PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

CENVAT Credit Rules, 2004

1. Examine the validity of the following statements, with reference to the CENVAT Credit Rules, 2004:-

   (a) Credit of capital goods can be availed when such capital goods are exclusively used in manufacture of dutiable goods on which benefit under *Notification 1/2011-CE* is availed.

   (b) The credit of input services used for repair or renovation of factory or office is available.

2. Determine the amount of CENVAT credit available to Gangotri Manufacturing Ltd. in respect of the following items procured by them in the month of October, 2011:-

Items	Excise duty paid (including EC and SHEC) (₹)
Raw materials	52,000
Capital goods used for generation of electricity for captive use within the factory	1,00,000
Motor spirit	40,000
Inputs used for construction of a building	1,00,000
Dairy and bakery products consumed by the employees	5,000
Motor vehicle	4,50,000

(Note: The aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2010-11 is ₹ 450 lakh)

Manufacture

3. T & T International was engaged in manufacture of 'tarpaulin made-ups'. For the purpose of preparing the tarpaulin made-ups, the tarpaulin cloth was cut into various sizes and stitched and then eye-lets were fitted. Department raised the plea that the "tarpaulin made-ups" prepared by means of cutting, stitching and fixing of eye-lets amounted to manufacture and, hence, they were exigible to duty. However, T & T International stated that the process of mere cutting, stitching and putting eyelets did not amount to manufacture and hence, the Department could not levy excise duty on tarpaulin made-ups.

   Explain, with the help of a decided case law, whether Department's plea is justified in law.

Valuation of excisable goods

4. Vibhuti Motors Ltd. was manufacturer of various types of motor vehicles chargeable to duty on *ad valorem* basis. Department observed that while selling the vehicles to the customers, the dealers added their own margin known as the dealer's margin to the price at which the vehicles were made available to them by Vibhuti Motors Ltd. This dealer's margin contained provision for rendering pre-delivery inspection and three after sale services.

   Hence, the Department contended that the cost of pre-delivery inspection and after sale services would form part of the assessable value of the automobile while discharging the duty liability.

   You are required to examine the veracity of the Department's contention, with the help of a decided case law.

5. Compute the assessable value of the goods manufactured by Bharat Enterprises, under section 4 of the Central Excise Act, 1944, with the help of the following particulars:-

Particulars	Amount (₹)
Contracted sale price for delivery at buyer's premises	2,42,000
The contracted sale price includes the following elements of cost:-	
(i) Cost of containers supplied by the buyer	15,200
(ii) Design and engineering charges	22,400
(iii) Loading and handling charges incurred after removal from the factory	6,000
(iv) Cost of after sale service	10,000
(v) Dharmada charges	2,100

   Give reasons with suitable assumptions wherever necessary.

Demand

6. XS Ltd. was engaged in manufacture of various toilet preparations such as after-shave lotion, deo-spray, mouthwash, skin creams, shampoos, etc. XS Ltd. procured Extra Natural Alcohol (ENA) from the local market on payment of duty, to which Di-ethyl Phthalate (DEP) was added so as to denature it and render the same unfit for human consumption. As a result, an intermediate product i.e. Di-ethyl Alcohol was produced. The Department alleged that Di-ethyl Alcohol manufactured as a result of addition of DEP to ENA, was liable to central excise duty and issued a show cause notice under section 11A.

   However, XS Ltd. alleged that the notice issued is time-barred as per section 11A. In reply, Department pleaded that non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A.

You are required to examine, with the help of a decided case law, whether the Department's plea is valid in law.

Section 5A

7. Mahavir Textiles was engaged in manufacturing certain non-branded goods of textile sector. While one notification granted full exemption to the said goods without any condition, another notification prescribed a concessional rate of duty of 4% on these items, with the benefit of CENVAT credit.

   At the time of selling the said goods to Dhara Industries, Mahavir Textiles opted to pay the excise duty at the concessional rate of 4% on such items under second notification with a view to claim the CENVAT credit of the duty paid on the inputs used in producing these goods. Further, Dhara Industries availed the CENVAT credit of 4% excise duty paid by it on the said goods to Mahavir Textiles.

   In the light of the aforementioned facts, answer following questions:-

   (a) Was Mahavir Textiles justified in paying duty @ 4% in respect of unconditionally fully exempted goods and can it avail the CENVAT credit of the excise duty paid on inputs on the plea that it has paid excise duty on the final goods?

   (b) Can Dhara Industries avail the CENVAT credit of the excise duty paid on the goods purchased from Mahavir Textiles?

Excise Audit 2000

8. Briefly explain the procedure for Excise Audit, 2000.

Works contract service

9. Examine, with the help of a decided case law, whether the service provided by way of "advice, consultancy or technical assistance" in the case of turnkey contracts will attract service tax and can these turnkey contracts be vivisected?

Registration under service tax

10. Examine, with the help of a decided case law, whether the provisions of deemed registration under rule 4(5) of the Service Tax Rules, 1994 are attracted in case of centralized registration?

Erection, commissioning or installation services

11. Bonne Ltd. is engaged in providing erection, commissioning or installation services. Compute the value of taxable services under the category of 'erection, commissioning or installation services' for the month of October, 2011 with the help of the following particulars furnished by it:-

Receipts	Amount (₹)
Installation of thermal insulation	12,00,000

Commissioning of Mechanized Food Grain Handling Systems	5,50,000
Installation of transformer	15,50,000
Installation of street lights	4,00,000
Erection of fire proofing system in the airport	95,00,000

All the receipts are excluding service tax. Bonne Ltd. is not eligible for small service provider's exemption under *Notification No. 6/2005 ST dated 01.03.2005.*

Taxable services

12. State, with reasons, whether service tax is payable in the following cases:-

    (a) Construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana.

    (b) Air transport of crew members on board the aircraft.

Tour operator's services

13. Chandan Tours and Travels, Mumbai are engaged in providing the tour operator's services. Compute the service tax payable by Chandan Tours and Travels for the month of November, 2011 on the basis of the information furnished as follows:-

Particulars	Amount (₹)
Amount charged for a package tour* from Mumbai to Goa	10,00,000
Amount charged from Indian pilgrims for Haj and Umrah pilgrimage in Saudi Arabia	12,54,000
Amount charged for arranging a tour (transportation only)	22,50,000
Charges for arranging hotel accommodation in Bangalore in relation to a tour from Mumbai to Bangalore (Cost of hotel accommodation included)	10,00,000

*Note: The package tour includes transportation, accommodation, food, tourist guide and entry fees for monuments.

All the charges are excluding service tax. Chandan Tours and Travels is not eligible for small service provider's exemption under *Notification No. 6/2005 ST dated 01.03.2005.*

Composition scheme under VAT

14. Who are not eligible for composition scheme under the VAT regime? Discuss briefly

Registration under VAT

15. Under what circumstances registration can be cancelled under VAT?

Computation of VAT

16. Mr. Ram, a dealer in Tamil Nadu dealing in consumer goods, submits the following information pertaining to the month of October, 2011:

Details of purchases of goods:-

Particulars (raw material purchased from within the State)	Amount (₹)	Rate of VAT
Goods 'A'	10,00,000	Exempt
Goods 'B'	20,00,000	1%
Goods 'C'	30,00,000	12.5%

Details of sales of goods:-

Particulars (Sale of finished goods)	State in which goods are sold	Amount (₹)	Rate of VAT
Produced from Goods 'A'	Tamil Nadu Gujarat	5,00,000 7,00,000	12.5% 1%
Produced from Goods 'B'	Tamil Nadu	24,00,000	Exempt
Produced from Goods 'C'	Tamil Nadu	35,00,000	4%

Compute the amount of Value Added Tax (VAT) payable by Mr. Ram for the relevant month. There was no opening or closing inventory.

Valuation under customs

17. Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

18. A consignment of 1,600 metric tonnes of edible oil of Egyptian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment, there were following imports of edible oil of Egyptian origin:

S. No.	Quantity imported in metric tonnes	Unit price in US $ (CIF)
1.	40	260
2.	200	220
3.	1,000	200
4.	1,800	175
5.	800	180
6.	1,560	160

The rate of exchange on the relevant date was 1 US $ = Rs. 43.00 and the rate of basic customs duty was 15% ad valorem. There is no countervailing duty or special additional

duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required.

Remission of custom duty

19. Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. Lucrative Laminates sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non-availability of orders for clearance.

    Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

Claim for refund of duty

20. Baidnath Medicals filed a Bill of Entry and paid the higher duty in ignorance of a notification which allowed him the payment of duty at a concessional rate. No assessment order was passed because the assessee simply filed Bill of entry and paid the duty.

    Baidnath Medicals filed a refund claim under section 27, of the excess duty paid by it. The Revenue contended that a refund in appeal could be asked for under section 27 of the Customs Act, 1962 only if the payment of duty had been made pursuant to an assessment order which was not so in the instant case.

    Do you think that Revenue's contention is valid in law?

SUGGESTED ANSWERS/HINTS

1. (a) The said statement is not valid. *Circular No. 943/04/2011-CX dated 29.04.2011* clarifies that as per rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Since, goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated the 01.03.2011* is availed are exempted goods [Rule 2(d)], credit of capital goods used exclusively in manufacture of such goods is not allowed.

   (b) The said statement is absolutely valid. *Circular No. 943/04/2011-CX dated 29.04.2011* clarifies that credit of input services used for repair or renovation of factory or office is allowed because services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

2. Computation of the amount of CENVAT credit available to Gangotri Manufacturing Ltd.:-

Items	Excise duty paid (including EC and SHEC) (₹)
Raw materials	52,000
Capital goods used for generation of electricity for captive use (50% of ₹ 1,00,000) (Note-1 & 2)	50,000
Motor spirit (Note-3)	Nil
Inputs used for construction of a building (Note-3)	Nil
Dairy and bakery products consumed by the employees (Note-3)	Nil
Motor vehicle (Note-3)	Nil
Total CENVAT credit available	1,02,000

Notes:-

1. Capital goods used for generation of electricity for captive use within the factory are eligible capital goods under rule 2(a) of the CENVAT Credit Rules, 2004.
2. Since, aggregate value of clearances of Gangotri Manufacturing Ltd. for the financial year 2010-11 is ₹ 450 lakh i.e. more than ₹ 400 lakh, it is not eligible for SSI exemption. Therefore, CENVAT credit of only 50% of the duty paid is available in respect of the eligible capital goods in the year of purchase [Third proviso to rule 4(2)(a)].
3. As per the definition of inputs under rule 2(k), there is specific exclusion with regard to the following:-
   (i) motor spirit
   (ii) goods used for construction of a building or a civil structure or a part thereof
   (iii) any goods, such as food items used primarily for personal use or consumption of any employee
   (iv) motor vehicles

3. No, the Department's plea is not justified in law. The facts of the given case are similar to the case of *CCE v. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.).* The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a

manufacturing process. Therefore, there could be no levy of Central excise duty on the tarpaulin made-ups.

Hence, the Supreme Court, upholding the decision of the Tribunal, held that conversion of tarpaulin into tarpaulin made-ups would not amount to manufacture.

4. Yes, the Department's contention is valid in law. The facts of the given case are similar to the case of *Maruti Suzuki India Ltd. v. CCE 2010 (257) E.L.T. 226 (Tri. – LB).* The Larger Bench of the Tribunal drew the following propositions:-

(i) Transaction value includes the amount paid by reason of/in connection with sales of goods

The transaction value is not confined to the amount actually paid and is not restricted to flow back of consideration or part thereof to the assessee directly but even for discharge of sales obligations both in present and future. Thus, all deferred and future considerations are added to assessable value.

(ii) Definition of transaction value is extensive, at the same time restrictive and exhaustive in relation to the items excluded there from

Extensive

The use of expressions like "includes in addition to" and "including but not limited to" in the definition clause establishes that it is of very wide and extensive in nature.

Restrictive and exhaustive

At the same time, it precisely pinpoints the items which are excluded there from, with the prefix as "but does not include". Since, exclusions are defined, no presumption for further exclusions is permissible. Hence, the definition is restrictive and exhaustive in relation to the items excluded there from.

(ii) PDI and after sales service charges is a payment on behalf of the assessee to the dealer by the buyer

Any amount collected by the dealer towards pre-delivery inspection or after sale services from the buyer of the goods under the understanding between the manufacturer and the dealer or forming part of the activity of sales promotion of the goods would be a payment on behalf of the assessee to the dealer by the buyer, and hence, it would form part of the assessable value of such goods.

Hence, it was held that the charges towards pre-delivery inspection and after-sale-service recovered by dealers from buyers of the cars would be included in the assessable value of cars.

Note: In view of the aforesaid judgment, CBEC vide Circular No. 936/26/2010-CX. dated 27-10-2010 has also clarified that Pre-delivery Inspection charges and after-sale service charges collected by the dealers are to be included in the assessable value under section 4 of the Central Excise Act, 1944.

5. Computation of the assessable value of goods manufactured by Bharat Enterprises:-

Particulars	Amount (₹)
Contracted sale price for delivery at buyer's premises	2,42,000
Less: Loading and handling charges incurred after removal from the factory	6,000
Assessable value of the goods	2,36,000

Notes:-

While computing the assessable value,

1. cost of containers supplied by the buyer is includible *[Circular No. 643/34/2002-CX. dated 1-7-2002].*
2. design and engineering charges are essential for the purpose of manufacture and hence, are includible since such payment is in connection with sale.
3. loading and handling charges incurred after removal from the factory are not includible.
4. cost of after sale service is includible *[Circular No. 936/26/2010-CX. dated 27-10-2010].*
5. dharmada charges are includible *[Circular No. 763/79/2003-CX. dated 21-11-2003].*

6. No, the Department's plea is not justified in law. The issue, as to whether non-disclosure as regards manufacture of Di-ethyl Alcohol amounts to suppression of material facts thereby attracting the larger period of limitation under section 11A, was decided by the Gujarat High Court in case of the *CC Ex. & C v. Accrapac (India) Pvt. Ltd. 2010 (257) E.L.T. 84 (Guj.).* In the instant case, The Tribunal noted that denaturing process in the cosmetic industry was a statutory requirement under the Medicinal & Toilet Preparations (M&TP) Act. Thus, addition of DEP to ENA to make the same unfit for human consumption was a statutory requirement. Hence, failure on the part of the respondent to declare the same could not be held to be suppression as Department, knowing the fact that the respondent was manufacturing cosmetics, must have the knowledge of the said requirement. Further, as similarly situated assesses were not paying duty on denatured ethyl alcohol, the respondent entertained a reasonable belief that it was not liable to pay excise duty on such product.

   The High Court upheld the Tribunal's judgment and pronounced that non-disclosure of the said fact on part of the assessee would not amount to suppression so as to call for invocation of the extended period of limitation.

7. (a) No, Mahavir Textiles was not justified in paying duty in respect of unconditionally fully exempted goods and cannot avail the CENVAT credit of the excise duty paid on inputs on the plea that it has paid excise duty on the final goods. *Circular No. 937/27/2010-CX. dated 26-11-10* clarifies that in view of the specific bar provided under section 5A(1A) of the Central Excise Act, 1944, the manufacturer cannot opt

to pay the duty in respect of unconditionally fully exempted goods and cannot avail the CENVAT credit of the duty paid on inputs.

(b) No, Dhara Industries cannot avail the CENVAT credit of the excise duty paid on the goods purchased from Mahavir Textiles. *Circular No. 940/1/2011-CX., dated 14-1-2011* clarifies that in such a case, in case of the unconditionally fully exempted goods, if the assessee pays any amount as excise duty on such goods, the same cannot be allowed as "CENVAT credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under rule 3 of the CENVAT Credit Rules, 2004.

The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of section 11D of the Central Excise Act, 1944.

Moreover, the CENVAT credit of such amount utilized by downstream units also needs to be recovered in terms of the rule 14 of the CENVAT Credit Rules, 2004.

8. Procedure of Excise Audit, 2000:-

(a) Selection of Assessee : Depending upon the manpower availability, about 300 to 400 units are selected for conducting audit during a financial year. Selection of the unit is based taking into account the 'risk-factors'.

(b) Desk Review: The auditors are assigned the assessees to be audited at the beginning of the financial year. They are required to gather as much information about the assessee as possible by interacting with the assessee.

(c) Gathering and documenting information: The auditor may also require certain documents or information from the assessee to complete his preliminary investigation. For this, he may write letter to the assessee or send him a questionnaire to obtain this information.

(d) Touring of the premises: The auditor then visits the unit of the assessee to see the actual running of the unit, the systems that are followed for maintaining records in various sections and the system of movement of goods and the related documents within the unit.

(e) Audit Plan: Based on his experiences and the information gathered so far about the assessee, the auditor prepares an 'audit plan'. The idea of developing audit plan is to list the areas which, as per the auditor are the vulnerable areas from the revenue point of view. A well thought audit plan generally increases the success of audit result manifolds.

(f) Verification: The auditors visit the unit of the assessee on a scheduled date (informed to the assessee in advance) and carry out the scrutiny of the records of the assessee as per the audit plan. The purpose of verification (carried out in

presence of the assessee) is to reasonably ensure that no amount, which as per the Central Excise law is chargeable to duty, escapes taxation.

(g) Audit Objection and Audit Para: Where the auditor finds instances of short payment of duty or non-observance of Central excise procedures, he is required to discuss the issue with the assessee. After explanation provided by the assessee, if the auditor is satisfied that such non-tax compliance has occurred, he records the same as an 'Audit Objection' or 'Audit Para' of the 'draft audit report' that he would be preparing at the end of the verification process.

(h) Audit Report: At the end of the process of verification, the auditor prepares an 'Draft Audit Report' which provides (issue or para wise) the issue in brief, the reply or the explanation of the assessee, the reason for the auditor not being satisfied with the reply, the amount of short payment (if tabulated) and the recoveries of the same (if could be made at the spot). It is then submitted to the superior officers for review after which it becomes final and in cases where the disputed amounts have not already been paid by the assessee at the spot, demand notices are issued by the Department for their recoveries.

9. The Larger Bench of the Tribunal, in case of *CCE v. BSBK Pvt. Ltd. 2010 (18) S.T.R. 555 (Tri. – LB),* decided the issue as to whether the service provided by way of "advice, consultancy or technical assistance" in the case of turnkey contracts would attract service tax and could these turnkey contracts be vivisected.

It noted that Article 366(29-A)(b) to the Constitution has allowed the vivisection of indivisible contracts in order to find out goods component and value thereof. Therefore, the remnant part of the contract may be attributable to the scope of service tax under the provisions of the Finance Act, 1994.

It inferred that turnkey contracts can be vivisected and discernible service elements involved therein can be segregated and classifiable as well as valued for levy of service tax under the Finance Act, 1994 provided such services are taxable services as defined by that Act and depending on the facts and circumstance of each case, services by way of advice, consultancy or technical assistance in the case of turnkey contract shall attract service tax liability.

10. The question as to the provisions of deemed registration under rule 4(5) of the Service Tax Rules, 1994 are attracted in case of centralized registration was examined by the High Court in case of *Karamchand Thapar & Bros. (Coal Sales) Ltd. v. UOI 2010 (20) STR 3 (Cal.).* The Court observed that every person liable to pay service tax is required under rule 4(1) of the Service Tax Rules, 1994, to apply to the Superintendent of Central Excise for registration in Form ST-1. The deeming provision in rule 4(5) is applicable to registration granted by the Superintendent of Central Excise.

However, in the instant case, the petitioner's application was for centralised registration under rule 4(2). The registration was to be granted by the Commissioner of Central

Excise or the Chief Commissioner of Central Excise in whose jurisdiction the premises of the petitioner company, from where centralised billing/accounting was done, was located. There being no time stipulation on the Commissioner of Central Excise to grant centralised registration under sub-rule (2), the provision of deemed registration is not attracted in case of grant of registration by the Commissioner.

Further, even if the applications for centralized registrations have been submitted to the Superintendent of Central Excise, registration under sub-rule (2) can only be granted by the Commissioner.

Undoubtedly, registration cannot be indefinitely delayed. Registration has to be granted within reasonable time. However, while in case of grant of registration by the Superintendent of Central Excise, the time stipulation of seven days is mandatory under the Rules and its contravention attracts the consequence of deemed registration, in case of the Commissioner, the same time stipulation extended by circulars is only directory. The circulars prescribe appropriate action against officers who delay registration.

11. Computation of the value of taxable service under the category of 'erection, commissioning or installation services' for the month of October, 2011:-

Particulars	Amount (₹)
Installation of thermal insulation	12,00,000
Installation of transformers (Note-2)	15,50,000
Installation of street lights (Note-2)	4,00,000
Value of taxable service	31,50,000

Notes:

1. *Notification No. 12/2010 ST dated 27.02.2010* has specifically exempted services relating to 'erection, commissioning or installation' of Mechanized Food Grain Handling Systems.
2. *Circular No.123/5/2010-TRU dated 24.05.2010* clarifies that installation of transformers and street lights is taxable under the category of erection, commissioning or installation service.
3. Services rendered wholly within an airport are classifiable under the category of 'airport service' [Proviso to section 65(105)(zzm)].

12. (a) No, service tax is not payable on construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana. *Notification No. 28/2010 ST dated 22.06.2010*, with effect from 01.07.2010, has exempted the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana from service tax.

(b) No, service tax is not payable on air transport of crew members on board the aircraft because *Notification No. 25/2010 ST dated 22.06.2010* has specifically exempted the air transport of crew members on board the aircraft.

13. Computation of total value of taxable services provided by Chandan Tours and Travels for the month of November, 2011:-

Particulars	Value of services (₹)	Abatement (%)	Taxable value in % age	Value of taxable services (₹)
Amount charged for a package tour from Mumbai to Goa (Note-1)	10,00,000	75	25	2,50,000
Amount charged for arranging a tour (transportation only) (Note-2)	22,50,000	60	40	9,00,000
Amount charged for arranging hotel accommodation in Bangalore (Note-3)	10,00,000	90	10	1,00,000
Amount charged from Indian pilgrims for Haj and Umrah pilgrimage (Note-4)	12,54,000	--	--	Nil
Total				12,50,000

Service tax payable on ₹ 12,50,000/- will be ₹ 1,25,000/-+ education cess (2%) and secondary and higher education cess (1%) i.e. ₹ 3750/- = ₹ 1,28,750/-

Notes:-

1. As per *Notification No. 1/2006 ST dated 01.03.2006*, in case of package tours, an abatement of 75% of the gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that it is inclusive of charges for such a tour.
2. Since, this tour package includes only transportation; it is not a package tour as per *Notification No. ST 1/2006 ST dated 01.03.2006.* In case of services provided in relation to a tour other than in relation to a package tour, an abatement of 60% of the gross amount charged is available. It has been assumed that the bill issued for this purpose indicates that the amount charged in the bill is the gross amount charged for such a tour.

3. As per *Notification No. 1/2006 ST dated 01.03.2006*, in cases where the services provided by a tour operator are solely of arranging or booking accommodation for any person in relation to a tour, an abatement of 90% of the gross amount charged is granted.

In case of tours referred to in above three notes, the exemption is available on the assumption that:-

(i) no CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of CENVAT Credit Rules, 2004; or

(ii) the service provider has not availed the benefit under the *Notification No. 12/2003 ST dated 20.06.2003.*

4. *Circular No. 117/11/2009 ST dated 31.10.2009* clarifies that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service. It is assumed that the other conditions of export as provided in the Export of Service Rules, 2005 are duly fulfilled.

14. Following are not eligible for the composition scheme:

(i) a manufacturer or a dealer who sells goods in the course of inter-State trade or commerce; or

(ii) a dealer who sells goods in the course of import into or export out of territory of India; or

(iii) a dealer transferring goods outside the State otherwise than by way of sale or for execution of works contract; or

(iv) a manufacturer/dealer who makes inter-State purchases; or

(v) a dealer/manufacturer who issues vatable invoices.

15. The VAT Registration may be cancelled under following circumstances:

(i) Discontinuance of business; or

(ii) Disposal of business; or

(iii) Transfer of business to a new location;

(iv) Annual turnover of a manufacturer or a trader dealing in designated goods or services falling below the specified amount.

16. Computation of VAT payable by Mr. Ram for the month of October, 2011:-

	Particulars	₹
(A)	Output tax payable	
	(i) On sale of finished goods produced from Goods 'A' within the State (₹ 5,00,000 × 12.5%)	62,500
	(ii) On taxable sale of finished goods produced from Goods 'C' within the State (₹ 35,00,000 × 4 %)	1,40,000
	Total (A)	2,02,500
(B)	Input tax credit available	
	(i) Goods 'A' (Exempt)	Nil
	(ii) Goods 'B' (Note-1)	Nil
	(iii) Goods 'C' (₹ 30,00,000×12.5%)	3,75,000
	Total (B)	3,75,000
	Net VAT payable = (A)-(B)	(1,72,500)
	CST payable on inter-state sale of goods produced from Goods 'A' (₹ 7,00,000 × 1%) shall be paid from the balance of credit of Rs. 1,72,500.	7,000
	Balance of input credit carried forward to next month	1,65,500

Notes:

1. Since, there is no opening and closing inventory, it implies that entire purchase of the Goods 'B' is used to manufacture the finished goods (which are exempt from tax). Further, purchases of goods, which are being utilized in the manufacture of exempted goods, are not eligible for input tax credit. Hence, no input tax credit is available in respect of VAT paid on purchase of Goods 'B'.
2. If finished goods are sold in the course of inter-state trade and commerce, credit is allowed.

17. *Circular No.11/2010 dated 03.06.2010* has clarified that with effect from 10.10.2007, section 14 of the Customs Act has been amended to provide that the value of the imported goods shall be the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a *sale for export to India*. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

18. Determination of transaction value of the subject goods:-

In the instant case, while determining the transaction value of the goods, following factors need consideration:-

1. In the given case, US $10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin. It may be presumed that they were produced by the same person. Even otherwise, such consignments can be accepted as identical goods.
3. Further, clause (b) of rule 4(1) requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.
4. As far as the quantities are concerned, the consignments of 40 and 200 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.
5. However, the unit prices in these 4 consignments are different. Rule 4(3) stipulates that in applying rule 4, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation shall be US $ 160 per metric tonne.

Computation of amount of duty payable:

CIF value of 1,600 metric tonnes:

=1,600 x 160 = US $ 2,56,000

At the exchange rate of $ 1 = ₹ 43

CIF Value (in Rupees)	=	₹ 1,10,08000
Add: Landing Charges at 1%	=	₹ 1,10080
	=	₹ 1,11,18,080
15% of Ad Valorem duty on Rs.1,11,18,080	=	₹ 16,67,712

Add: Education cess @ 2%		
(rounded off)	=	₹ 33,354
Add: Secondary and higher education		
1cess @ 1% (rounded off)	=	₹ 16,677
Total custom duty payable	=	₹ 17,17,743

19. No, the application for remission of duty filed by the Lucrative Laminates is not valid in law. The facts of the given case are similar to the case of *CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.).* The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.

    Therefore, the expression *"at any time before clearance for home consumption"* would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.

    Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.

    The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

20. No, Revenue's contention is not valid. The refund claim filed by Baidnath Medicals is valid in law. The facts of the given case are similar to the case of *Aman Medical Products Ltd. v. CCus. Delhi 2010 (250) ELT 30 (Del.).* The High Court, referring to the language of section 27, interpreted that it is not necessary that the duty paid by the importer must be pursuant to an order of assessment. The duty paid by the importer can also be 'borne by him'. Clauses (i) and (ii) of sub-section (1) of section 27 are clearly in the alternative because the expression 'or' is found in between clauses (i) and (ii). The object of section 27(ii) is to cover those classes of case where the duty is paid by a person without an order of assessment.

The High Court held that the refund claim of the appellant was maintainable under section 27 and the non-filing of the appeal against the assessed bill of entry did not deprive the appellant to file its claim for refund under section 27 of the Customs Act, 1962. The refund claim, in the case on hand, would fall under clause (ii) of sub-section (1) of section 27.

Note: The aforesaid judgment has been appealed to Supreme Court and appeal is pending in case of Commissioner v. Aman Medicals Products Ltd. 2010 (257) ELT A57 (SC).

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2010 TO 30.04.2011

I. EXCISE

A. AMENDMENTS IN THE CENTRAL EXCISE RULES, 2002

1. In case of ready-made garments and made-up articles of textiles manufactured on job-work basis, liability to pay duty and comply with the provisions of the Central Excise Rules, 2002 is on the merchant manufacturer

(a) Liability of the merchant manufacturer to pay duty [Rule 4(1A)]

Sub-rule (1A) inserted after the sub-section (1) to section 4, provides as follows:-

Notwithstanding anything contained in sub-rule (1), every person who gets the following goods produced/manufactured on his account on job work, shall pay the duty leviable on such goods, at such time and in such manner as is provided under these rules, as if such goods have been manufactured by such person:-

(a) Articles of apparel and clothing accessories, knitted or crocheted [Chapter 61 of the First Schedule to the Tariff Act]

(b) Articles of apparel and clothing accessories, not knitted or crocheted [Chapter 62 of the First Schedule to the Tariff Act]

(c) Other made up textile articles; sets; worn clothing and worn textile articles; rags [Chapter 63 of the First Schedule to the Tariff Act].

Implication of the amendment

It is the practice in the garment and made up industry for brand owners to have goods manufactured from several job-workers. The brand owners may or may not, themselves, possess any manufacturing facility.

By virtue of the aforesaid amendment, in case of ready-made garments and made-up articles of textiles manufactured on job-work basis, liability to pay duty is on the merchant manufacturer (person on whose behalf the goods are manufactured by job-workers) and not on the job-workers. Hence, the job-worker is exempt from payment of duty if the merchant manufacturer pays the duty.

Further, merchant manufacturer would be required to register his private store-room or warehouse in which inputs are received for distribution to job-workers and finished goods are received from the job-workers. He would also be required to comply with all the other provisions of Central Excise law.

Job worker may also be authorized to pay the duty and comply with the provisions of these rules

However, merchant manufacturer may authorize the job worker to pay the duty leviable on such goods on his behalf and the job worker so authorized may undertake to discharge all liabilities and comply with all the provisions of these rules.

Meaning of job worker and job work

For the purposes of this sub-rule, the expression "job worker" means a person engaged in manufacture, or undertaking any process on behalf and under the instructions of such person for manufacturing, from any inputs or goods supplied by such person or by any other person authorized by such person so as to complete a part or whole of the process resulting ultimately in the manufacture of goods falling under chapters 61 or 62 or 63 of the First schedule to the Tariff Act.

The term "job work" shall be construed accordingly.

(b) Liability of the merchant manufacturer to comply with the Central Excise procedures [Rule 12D]

Rule 12D has been inserted after rule 12CC. It provides as follows:-

The provisions of the Central Excise Rules, 2002 shall apply to a merchant manufacturer (person on whose behalf the goods are manufactured by the job-workers) of the following goods as if such goods have been manufactured by him:-

(a) Articles of apparel and clothing accessories, knitted or crocheted [Chapter 61 of the First Schedule to the Tariff Act]

(b) Articles of apparel and clothing accessories, not knitted or crocheted [Chapter 62 of the First Schedule to the Tariff Act]

(c) Other made up textile articles; sets; worn clothing and worn textile articles; rags [Chapter 63 of the First Schedule to the Tariff Act].

[Notification No. 4/2011-C.E. (N.T.) dated 01.03.2011]

2. Quarterly return required to be filed by an assessee availing exemption under *Notification No. 1/2011-CE* [Sixth proviso to rule 12(1)]

Where an assessee is availing the exemption under *Notification No. 1/2011-CE dated 01.03.2011* and does not manufacture any other excisable goods other than those specified in the said notification, he shall file a quarterly return in the form specified by notification by

the Board, of production and removal of goods and other relevant particulars, within 10 days after the close of the quarter to which the return relates.

[Notification No. 08/2011-C.E. (N.T.) dated 24.03.2011]

3. Special provisions relating to job work in case of articles of jewellery extended to articles of goldsmiths' or silversmiths' wares [Rule 12AA(1)]

Rule 12AA(1) provides that in case of job work for the article of jewellery of precious metals falling under heading 7113, principal manufacturer (not being an EOU or a unit located in SEZ) shall obtain registration, maintain accounts, pay duty leviable on such goods and comply with all the relevant provisions of these rules, as if he is an assessee.

Amendment made by the *Notification No. 08/2011-C.E. (N.T.) dated 24.03.2011*

The aforesaid provisions relating to job work in case of articles of jewellery of precious metals (falling under heading 7113 of the Central Excise Tariff) have been extended to articles of goldsmiths' or silversmiths' wares of precious metals (falling under heading 7114 of the Central Excise Tariff).

4. ER-2 and ER-4 to be filed electronically if excise duty of Rs. 10,00,000 or more is paid in the preceding financial year

With effect from 01.06.2010, the Central Excise Rules, 2002 have been amended to provide that the following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year:

(i) Annual Financial Information Statement - ER-4 [Rule 12(2) of the Central Excise Rules, 2002]

(ii) Monthly return by EOU - ER-2 [Rule 17(3) of the Central Excise Rules, 2002]

[Notification No. 20/2010 CE (NT) dated 18.05.2010]

B. AMENDMENTS AND CLARIFICATIONS IN THE CENVAT CREDIT RULES, 2004

AMENDMENTS

Following amendments have been made in the CENVAT Credit Rules, 2004:

(i) Definition of capital goods [Rule 2(a)]

Following amendments have been made in the definition of capital goods:-

(a) Capital goods used outside the factory for electricity generation for captive use eligible under rule 2(a)

With effect from 01.04.2011, CENVAT credit of duty paid on capital goods used outside the factory of the manufacturer of the final products for generation of

electricity for captive use within the factory has been permitted [Item (1A) in sub-clause (A)].

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(b) Dumpers or Tippers eligible capital goods for availing CENVAT credit

Dumpers or tippers used for providing site preparation and clearance, excavation, earth moving and demolition services and mining services would be treated as capital goods if they are registered in the name of such output service provider [Sub-clause (C)].

[Notification No. 25/2010 CE (NT) dated 22.06.2010]

(c) Components, spares and accessories of motor vehicles, dumpers or tippers used for providing prescribed taxable services eligible for CENVAT credit as capital goods

Components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide the following taxable services would be treated as capital goods:-

- Courier services
- Tour operator's services
- Rent-a-cab scheme operator's services
- Cargo handling services
- Goods Transport Agency services
- Outdoor catering services
- Pandal/Shamiana services
- Site preparation and clearance, excavation, earth moving and demolition services
- Mining services

[Sub-clause (D)]

[Notification No. 29/2010 CE (NT) dated 24.09.2010]

(ii) Definition of exempted goods [Rule 2(d)]

Prior to Amendment

Exempted goods means excisable goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011*

With effect from 01.03.2011, definition of exempted goods has been amended to include goods in respect of which the benefit of an exemption under *Notification No. 1/2011-C.E. dated 01.03.2011* is availed.

Implication of the amendment

Henceforth, credit attributable to such goods would have to be reversed when common inputs and input services are used for both these goods and otherwise dutiable goods.

(iii) Definition of exempted services [Rule 2(e)]

Prior to Amendment

Exempted services means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011*

With effect from 01.04.2011, definition of exempted services has been amended to include taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.

Further, it has been clarified that "exempted services" includes trading.

(iv) New definition of inputs [Rule 2(k)]

With effect from 01.04.2011, definition of inputs has been substituted with the following new definition:-

Input means -

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products; or

(iii) all goods used for generation of electricity or steam for captive use; or

(iv) all goods used for providing any output service;

but excludes -

(A) light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol;

(B) any goods used for -

(a) construction of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of any of the following taxable service:-

· Port services

- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

(C) capital goods except when used as parts or components in the manufacture of a final product;

(D) motor vehicles;

(E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; and

(F) any goods which have no relationship whatsoever with the manufacture of a final product.

Meaning of free warranty

Free warranty means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer.

Clarification

In respect of the aforesaid amendment, *D.O.F.No.334/ 3/2011-TRU* clarifies as follows:-

- The requirement that goods should be used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not has been removed.
- Henceforth, all goods used in the factory by the manufacturer of the final product, except those specified in the negative list and goods having no relationship whatsoever with the manufacture of final product, would qualify for treatment as inputs.
- Another feature of the new definition is that goods used primarily for personal use or consumption of any employee including food articles etc. have been expressly excluded.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(v) New definition of input service [Rule 2(l)]

With effect from 01.04.2011, definition of input service has been substituted with the following new definition:-

Input service means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) 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,

and includes services used 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; but excludes services,-

(A) Following specified services, in so far as they are used for construction of a building or a civil structure or a part thereof; or laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services:-

- Architect's services
- Port services
- Other port services
- Airport services
- Construction in respect of commercial or industrial buildings or civil structures
- Construction services in respect of residential complexes
- Works contract services

(B) Following specified services, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods:-

- General insurance business
- Rent-a-cab scheme operator's services
- Service Stations' services
- Supply of tangible goods services

(C) 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 benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee.

Clarification

In respect of the aforesaid amendment, *D.O.F.No.334/ 3/2011-TRU dated 28.02.2011* clarifies as follows:-

1. The distinction between goods and services is diminishing and many goods can be received as services. Accordingly the definition of "input service" has been aligned with the definition of "input" such that goods that do not constitute "input" do not qualify as "input service". For instance, goods used for construction have been excluded from inputs while construction services, works contract service, and other specified services in so far as they are used for construction have been kept out of the purview of input services..
2. Similarly services relating to motor vehicle i.e. rent-a-cab, use of tangible goods, insurance or repair of vehicle shall not constitute an "input service" except in respect of output services where credit on motor vehicle is permitted as "capital goods".
3. On the same lines, a service meant primarily for the personal use or consumption of employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.
4. Expression "activities relating to business" has been deleted and Business exhibition and legal services added in the list of services.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(vi) New definition of manufacturer or producer [Rule 2(naa)]

With effect from 01.03.2011, definition of "manufacturer or producer" has been substituted with the following new definition:-

Manufacturer or producer-

(i) in relation to articles of jewellery or articles of goldsmiths' or silversmiths' wares of precious metals falling under heading 7113 or 7114 as the case may be, of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1) of rule 12AA of the Central Excise Rules, 2002;

(ii) in relation to goods falling under Chapters 61, 62 or 63 of the First Schedule to the Excise Tariff Act, includes a person who is liable to pay duty of excise leviable on such goods under sub-rule (1A) of rule 4 of the Central Excise Rules, 2002.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(vii) Amendments in rule 3-Utilization of CENVAT credit

(a) CENVAT credit of basic excise duty, paid on the goods on which exemption under *Notification No.1/2011- CE* has been availed, not available [Proviso to rule 3(1)(i)]

With effect from 01.03.2011, CENVAT credit of the basic excise duty shall not be allowed to be taken when paid on any goods in respect of which the benefit of an exemption under *Notification No.1/2011-CE dated 01.03.2011* is availed.

[Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011]

(b) CENVAT credit of only 85% of CVD, paid on ships, boats and other floating structures for breaking up, allowed [Proviso to rule 3(1)(vii)]

With effect from 01.03.2011, CENVAT credit shall not be allowed in excess of 85% of the additional duty of customs paid under section 3(1) of the Customs Tariff Act, on ships, boats and other floating structures for breaking up (falling under tariff item 8908 00 00 of the First Schedule to the Customs Tariff Act).

Reason for the amendment

D.O.F.No.334/ 3/2011-TRU provides the reason for the aforesaid amendment as follows:-

The process of obtaining goods and material mainly melting scrap and re-rollable scrap of steel, by breaking up of ships, boats and other floating structures is deemed to be a process of manufacture in terms of section note 9 of Section XV of the Central Excise Tariff. In the breaking of ships, a number of used serviceable articles such as pumps, air-conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a manufacturing process.

At the same time, ship breaking units are allowed to avail full credit of additional duty of customs paid on the ship when it is imported for breaking it. This anomaly was resulting in misuse of the Cenvat credit scheme. Rule 3 has been amended to prescribe that Cenvat credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(c) Utilisation of CENVAT credit not allowed for payment of excise duty on the goods on which exemption under *Notification No.1/2011- CE* has been availed [Second proviso to rule 3(4)]

With effect from 01.03.2011, CENVAT credit shall not be utilised for payment of any duty of excise on goods in respect of which the benefit of an exemption under *Notification No. 1/2011-CE dated 01.03.2011* is availed.

[Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011]

(d) CENVAT credit cannot be used for paying Clean Energy Cess [Sixth proviso to rule 3(4)]

Rule 3(4) of the CENVAT Credit Rules, 2004 has been amended to provide that the CENVAT credit of any duty specified in sub-rule (1) of rule 3 cannot be utilized for payment of the Clean Energy Cess.

[Notification No. 26/2010 CE (NT) dated 29.06.2010]

(e) In case any inputs are removed as such outside the factory for providing free warranty for final products, CENVAT credit availed need not be reversed [Second proviso to rule 3(5)]

Rule 3(5) provides that when inputs/capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9.

Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011 provides that with effect from 01.04.2011, such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products.

(f) In case inputs/capital goods written off *partially* before being put to use, amount equivalent to the CENVAT credit taken on such inputs/capital goods required to be paid [Rule 3(5B)]

Prior to Amendment

Earlier, rule 3(5B) stipulated that a manufacturer/service provider was required to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods where the value of such inputs or capital goods is written off ***fully*** before being put to use.

Amendment made by Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011

With effect from 01.03.2011, rule 3(5B) has been amended to provide that a manufacturer /service provider is required to pay an amount equivalent to the CENVAT credit taken in respect of inputs or capital goods even where the value of such inputs or capital goods is written off *partially* before being put to use.

(viii) Amendment in rule 4- Conditions for allowing CENVAT credit

(a) Special provisions relating to job work in case of articles of jewellery extended to articles of goldsmiths' or silversmiths' wares [Proviso to rule 4(1)]

Prior to Amendment

The proviso to rule 4(1) lays down that where articles of jewellery of precious metals (falling under heading 7113 of the Central Excise Tariff) are manufactured on job

work basis, the CENVAT credit of duty paid on inputs may be taken immediately on receipt of such inputs in the registered premises of the principal manufacturer subject to the condition that such inputs are used in the manufacture of articles of jewellery by the job worker.

Amendment made by *Notification No. 9/2011-C.E. (N.T.) dated 24-3-2011*

The aforesaid provisions relating to job work in case of articles of jewellery of precious metals (falling under heading 7113 of the Central Excise Tariff) have been extended to articles of goldsmiths' or silversmiths' wares of precious metals (falling under heading 7114 of the Central Excise Tariff).

(b) Restriction of availing 50% credit in the same financial year extended to the capital goods received outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory [Rule 4(2)(a)]

Prior to Amendment

Rule 4(2)(a) restricts the quantum of credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year as under:

a. Upto 50% in the same financial year;

b. Balance in one or more subsequent financial years provided the capital goods are still in the possession and use of the manufacturer or the output service provider.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011*

With effect from 01.04.2011, the aforesaid restriction of availing only 50% credit in the same financial year has been extended to the capital goods received outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory.

(ix) Amendments in rule 6-Obligation of manufacturer or producer of final products and a provider of taxable service

Rule 6 has undergone major changes vide *Notification No. 27/2010 CE(NT)* dated 01.07.2010, *Notification No. 21/2010 CE (NT)* dated 18.05.2010 and *Notification No. 3/2011-C.E.* (N.T.) dated 1-3-2011.

Amended rule 6 provides as follows:-

(1) No CENVAT credit on inputs/input services used in manufacture of exempted goods/for provision of exempted services [Sub-rule(1)]

The CENVAT credit shall not be allowed on:-

(i) such quantity of input used in/in relation to the manufacture of exempted goods or for provision of exempted services

or

(ii) input service used in/in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services

except in the circumstances mentioned in sub-rule (2).

CENVAT credit available in respect of the goods removed without payment of duty by job worker under rule 12AA of the Central Excise Rules, 2002

The CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Since, as per rule 12AA, the liability of payment of duty has been cast on the principal manufacturer, goods are cleared by a job-worker without payment of duty. However, CENVAT credit on the inputs used in the manufacture of such goods shall not be denied.

(2) CENVAT credit on inputs/input services allowed in case of maintenance of separate accounts [Sub-rule (2)]

Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts in respect of the following -

(a) Receipt, consumption and inventory of following INPUTS–

(i) Exempted goods and services

- Inputs used in or in relation to the manufacture of exempted goods.
- Inputs used for the provision of exempted services.

(ii) Dutiable goods and taxable services

- *Inputs used in or in relation to the manufacture of dutiable final products excluding exempted goods.*
- *Inputs used for the provision of output services excluding exempted services*

and

(b) Receipt and use of following INPUT SERVICES—

(i) Exempted goods and services

- Input services used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal.

- Input services used for the provision of exempted services.

(ii) Dutiable goods and taxable services

- *Input services used in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal.*
- *Input services used for the provision of output services excluding exempted services.*

and shall take CENVAT credit only on inputs under sub-point (ii) of point (a) and input services under sub-point (ii) of point (b) above.

(3) Options in case of non-maintenance of separate accounts [Sub-rule(3)]

Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods/the provider of output service, opting not to maintain separate accounts, shall follow any one of the following options, as applicable to him, namely:-

(i) Option to pay 5% of value of exempted goods/services [Clause (i)]

The manufacturer of goods/the provider of output service has an option to pay the following amount:-

Particulars	Amount (₹)
5% of value of the exempted goods and/or exempted services	xxxx
Less: Duty of excise, if any, paid on the exempted goods	xxxx
Amount payable under rule 6(3)(i)	xxxx

5% of the exempted value of the service to be paid in case of exempted services that are partially taxed with no facility of credits

However, if any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, shall be taken then the amount specified in clause (i) shall be 5% of the value so exempted.

For example, if the abatement on certain service is 60%, the amount required to be paid shall be 3% (5% of 60) of the full value of the exempted service.

(ii) Option to pay amount determined under sub-rule (3A) [Clause (ii)]

The manufacturer of goods/the provider of output service has an option to pay an amount as determined under sub-rule (3A).

(iii) Option to maintain separate accounts only in respect of inputs and payment of amount under sub-rule (3A) in respect of input services [Clause(iii)]

The manufacturer of goods/the provider of output service has an option to:-

(i) maintain separate accounts for the receipt, consumption and inventory of inputs as provided for in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said clause (a)

and

(ii) pay an amount as determined under sub-rule (3A) in respect of input services.

However, the provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply for such payment.

Points which merit consideration

1. If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.
2. It is hereby clarified that the credit shall not be allowed on inputs used exclusively in or in relation to the manufacture of exempted goods or for provision of exempted services and on input services used exclusively in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services.
3. No CENVAT credit shall be taken on the duty or tax paid on any goods and services that are not inputs or input services.

(4) Method of computation of amount payable under sub-rule 3(ii) [Sub-rule (3A)]

For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely :-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or taxable services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)= (B/C) multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services (provisional) = (E/F) multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely :-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services = (J/K) multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance upto the place of removal] or provision of exempted services = (M/N) multiplied by P, where [M] denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, [1][N] denotes total value of taxable and exempted services provided, and total value of dutiable and

exempted goods manufactured and removed, during the financial year, and P denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely :-

(i) details of CENVAT credit attributable to exempted goods and exempted services, monthwise, for the whole financial year, determined provisionally as per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June

of the succeeding financial year.

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent. per annum from the due date till the date of payment.

(5) Banking company & financial institution (including NBFC) required to pay 50% of credit availed [Sub-rule (3B)]

Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company (NBFC), providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

(6) Providers of service of life insurance or management of ULIP required to pay 20% of credit availed [Sub-rule (3C)]

Notwithstanding anything contained in sub-rules (1), (2), (3) and (3B), a provider of output service providing taxable services as specified in sub-clauses (zx) and (zzzzf) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to 20% of the CENVAT credit availed on inputs and input services in that month.

In respect of the aforesaid amendment, *D.O.F.No.334/ 3/2011-TRU* clarifies as follows:-

A substantial part of the income of a bank or a life insurance company is from investments or by way of interest in which a number of inputs and input services are used. There have been difficulties in ascertaining the amount of credit flowing into earning these amounts. Thus a banking company or a financial institution, including NBFC, providing banking and financial services are being obligated to pay an amount equal to 50% of the credit availed. In case of services relating to life insurance or management of ULIPs, such amount will be equal to 20% of credit availed. Other options of payment of amount under rule 6 shall not be available for these taxpayers.

(7) Payment under sub-rule (3) deemed to be CENVAT credit not taken for the purpose of exemption notification [Sub-rule (3D)]

Payment of an amount under sub-rule (3) shall be deemed to be CENVAT credit not taken for the purpose of an exemption notification wherein any exemption is granted on the condition that no CENVAT credit of inputs and input services shall be taken.

"Value" for the purpose of sub-rules (3) and (3A)

(a) shall have the same meaning as assigned to it under section 67 of the Finance Act, read with rules made thereunder or, as the case may be, the value determined under section 3, 4 or 4A of the Excise Act, read with rules made thereunder;

(b) in the case of a taxable service, when the option available under sub-rules (7), (7B) or (7C) of rule 6 of the Service Tax Rules, 1994, or the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 has been availed, shall be the value on which the rate of service tax under section 66 of the Finance Act, read with an exemption notification, if any, relating to such rate, when applied for calculation of service tax results in the same amount of tax as calculated under the option availed; or

(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or 10% of the cost of goods sold, whichever is more.

Points which merit consideration

1. The amount mentioned in sub-rules (3), (3A), (3B) and (3C), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the pmonth of March, when such payment shall be made on or before the 31st day of the month of March.
2. If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3), (3A), (3B) and (3C), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.
3. In case of a manufacturer who avails the exemption under a notification based on the value of clearances in a financial year and a service provider who is an individual or proprietary firm or partnership firm, the expressions, "following month" and "month of March" occurring in sub-rules (3) and (3A) shall be read respectively as "following quarter" and "quarter ending with the month of March.

(8) CENVAT credit not allowed on capital goods used exclusively in manufacture of exempted goods/for provision of exempted services [Sub-rule (4)]

No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods/in providing exempted services.

However, CENVAT credit in respect of the capital goods used in the manufacture of the exempted final products of an SSI unit shall be allowed.

Note: An SSI unit can avail the CENVAT credit of the capital goods used exclusively in manufacture of the exempted final product, but can be utilised for payment of duty on clearances exceeding Rs. 150 lakh.

(9) Provisions of sub-rule (1) to (4) not applicable in certain cases [Sub-rule (6)]

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable certain cases. In certain cases, although the final products are removed without payment of duty, CENVAT credit on inputs/capital goods/input services used in the manufacture of such final

products shall be allowed. Such cases are as follows:-

(i) Clearances to unit/developer of SEZ

The excisable goods cleared to a unit in a special economic zone (SEZ) or to a developer of a special economic zone for their authorized operations without payment of duty.

(ii) Clearances to 100% EOU

The excisable goods cleared to a hundred percent export-oriented undertaking (100% EOU) without payment of duty.

(iii) Clearances to EHTP/STP

The excisable goods cleared to a unit in an Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) without payment of duty.

(iv) Goods supplied to the UN/International organization

The excisable goods supplied, without payment of duty, to the United Nations (UN) or an international organization for their official use or supplied to projects funded by them exempted under *Notification No. 108/95-CE dated 28.08.1995.*

(iva) Goods supplied to diplomatic missions/consular missions etc.

The excisable goods supplied, without payment of duty, for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of *Notification No. 6/2006-CE dated 01.03.2006*.

(v) Export under bond

The excisable goods cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002 without payment of duty.

(vi) Gold/silver (falling within Chapter 71)

Gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.

(vii) Specifed goods exempt from import duty and CVD

All goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding,

in terms of *Notification No. 6/2006-CE dated 03.03.2006*.

(viii) Provision of services, without payment of duty, to a unit/developer of SEZ [Sub-rule (6A)]

The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the taxable services are provided, without payment of service tax, to a Unit in a Special Economic Zone (SEZ) or to a Developer of a Special Economic Zone for their authorised operations.

Note: Sub-rule (5) of rule 6 has been omitted vide Notification No. 3/2011-C.E. (N.T.) dated 01.03.2011.

(x) Amendments in rule 9-Documents and accounts

(a) Sub-rule (1)

Sub-rule (1) enumerates the documents on the basis of which the CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be. Clause (bb) inserted prescribes the following additional document to be furnished:-

A supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax.

The aforesaid amendment is effective from 01.04.2011.

[Notification No. 13/2011-C.E. (N.T.) dated 31.03.2011]

(b) Proviso to sub-rule (7)-SSI required to file the return within 10 days of the close of the quarter

Prior to Amendment

Earlier, proviso to rule 9(7) of the CENVAT Credit Rules, 2004 required that SSI shall file a quarterly return in the form specified, by notification, by the Board within *twenty* days after the close of the quarter to which the return relates.

However, as per clause (a) of the second proviso to rule 12(1) of the Central Excise Rules, 2002, SSI is required to file a quarterly return of production and removal of goods within *ten* days after the close of the quarter to which the return relates.

Amendment made by *Notification No. 3/2011-C.E. (N.T.) dated 1-3-2011*

In order to remove the anomaly, with effect from 01.03.2011, the proviso to rule 9(7) has been amended so as to provide that SSI shall file a quarterly return in the form specified, by notification, by the Board within *ten* days after the close of the quarter to which the return relates.

(c) Proviso to sub-rule (8)

With effect from 01.06.2011, the quarterly return of CENVATABLE invoices submitted by the first/second stage dealer under rule 9(8) of the CENVAT Credit Rules, 2004 shall be filed electronically unconditionally.

[Notification No. 21/2010 CE (NT) dated 18.05.2010]

(xi) ER-5 and ER-6 to be filed electronically if excise duty of Rs.10,00,000 or more is paid in the preceding financial year [Rule 9A]

With effect from 01.06.2010, the CENVAT Credit Rules, 2004 have been amended to provide that the following statements/returns shall be filed electronically if the manufacturer of final products has paid total excise duty of Rs.10,00,000 or more including the amount of duty paid by utilization of CENVAT credit in the preceding financial year:

(i) Information relating to principal inputs - ER-5 [Rule 9A(1) of the CENVAT Credit Rules, 2004]

(ii) Monthly return of receipt and consumption of each of principal inputs - ER-6 [Rule 9A(3) of the CENVAT Credit Rules, 2004]

[Notification No. 21/2010 CE (NT) dated 18.05.2010]

CLARIFICATIONS

1. Clarifications on various issues arising out of Budget 2011 amendments

The CENVAT Credit Rules 2004 were amended along with the Budget 2011 announcements vide *Notification 3/2011-CE (NT) dated 1.3.2011*. A few changes were further effected vide *Notification 13/2011-CE (NT) dated 31.3.2011*. Accordingly the following clarifications are presented on few issues in a tabular format:-

S.No.	Issue	Clarification
1	Can credit of capital goods be availed of when used in manufacture of dutiable goods on which benefit under Notification 1/2011- CE is availed or in provision of a service whose part of value is exempted on the condition that no credit of inputs and input services is taken?	As per Rule 6(4) no credit can be availed on capital goods used exclusively in manufacture of exempted goods or in providing exempted service. Goods in respect of which the benefit of an exemption under notification No. 1/2011-CE, dated the 1st March, 2011 is availed are exempted goods [Rule 2(d)]. Taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable

		service shall be taken are exempted services [Rule 2(e)]. Hence credit of capital goods used exclusively in manufacture of such goods or in providing such service is not allowed.
2	Is the credit of only specified goods and services listed in the definition of inputs and input services not allowed such as goods used in a club, outdoor catering etc, or is the list only illustrative?	The list is only illustrative. The principle is that CENVATcredit is not allowed when any goods and services are used primarily for personal use or consumption of employees.
3	How is the "no relationship whatsoever with the manufacture of a final product" to be determined?	Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed.
4	Is the credit of input services used for repair or renovation of factory or office available?	Credit of input services used for repair or renovation of factory or office is allowed. Services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, are specifically provided for in the inclusive part of the definition of input services.

5	Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business"?	The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.
6	Can the credit of input or input services used exclusively in trading, be availed?	Trading is an exempted service. Hence the credit of any inputs or input services used exclusively in trading cannot be availed.
7	What shall be the treatment of credit of input and input services used in trading before 1.4.2008?	Trading is an exempted service. Hence credit of any inputs or input services used exclusively in trading cannot be availed. Credit of common inputs and input services could be availed subject to restriction of utilization of credit up to 20% of the total duty liability as provided for in extant Rules.
8	While calculating the value of trading what principle to follow- FIFO, LIFO or one to one correlation?	The method normally followed by the concern for its accounting purpose as per generally accepted accounting principles should be used.
9	Are the taxes and year end discounts to be included in the sale price and cost of goods sold while calculating the value of trading?	Generally accepted accounting principles need to be followed in this regard. All taxes for which set off or credit is available or are refundable/ refunded may not be included. Discounts are to be included.
10	Does the expression "in or in relation" used in Rule 6 override the definition of "input" under Rule 2(k) for determining the eligibility of CENVAT credit?	The definition of "input" is given in Rule 2(k) and Rule 6 only intends to segregate the credits of inputs used towards dutiable goods and exempted goods. While applying Rule 6, the expression "in or in relation"

		must be read harmoniously with the definition of "inputs".
11	Sub-rules 3B and 3C of rule 6 apply to whole entity or independently in respect of each registration?	The sub-rules 6(3B) and 6(3C) impose obligation on the entities providing banking and financial services (in case of a bank and a financial institution including a non-banking financial company) or life insurance services or management of investment under ULIP service. The obligation is applicable independently in respect of each registration. When such a concern is exclusively rendering any other service from a registered premise, the said rules do not apply. In addition to BoFS and life insurance services if any other service is rendered from the same registered premises, the said rules will apply and due reversals need to be done.
12	Is the credit available on services received before 1.4.11 on which credit is not allowed now? e.g. rent-a-cab service	The credit on such service shall be available if its provision had been completed before 1.4.2011.

[Circular No.943/04/2011-CX dated 29.04.2011]

2. Interest liability arises where CENVAT credit wrongly taken but reversed before utilisation

Earlier, *Circular No. 897/17/2009-CX dated 3-9-2009* had clarified that in light of clear and unambiguous provisions of rule 14 of the CENVAT Credit Rules, 2004, the interest shall be recoverable when credit has been wrongly "taken", even if it has not been utilized.

The said issue has been re-examined. It is clarified that the matter has been conclusively decided by the judgment under *UOI v. Ind-Swift Laboratories Ltd. 2011 (265) E.L.T. 3 (S.C.)* wherein it is held that if the provision of rule 14 is read as a whole, there is no reason to read the word "OR" in between the expressions 'taken or utilized wrongly or has been erroneously refunded' as the word "AND". On the happening of any of the three circumstances, such credit becomes recoverable along with interest. In effect, therefore, the view taken by the Board in circular dated 3-9-09 has now been endorsed by the Apex Court.

[Circular No. 942/3/2011-CX. dated 14-3-2011]

C. OTHER AMENDMENTS

1. Effective rate of duty of 1% on specified items if the CENVAT credit is not availed on inputs/input services

Notification No. 1/2011-C.E. dated 1-3-2011 has withdrawn a number of exemptions from Central excise duty (about 130 items). These include some cases where the rate of duty is Nil by tariff. A nominal duty of 1% *ad valorem has been* imposed on these items with the condition that no credit of the duty paid on input and input services is taken.

2. Rate of interest for delayed payment of duty increased by 5% per annum [Section 11AB]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 11AB was 13% per annum vide *Notification No. 66/2003-C.E. (N.T.) dated 12-9-2003.*

Amendment made by *Notification No. 06/2011 CE (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

3. Rate of interest for delayed payment of duty increased by 3% per annum [Section 11AA]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 11AA was 15% per annum vide *Notification No. 18/2002-C.E. (N.T.) dated 13-5-2002.*

Amendment made by *Notification No. 05/2011 CE (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

4. Mines engaged in the production/manufacture of specified goods exempt from obtaining registration if the producer/manufacturer of such goods has a centralized billing/accounting system in respect of such goods

Every mine engaged in the production/manufacture of following goods is exempt from obtaining registration where the producer/manufacturer of such goods has a centralized billing/accounting system in respect of such goods produced by different mines and opts for registering only the premises or office from where such centralized billing or accounting is done:-

- Coal, briquettes, ovoids and similar solid fuels manufactured from coal [Chapter heading 2701]

- Lignite, whether or not agglomerated, excluding jet [Chapter heading 2702]
- Peat (including peat litter), whether or not agglomerated [Chapter heading 2703]
- Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon [Chapter heading 2704]
- Tar distilled from coal, from lignite or from peat and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars [Chapter heading 2706]

[Notification No. 10/2011-CE (NT) dated 24.03.2011]

5. Clean Energy Cess levied from 01.07.2010

Clean energy cess announced in the Budget has been levied on coal @ Rs.50 per tonne with effect from 01.07.2010. Exemption has been granted in respect of education cess and secondary higher education cess leviable on such products. Further, exemption has been granted in respect of goods produced or extracted as per traditional and customary rights enjoyed by local tribals in Meghalaya without any license or lease.

The procedures relating to exemption, registration, recovery, demand, interest, refund, offences, penalty etc. in respect of such cess are being governed by the provisions as applicable under the Central Excise Act, 1944 in regard to like matters.

Clean Energy Cess Rules, 2010 have been notified which prescribe the procedures relating to registration, payment of cess, filing of returns, maintenance of records etc. All coal producers would have to register with the designated officer within 30 days and pay cess on the removal of the produce from their mines. The new levy will be paid on the basis of self assessment. The cess should be shown separately in the invoice or bill issued by the producers.

[Notification Nos. 1-6/2010 CE dated 22.06.2010 and Notifications Nos. 28-29/2010 CE dated 22.06.2010]

6. Goods supplied to UN or an international organisation exempted from additional and special additional duty of excise

All goods falling under the Schedule to the Central Excise Tariff Act, when supplied to the United Nations or an international organisation for their official use, have been exempted from the whole of the additional and special additional duty of the excise.

Condition to be satisfied

Above exemption will be available only if the manufacturer produces a certificate before the jurisdictional Assistant /Deputy Commissioner of Central Excise from the United Nations or the international organisation that the goods are intended for such use.

Meaning of international organization
"International organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947, that the provisions of the Schedule to the said Act shall apply.

[Notification No. 33/2010 CE dated 19.10.2010]

7. Relaxation from brand name restriction under the SSI exemption scheme extended to all packing materials

Prior to amendment

Earlier, SSI exemption was available to certain *specified* packing materials even if they bear the brand name of others.

Amendment made by *Notification No. 24/2010-CE dated 29.04.2010 and Notification No. 28/2011 dated 28.03.2011*

Now, SSI exemption is available in case the specified goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear even if they bear the brand name of others.

For the removal of doubts, it is hereby clarified that "packing material" includes labels of all kinds

D. CIRCULARS

1. Cost of return fare of vehicles not to be added for determining assessable value

Circular No. 634/34/2002-CX dated 1st July 2002 as amended *inter alia* clarified that cost of return fare of vehicles was to be included in the assessable value of the excisable goods. The clarification to this extent has been withdrawn and it has been re-clarified that cost of return fare of vehicles is not required to be added for determining value. This clarification has been issued in view of the Tribunal's decisions in case of *DCW Ltd. v. CCE [2007 (217) ELT 541 (Mad.)]* and *Haldia Petrochemicals Limited v. CCEx. Haldia [2009 (233) E.L.T. 344 (Tri. - Kolkata)]*

[Circular No. 923/13/2010 – CX dated 19.05.2010]

2. Pre-delivery Inspection charges and after-sale service charges collected by the dealers to be included in the assessable value

CBEC, in view of the judgment of the Larger Bench of CESTAT in case of *Maruti Suzuki India Ltd. v. CCE 2010 (257) E.L.T. 226 (Tri. – LB)* has again clarified that Pre-delivery Inspection charges and after-sale service charges collected by the dealers are to be included in the assessable value under section 4 of the Central Excise Act, 1944.

[Circular No. 936/26/2010-CX. dated 27-10-2010]

3. Pickling and oiling is not manufacture

It has been clarified that the process of pickling and oiling does not amount to manufacture.

"Pickling is removing surface oxides from metals by chemical or electro chemical reaction" and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution." Therefore it can be said that the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity.

The Tribunal has also in the case of *Resistance Alloys [1996 (84) ELT 507 (T)] & Bothra Metal Industries [1998 (99) E.L.T. 120 (Tribunal)]* held that the process of pickling being preparatory process to drawing of wire does not amount to manufacture.

Therefore it has been clarified that mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture.

[Circular No. 927/17/2010-CX dated 24.06.2010]

4. Polyester Staple Fibre manufactured out of PET scrap and waste bottles is a textile material classifiable under Section XI of the Central Excise Tariff

It has been clarified that polyester staple fibre manufactured out of PET scrap and waste bottles is nothing but a textile material and hence will be classified as textile material under heading 55032000 under Section XI and not as article of plastic in Chapter 39.

[Circular No. 929/19/2010-CX dated 29.06.2010]

5. Superintendents empowered to adjudicate cases involving duty and/or CENVAT credit upto ₹ 1 Lakh in individual show cause notices

Circular No. 752/68/2003-CX dated 01.10.03 as amended has been further amended to confer the power of adjudication on Superintendents for cases involving duty and/or CENVAT credit upto ₹ 1 Lakh in individual show cause notices. However, they would not be eligible to decide cases which involve excisability of a product, classification, eligibility of exemption, valuation and cases involving suppression of facts, fraud etc. Consequently, the Assistant/Deputy Commissioners are now empowered to adjudicate cases involving duty upto ₹ 5 lakh (except the cases where Superintendents are empowered to adjudicate).

[Circular No. 922/12/ 2010-CX dated 18.05.2010]

6. Exempted goods not to be exported under bond

Notification No. 42/2001-CE (NT) dated 26.06.01 prescribes the procedures and conditions for export without payment of duty under bond.

The said notification has been amended vide *Notification No. 24/2010-CE (NT) dated 26.05.10* to provide that goods which are exempted from payment of duty or chargeable to nil rate of duty shall not be allowed to be exported under bond. Since, 100% EOU's are required

to export the goods under bond, in terms of Customs and Excise notifications, the exports from 100% EOU's have been specifically excluded from the purview of this amendment.

The rationale behind the amendment made in *Notification No. 42/2001-CE (NT) dated 26.06.01* has been explained vide a circular. As a policy, the Government does not tax exports. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through *Notification No. 21/2004-CE (NT) dated 06.09.2004*, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. The reason for the same is that in case of exempted goods, the department does not exercise control. In order to avoid such detailed verification and scrutiny by the department for claiming of refund of input taxes, some of the exporters were exporting the exempted goods under bond and claiming refund under rule 5 of the CENVAT Credit Rules, 2004, though a bond is executed only when goods are liable for payment of excise duty. If there is no excise duty then there is no question of exporting under bond. This was the reason for amending *Notification No. 42/2001-CE (NT) dated 26.06.01* in the above manner.

[Circular No. 928/18/2010-CX dated 28.06.2010]

7. Goods cleared from an EOU for sale in DTA, when actual sale transaction does not take place at the time of clearance but on a subsequent date, to be valued by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007

The value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

The same view has been expressed by the CESTAT in following cases:-

(a) Endress Hauser Flowtec (I) Pvt Ltd. [2009 (237) ELT 598 (T)]

(b) Morarjee Brembana Ltd. [2003 (154) ELT 500 (T)]

(c) Uniworth Textile Ltd. [2009 (244) ELT 401 (T)]

The earlier clarification issued vide *Circular No 268/85-CX.8 dated 29.09.1994* clarifying that valuation of goods in such situations will have to be done in accordance with the Rule 8 of the Customs Valuation Rule (Determination of Price of Imported Goods), 1988 as it existed then has been withdrawn.

[Circular No. 933/23/2010 CX dated 16.08.2010]

8. Textiles and textile articles — No option to pay duty when full exemption available

Issue	Clarification
During the period between 07.12.2008 and 06.07.2009, while one notification granted full exemption to certain items of Textile Sector without any condition, another notification prescribed a concessional rate of duty of 4% on these items, with the benefit of CENVAT credit*. The issue is as to whether an assessee can avail the benefit of either of the above said two notifications whichever is beneficial to him or he is bound to avail the unconditional exemption under first notification during the period under dispute in terms of the provisions of section 5A(1A) of the Central Excise Act, 1944?	1. On the basis of the opinion of the Law Ministry, it is clarified that in view of the specific bar provided under section 5A(1A) of the Central Excise Act, 1944, the manufacturer cannot opt to pay the duty under second notification in respect of unconditionally fully exempted goods and he cannot avail the CENVAT credit of the duty paid on inputs. *[Circular No. 937/27/2010-CX. dated 26-11-10]* 2. It is further clarified that in case the assessee pays any amount as excise duty on such exempted goods, the same cannot be allowed as "CENVAT credit" to the downstream units, as the amount paid by the assessee cannot be termed as "duty of excise" under rule 3 of the CENVAT Credit Rules, 2004. 3. The amount so paid by the assessee on exempted goods and collected from the buyers by representing it as "duty of excise" will have to be deposited with the Central Government in terms of section 11D of the Central Excise Act, 1944. 4. Moreover, the CENVAT Credit of such amount utilized by downstream units also needs to be recovered in terms of the rule 14 of the CENVAT Credit Rules, 2004. *[Circular No. 940/1/2011-CX., dated 14-1-2011]*

**Note - Students may note that in the case of ready-made garments and made-up articles bearing a brand name/sold under a brand name, no such option is henceforth available and a duty of 10% is payable regardless of the composition of the item/article.*

II. CUSTOMS

NOTIFICATIONS

1. Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.

[Notification No. 48/2010 Cus. (N.T.) dated 17.06.2010]

2. Amendments in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

(a) Change in time periods available under rules 6, 7, 15 and 16A

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995:

(i) The time period for the following has been extended from sixty days to three months:

(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback [Rule 6].

(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less and a further period of six months by Commissioner of Central Excise/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.

(ii) The extended period of nine months for filing a supplementary claim under rule 15 will now be available on making an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less [Rule 15].

(iii) The time period available to an exporter for producing evidence of realisation of export proceeds, where the drawback has been recovered by the Government due to non-realisation of the export proceeds by the exporter, has been reduced from one year to three months from the date of realisation of sale proceeds provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India [Rule 16A].

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise

on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less.

[Notification No. 49/2010 Cus. (N.T.) dated 17.06.2010]

(b) In case of non-realization of sale proceeds within prescribed time, drawback not to be recovered under specified circumstances/conditions [Rule 16A]

Prior to Amendment

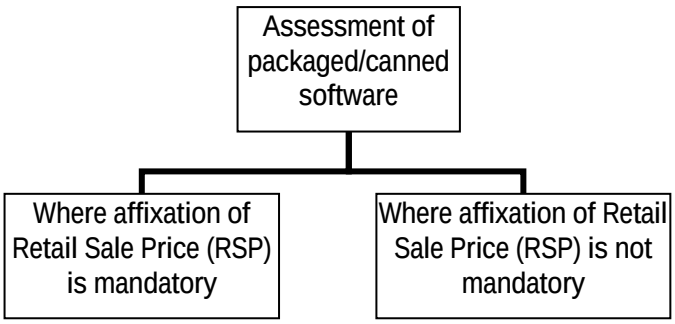
The drawback granted to an exporter or a person authorised by him shall be recovered from him if the sale proceeds in respect of such export goods have not been realised in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period [Sub-rule (1) of rule 16A].

Amendment made by *Notification No. 30/2011-Cus. (N.T.) dated 11-4-2011*

Sub-rule (1) has been amended to provide that such drawback shall not be recovered under circumstances or conditions specified in sub-rule (5). Further, sub-rule (5) provides as follows-

Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999, but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.

3. Applicability of indirect taxes on packaged/canned software



A. Assessment of packaged software where affixation of Retail Sale Price (RSP) is mandatory under the Standards of Weights and Measures Act, 1976

(i) Excise duty

MRP based valuation of the packaged or canned software

Packaged or canned software is to be valued on the basis of MRP* under section 4A of the Central Excise Act, 1944 for the purpose of charging excise duty.

An abatement of 15% of retail sale price is allowed while arriving at the assessable value.

[Notification No. 30/2010-C.E. (N.T.) dated 21-12-2010]

**Note: Such retail sale price declared will be combined values of the software and licenses (right to use) [clarified vide Circular No. 15/2011-Cus. dated 18.03.2011].*

(ii) Custom duty

Packaged or canned software is to be valued on the basis of MRP under section 4A of the Central Excise Act, 1944 for the purpose of charging additional duty of customs under section 3(1) of the Customs Tariff Act.

**Note: Such retail sale price declared will be combined values of the software and licenses (right to use) [clarified vide Circular No. 15/2011-Cus. dated 18.03.2011].*

(iii) Service tax

Exemption to packaged/canned software from service tax on specified taxable service when excise/customs duty is paid

Notification No. 53/2010-S.T. dated 21.12.2010 has been issued to exempt the service of providing the right to use the packaged or canned software (hereinafter referred to as 'said goods') under 'information technology software services' from the whole of service tax.

Conditions to be fulfilled:-

(i) the value of the said goods domestically produced/imported, for the purposes of excise duty or countervailing duty (if imported) has been determined on the basis of MRP valuation (i.e. under section 4A of the Central Excise Act, 1944) and

(ii) (a) In case of domestic production: the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or

(b) In case of import: the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India.

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

Note: Notification No. 02/2010 and 17/2010 have been rescinded by Notification No. 51/2010 and 52/2010 respectively.

Meaning of important terms

(i) Appropriate duties of excise

It means the duties of excise leviable under section 3 of the Central Excise Act, 1944 and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and

(ii) Appropriate duties of customs

It means the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification, for the time being in force, issued in accordance with the provision of section 25(1) of the said Customs Act.

B. Assessment of packaged software which does not require affixation of Retail Sale Price (RSP) under the Standards of Weights and Measures Act, 1976

(i) Excise duty

Exclusion of consideration for transfer of right to use such packaged/canned software from the assessable value

Such packaged/ canned software, on which affixation of retail sale price is not required under the Standards of Weights and Measures Act, 1976, the assessment would be based on the value determined under section 4 of the Central Excise Act, 1944. Further, the excise duty will be charged only on the value, excluding the value representing consideration for transfer of right to use such packaged/canned software.

[Notification No. 14/2011-C.E. dated 1-3-2011]

(ii) Custom duty

Exclusion of consideration for transfer of right to use such packaged/canned software from the assessable value

Such packaged/ canned software, on which affixation of retail sale price is not required under the Standards of Weights and Measures Act, 1976, additional duty of customs under section 3(1) of the said Customs Tariff Act would be charged on the value excluding the value representing consideration for transfer of right to use such packaged/canned software.

[Notification No. 25/2011-Cus. dated 1-3-2011]

(iii) Service tax

Service tax would be charged under the category of information technology software service on the value representing consideration for transfer of right to use such packaged/canned software.

Meaning of packaged or canned software

"Packaged software or canned software" means a software developed to meet the needs of variety of users, and which is intended for sale or capable of being sold off the shelf.

4. Rate of interest for delayed payment of duty increased by 5% per annum [Section 28AB]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 28AB was 13% per annum vide *Notification No. 76/2003-Cus. (N.T.) dated 12-9-2003.*

Amendment made by *Notification No. 18/2011-Cus. (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

5. Rate of interest for delayed payment of duty increased by 3% per annum [Section 28AA]

Prior to amendment

Earlier, the rate of interest notified by the Central Government under section 28AA was 15% per annum vide *Notification No. 26/2002-Cus. (N.T.) dated 13-5-2002.*

Amendment made by *Notification No. 17/2011-Cus. (NT) dated 01.03.2011*

With effect from 01.04.2011, the said notification has been superseded to fix the rate of interest at 18% per annum.

CLARIFICATIONS

1. Clarification on determination of assessable value in case of sale of warehoused goods before being cleared for home consumption

The following issue has been clarified:

Issue: Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Clarification: With effect from 10.10.2007, section 14 of the Customs Act has been amended to provide that the value of the imported goods shall be the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a *sale for export to India*. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

However, as per erstwhile section 14, applicable to period prior to October 2007, the value of the imported goods is deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, or as the case may be, *in the course of international trade.* In this case also, the sale of imported goods made after warehousing cannot be considered to have been made *in the course of international trade* and hence, the price at which such sale takes place cannot be the assessable value in terms of erstwhile section 14.

[Circular No.11/2010 dated 03.06.2010]

2. Clarification regarding classification of paper licenses of software and PUK cards

Issue: Whether documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale i.e. paper licenses of software and PUK cards, when imported without the packaged software should be classified under Customs Tariff Heading 8523 i.e. the heading applicable to IT software?

Clarification: The documents conveying the right to use software by themselves do not satisfy the definition of information technology software provided in the supplementary note to Chapter 85 and therefore, do not qualify for classification under this tariff item because they do not contain any representation of instructions, data, sound or image recorded in a machine readable form, which is capable of being manipulated or providing interactivity to a user.

Classification of paper licenses of software

On the other hand, tariff item 49070030 of heading 4907 refers directly to "Documents of title conveying the right to use Information Technology software". Hence, as per rule 1 of the Rules for the interpretation of the Tariff Schedule, such paper licenses which are essentially documents conveying the right to use such IT software, merit classification under CTH 49070030.

Classification of PUK cards

PUK cards are not documents of title conveying the right to use Information Technology software per se, but are actually printed matter containing numbers which when entered; enable the importer to access right to use such IT software. Hence, they are liable to classified under CTH 4911 as "other printed matter".

Documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale

There are frequent imports of such documents *without any accompanying software*. Such packages do not contain software, but consist of paper licenses or PUK (Personal Unlocking Key, usually in the form of a scratch card of paper board or plastic) that are used to convey the right to use such IT software. The software in these cases could be freely downloadable or loaded by the OEM supplier under an arrangement with the software company as pre-loaded

trial version of software on the computer system requiring the customer to purchase license or PUK after the trial period. Typically, these licenses are used either to authorize additional uses against a sale of IT software that has already taken place in the past or to service transactions where the connected software is downloaded electronically by the customer.

[Circular No. 15/2011-Cus. dated 18.03.2011]

III. SERVICE TAX

New services and amendments in the existing services to be effective from 1st May, 2011

The new services introduced by the Finance Act, 2011 and the amendments made in the existing services vide the Finance Act, 2011 would be effective from 01.05.2011.

[Notification No. 29/2011 ST dated 25.04.2011]

A. EXEMPTIONS/AMENDMENTS IN/WITHDRAWALS OF EXISTING EXEMPTIONS

1. Transport of passengers by air service

(a) Air travel of specified persons exempted

With effect from 01.07.2010, air transport of following persons has been exempted from service tax:

(a) persons in transit in the course of international journey who have not passed through immigration;

(b) crew members on board the aircraft.

[Notification No. 25/2010 ST dated 22.06.2010]

(b) Air journeys originating/terminating in North-Eastern States exempted

With effect from 01.07.2010, air transport of passengers embarking on a journey originating or terminating in an airport located in any of the North-Eastern States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura) or at Baghdogra located in West Bengal have been exempted from service tax.

[Notification No. 27/2010 ST dated 22.06.2010]

(c) Specified rates of service tax for transport of passengers by air

The rates of service tax on travel by air are as follows:-

Type of Travel		Service tax leviable at the rate of	
		01.07.2010-31.03.2011	01.04.2011 onwards
		Notification No. 26/2010 ST dated 22.06.2010	*Notification No. 04/2011-ST dated 01.03.2011*
Domestic	Economy	(a) 10% of the gross value	(a) 10% of the gross value

Travel	Class	of the ticket or (b) Rs.100 per journey whichever is less	of the ticket or (b) Rs.150 per journey whichever is less
	Other than Economy Class	(a) 10% of the gross value of the ticket or (b) Rs.100 per journey whichever is less	10% (Standard rate)
International Travel	Economy Class	(a) 10% of the gross value of the ticket or (b) Rs.500 per journey whichever is less	(a) 10% of the gross value of the ticket or (b) Rs.750 per journey whichever is less
	Other than Economy Class	10% (Standard rate)	10% (Standard rate)

These special provisions apply only where excise duty credit has not been taken on inputs used for providing such taxable service.

Meaning of economy class

Economy class in an aircraft means, —

(i) where there is more than one class of travel: the class attracting the lowest standard fare; or

(ii) where there is only one class of travel: that class.

2. Construction services

(a) Construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana exempted

With effect from 01.07.2010, the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from service tax.

[Notification No. 28/2010 ST dated 22.06.2010]

(b) Abatement of 75% for construction services

With effect from 01.07.2010, service tax is payable on 25% of the gross amount charged in case of "commercial or industrial construction services" and "construction of complex services" provided the gross amount charged includes the value of goods and materials

supplied/provided/used for providing the taxable service and the cost of land. This exemption is not available in cases where the taxable services provided are only completion and finishing services.

[Notification No. 29/2010 ST dated 22.06.2010]

3. Port/Other Port/Airport services

(a) Specified services provided within a port or an airport exempted

A negative list of services provided within a port or an airport has been notified with effect from 01.07.2010. In other words, the following services provided within a port or an airport have been exempted from service tax with effect from 01.07.2010:

(i) repair of ships/boats/vessels owned by the Government (including Navy or Coast Guard or Customs) but excluding Government owned Public Sector Undertakings;

(ii) repair of ships/boats/vessels where such repair amounts to 'manufacture' as per section 2(f) of the Central Excise Act, 1944;

(iii) supply of water;

(iv) supply of electricity;

(v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);

(vi) services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;

(vii) services provided by fire service agencies

(viii) pollution control services.

[Notification No. 31/2010 ST dated 22.06.2010]

(b) Exemption to commercial or industrial construction of wharves, quays, docks etc. within the port

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways has been exempted from service tax.

[Notification No. 38/2010 ST dated 28.06.2010]

(c) Abatements available to specified services to continue when provided wholly within a port/airport

The following services when provided wholly within an airport or a port or other port will continue to be eligible for the abatements available to them under *Notification No.1/2006 ST dated 01.03.2006*:

(a) Renting of a cab service

(b) Erection, Commissioning & Installation Service

(c) Goods Transport Agency service

(d) Commercial or Industrial construction service

(e) Construction of complex service

(f) Transport of goods by rail service

Reason for the amendment

Definitions of port, other port and airport services were amended vide the Finance Act, 2010 so as to provide *inter alia* that all services provided entirely within the airport/port premises would be classified under these services. This would have led to the situation where abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services. This Notification has been issued to take care of such situations.

[Notification No. 40/2010 ST dated 28.06.2010 as corrected by corrigendum dated 30.06.2010 and Notification No. 43/2010 ST dated 30.06.2010]

(d) Exemptions available to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air transport of export goods etc. to continue when provided wholly within port/airport

With effect from 01.07.2010, the following services when provided wholly within the port or other port or airport have been exempted from payment of service tax:

(i) taxable service provided by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage;

(ii) taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;

(iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;

(iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Exemptions to these services are already available under their respective category. The above exemption has been provided in view of the classification of these services getting changed when provided wholly within a port or an airport.

[Notification No. 41/2010-ST dated 28.06.2010]

(e) Commercial or Industrial Construction provided wholly within the airport exempt from service tax

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the airport has been exempted from payment of service tax.

The definition of commercial or industrial construction *inter alia* excludes services of such kind provided in respect of airports. On account of the amendment in the definition of airport service, commercial or industrial construction when provided wholly within the airport would be classified as airport service. Therefore, the exclusion to such construction has been provided by way of the above exemption notification.

[Notification No. 42/2010-ST dated 28.06.2010]

(f) Service tax paid on service provided by airports authority to an exporter for export of goods eligible for refund

Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under *Notification No. 17/2009 ST dated 07.07.2009*. The said Notification covers port service within its ambit but does not include 'airport service'. Such anamoly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

[Notification No. 37/2010 ST dated 28.06.2010]

(g) Exemption to works contract service provided wholly within an airport and classified under section 65(105)(zzm)

Works contract services, when provided wholly within an airport and classified under airport services [Section 65(105)(zzm) of the Finance Act, 1994], have been exempted from the whole of service tax.

[Notification No. 10/2011-ST dated 01.03.2011]

(h) Exemption to works contract service provided wholly within a port/other port

Works contract services, when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways have been exempted from the whole of service tax.

[Notification No. 11/2011-ST dated 01.03.2011]

4. Business auxiliary services

(a) Taxable services provided for distribution of electricity exempted

Taxable services provided by a distribution licencee, a distribution franchisee, or any other person authorized to distribute power under the Electricity Act, 2003 for distribution of electricity have been exempted from service tax.

[Notification No. 32/2010 ST dated 22.06.2010]

(b) Service tax payable on transmission and distribution of electricity upto 26th February and 21st June, 2010 respectively not required to be paid

The Central Government vide the powers conferred by section 11C of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 has directed that service tax payable on all taxable services, which was not being levied in accordance with a generally prevalent practice, provided by a person to any other person in relation to:

(a) transmission of electricity is not required to be paid for the period up to 26.02.2010;

(b) distribution of electricity is not required to be paid for the period up to 21.06.2010.

It is important to note here that transmission and distribution of electricity have been exempted from service tax with effect from 27.02.2010 and 22.06.2010 vide *Notification Nos. 11/2010 and 32/2010* respectively.

[Notification No. 45/ 2010-ST dated 20.07.2010]

5. Transport of goods by air/road/rail service

(a) Exemption to services of transportation of goods by air/road/rail provided to a person located in India when the goods are transported from a place outside India to a destination outside India

With effect from 01.04.2011, following taxable services provided to any person located in India have been exempted from the whole of service tax, when the goods are transported from a place located outside India to a final destination which is also outside India:-

(a) Transport of goods by air services

(b) Transport of goods by rail service

(c) Transport of goods by road service

[Notification No. 08/2011-ST dated 01.03.2011]

(b) Exemption to the transport of goods by air service to the extent air freight is included in the customs value of goods

With effect from 01.04.2011, services of transport of goods by air have been exempted from service tax to the extent so much of the value as is equal to the amount of air freight included in the value determined under section 14 of the Customs Act, 1962 or the rules made thereunder for the purpose of charging customs duties.

[Notification No. 09/2011-ST dated 01.03.2011]

(c) Exemption/withdrawal of exemption from service tax on service provided in relation to 'transport of goods by rail'

The exemptions/withdrawal of exemptions with regard to service provided in relation to 'transport of goods by rail' can be summarized as follows:-

Notification No.	Amendment	Effect of amendment
19/2011 ST dated 01.04.2011	Has amended *Notification No. 7/2010 dated 27.02.2010*	Following services also shall now be subject to service tax levy with effect from 1st July, 2011:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers.
20/2011 ST dated 30.03.2011	Has amended *Notification No. 8/2010 dated 27.02.2010*	Exemption provided to transport of specified goods by rail shall now be restored with effect from 1st July, 2011.
21/2010 ST dated 30.03.2011	Has amended *Notification No. 9/2010 dated 27.02.2010*	Abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of transportation of goods by rail, shall now be effective from 1st July, 2011.

6. Exemption to advance received prior to 01.07.2010 towards new services as introduced by the Finance Act, 2010 and existing services whose scope have been widened by the said Act

Advance payments received prior to 01.07.2010 towards eight new services introduced by the Finance Act, 2010 have been exempted from payment of service tax. Similarly, advances received prior to 01.07.2010 towards activities brought into service tax net on account of expansion of scope of existing services vide the Finance Act, 2010 have also been exempted from payment of service tax. However, such an exemption would not be available to commercial training or coaching services and renting of immovable property service.

For example, service tax would not be payable in case of a domestic air journey performed after 01.07.2010 if the payment for the ticket of such journey has been made prior to 01.07.2010. However, this exemption would be available only if the advance is received by the service provider/ person liable to pay the tax and not by an agent, who in turn transfers such amount to such person after 01.07.2010.

[Notification No.36/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 29.06.2010]

7. Exemption to service of management, maintenance or repair of roads extended to bridges, tunnels, dams, airports, railways and transport terminals

Prior to amendment

The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads was exempt from the whole of the service tax leviable thereon vide *Notification No. 24/2009 ST dated 27.07.2009*

Amendment made by the *Notification No. 54/2010-ST dated 21.12.2010*

The aforesaid exemption has been extended to the service of management, maintenance or repair of bridges, tunnels, dams, airports, railways and transport terminals also.

8. Exemption to works contract service rendered for carrying out construction services under Jawaharlal Nehru Urban Renewable Mission (JNURM) and Rajiv Awaas Yojana

The taxable service of execution of a works contract provided for the purpose of carrying out-

(a) construction of new residential complex or part thereof; or

(b) completion and finishing services of new residential complex or part thereof ,

under Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from whole of the service tax.

[Notification No. 06/2011-ST dated 01.03.2011]

9. Abatement of 25% of the gross amount charged to the transport of coastal goods, goods through National Waterways/ inland water

Notification No. 01/2006 dated 01.03.2006 has been amended so to provide an abatement of 25% of the gross amount charged for the services provided or to be provided, to any person, by any other person, in relation to transport of-

(i) Coastal goods;

(ii) Goods through national waterway; or

(iii) Goods through inland water.

[Notification No. 16/2011-ST dated 01.03.2011]

10. Exemption to services received by a developer or units of a special economic zone, (refund of service tax paid) - *Notification No. 9/2009-ST dated 03.03.2009* superseded

(A) Eligibility for exemption

The taxable services received by any of the following are eligible for exemption under this notification:-

- a unit located in a Special Economic Zone (hereinafter referred to as SEZ)
- developer of SEZ for the authorized operations

(B) Conditions to be fulfilled

(a) List of taxable services required to be approved by the Approval Committee

For the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ.

(b) Declaration by the developer/unit of SEZ not owning/carrying out any business other than SEZ operations

The Developer or Unit of SEZ who does not own or carry out any business other than SEZ operations, shall furnish a declaration to that effect in Form A-1, verified by the Specified Officer of the SEZ, in addition to obtaining list under condition (a) above, for the purpose of claiming exemption.

(c) Option not to pay service tax *ab-intio* in case the specified services wholly consumed within the SEZ

(i) Where the specified services are wholly consumed within the SEZ

Service provider/service receiver (reverse charge basis) has the option not to pay the service tax. Hence, under this option, instead of the Unit or Developer claiming exemption by way of refund, service tax may not be paid *ab intio*.

(ii) Where the specified services are not wholly consumed within the SEZ

Where the specified services received and used for authorised operations are partially consumed within the SEZ and partially outside SEZ, the exemption shall be provided only by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ. Hence, the option of not paying the service tax *ab-intio* is not available here.

Meaning of wholly consumed

For the purposes of this notification, the expression —

Wholly consumed refer to following taxable services, received by a developer or unit of a SEZ, for the authorised operations, namely:-

(i) services listed in clause (i) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005 in relation to an immovable property situated within the SEZ; or

(ii) services listed in clause (ii) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005, as are wholly performed within the SEZ; or

(iii) services other than those falling under (i) and (ii) above, provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ.

(d) Restricted amount of refund in case the specified services are not wholly consumed within the SEZ

Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area(DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates.

$$\text{Maximum refund} = \frac{ST \times ET}{TT}$$

where

ST stands for service tax paid on specified services used for SEZ authorised operations shared with DTA Unit for the period

ET stands for Export turnover of SEZ Unit for the period

TT stands for Total turnover for the period

Meaning of important terms

For the purposes of condition (d),-

(a) Total turnover means the sum total of the value of:-

(i) all output services and exempted services provided, including the value of services exported;

(ii) all excisable and non-excisable goods cleared, including the value of the goods exported;

(iii) bought out goods sold,during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

(b) Turnover of SEZ Unit means the sum total of the value of:-

(i) final products exported,

(ii) output services exported

during the period of which the invoices pertain and the exporter claims the facility of refund under this notification.

(e) Declaration that the specified services have been actually used for the authorized operations

Any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed to have been actually used for the authorized operations.

(f) Developer/unit of SEZ claiming refund must actually pay the amount indicated in invoice

The Developer or unit of SEZ claiming the exemption, by way of refund has actually paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act.

(g) No CENVAT credit of service tax paid on the specified services availed

No CENVAT credit of service tax paid on the specified services used for the authorized operations in a SEZ has been taken under the CENVAT Credit Rules, 2004.

(h) No exemption/refund of service tax paid on specified services claimed under any other notification

Exemption of service tax paid on the specified services (refund, in case of other than wholly consumed services) used for the authorised operations in a SEZ shall not be claimed except under this notification.

(i) Maintenance of proper account of receipt and use of the specified services

The developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

(C) Procedure for claiming the benefit of the exemption

(a) Refund claim to be filed by Developer or Unit of a SEZ

The Developer or Unit of a SEZ, who has paid the service tax under sections 66 of the Finance Act, shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations.

(b) Registered Developer or Unit of a SEZ to file the claim to jurisdictional Assistant/Deputy Commissioner of Central Excise

The Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, or the Finance Act, 1994 or the rules made there under, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-2.

(c) Unregistered Developer or Unit of a SEZ to file a declaration in Form A-3 with the jurisdictional Assistant/Deputy Commissioner of Central Excise before filing claim

The Developer or Unit of a SEZ who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner/Deputy Commissioner of Central

Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-3.

(d) Allotment of service tax code number within 7 days in Form A-3

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3.

(e) Time-limit of one year for filing the refund claim

The claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit to the registered service provider.

Extension of time-limit of one year

The aforesaid period of one year can be extended if the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, so permit.

(f) Documents to accompany the refund claim

The refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, document specified in 2(c), i.e. , declaration in Form A-1;

(ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of Finance Act or rules made thereunder, in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;

(iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that—

(A) the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ ;

(B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;

(C) accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects.

(g) Grant of refund after due verification

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

(i) the refund claim is complete in all respects;

(ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,

shall refund the service tax paid on the specified services.

(h) Service provider to provide the specified services falling under wholly consumed category under exemption provided Developer or Unit of SEZ produce the specified documents

A service provider, shall provide the specified services falling under wholly consumed category, under exemption granted by this notification, to a Developer or Unit of SEZ, for authorized operations, subject to the production of documents specified in sub-para (b) of para (B). and in addition wherever applicable, documents specified in sub-para (c) para (B), i.e., declaration in Form A-1.

(i) Recovery of erroneous refund

Where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the Finance Act, 1994 and the rules made there under, as if it is recovery of service tax erroneously refunded;

Points to be noted

1. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

2. Meaning of statutory auditor

Statutory auditor refers to a Chartered Accountant who audits the annual accounts of the Developer or Unit of a SEZ for the purposes of the Companies Act, 1956 or the Income Tax Act, 1961.

[Notification No. 17/2011 ST dated 01.03.2011]

11. Exemption to inter-bank transactions of purchase or sale of foreign currency undertaken by any banks /money changers

Prior to amendment

Earlier, *Notification No. 19/2009-ST dated 07.07.2009* had exempted the money changer services provided in relation to sale and purchase of foreign currency by one Scheduled bank to another Scheduled bank.

Amendment made by *Notification No.27/2011 – ST dated 31.03.2011*

With effect from 01.04.2011, the aforesaid notification has been amended to provide that money changer services provided in relation to sale and purchase of foreign currency to any bank, including a bank located outside India, or money changer, by any other bank or money changer are exempt.

B. AMENDEMNTS IN THE WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007

Restriction of CENVAT credit to 40% of the tax paid on specified services

Sub-rule (2A) has been inserted vide *Notification No. 01/2011-ST dated 01.03.2011* after sub-rule (2) to rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. The said rule reads as follows:-

The CENVAT credit of tax paid on taxable services as referred to under sub-clauses (zzd), (zzq) and (zzzh) of clause (105) of section 65 of the Finance Act, 1994, shall be available only to the extent of 40% of the service tax paid when such tax has been paid on the full value of the service after availing CENVAT credit on inputs.

Analysis

The restriction of CENVAT credit only upto 40% of the service tax paid on the input services would apply if the following two conditions are satisfied:-

(a) The input services of the service provider are either of the following services:-
   - Erection, commissioning and installation services [Section 65(105)(zzd)]
   - Services of commercial or industrial construction [Section 65(105)(zzq)]
   - Construction services in respect of residential complexes [Section 65(105)(zzzh)]

(b) The service tax on such input services has been paid on the full value of service, i.e., benefit of *Notification No. 01/2006 dated 01.03.2006* has not been availed.

Purpose of amendment

In case the service provider providing works contract service opts for the composition scheme, he shall not be eligible to avail the CENVAT credit of the inputs of duties or cess paid on any inputs, used in or in relation to the said works contract. However, if the service tax on the input services is paid on the full value of the service after availing CENVAT credit

on inputs i.e. without availing exemption under *Notification 1/2006-ST dated 01.03.2006*, service provider can indirectly avail the CENVAT credit on inputs while availing the composition scheme. In order to plug this lacuna, the aforesaid amendment is introduced.

C. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

1. Determination of value of service in relation to money changing [Rule 2A]

Rule 2B inserted after rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

(a) For a currency, when exchanged from, or to, Indian Rupees (INR)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US$ 1,000 are sold by a customer at the rate of ₹ 45 per US$.

RBI reference rate for US$ is ₹ 45.50 for that day.

Value of taxable service= (RBI reference rate for $ – Selling rate for $) × Total units

= ₹ (45.50 - 45) × 1,000

=₹ 0.50 × 1,000

The taxable value shall be ₹ 500.

Example II: INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is ₹ 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is ₹ 69.

The taxable value shall be ₹ 1,000.

(b) Where the RBI reference rate for a currency is not available

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

(c) Where neither of the currencies exchanged is Indian Rupee

Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

The aforementioned amendment shall come into force on 01.04.2011.

[Notification No. 02/2011-ST dated 01.03.2011 as amended by *Notification No. 24/2011 dated 31.03.2011]*

2. Value of taxable service for the telecommunication service [Explanation to rule 5(1)]

Following explanation to rule 5(1) has been inserted vide *Notification No. 02/2011-ST dated 01.03.2011* to provide clarification regarding the value of taxable service under telecommunication service:-

For the removal of doubts, it is hereby clarified that for the telecommunication service [Section 65(105)(zzzx)], the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies that in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

D. AMENDEMNTS IN THE SERVICE TAX RULES, 1994

1. Air ticket to be considered a valid invoice/bill/challan under rule 4A

Rule 4A of the Service Tax Rules, 1994 has been amended to provide that in case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected 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 the classification of the service received or address of the service receiver.

As per the provisions of rule 4A of the Service Tax Rules, 1944, invoice/ bill/ challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. 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 requirement of an invoice would cast an additional compliance burden on the service provider. Therefore, the above amendment has been made in the said rule.

[Notification No.39/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 30.06.2010]

2. Amendments in rule 6-Payment of service tax

(a) Excess payment of service tax [Sub-rule (4B)]

Prior to amendment

In case the service provider has made excess payment, the same may be utilized for the payment of service tax for the subsequent month liability subject to certain conditions as prescribed under various clauses of sub-rule (4B) of rule 6.

Clause (iii) of the said sub-rule stipulates that the adjustment of excess amount paid shall be subject to maximum of Rs. 1,00,000/- for a relevant month or quarter, as the case may be, in cases where the excess payment is not due to delayed receipt of details of payments towards taxable services.

Amendment made by *Notification No. 03/2011-ST dated 01.03.2011*

With effect from 01.04.2011, the aforesaid limit of Rs. 1,00,000 has been increased to Rs. 2,00,000.

(b) Recovery of the amount of service tax short paid/not paid under self-assessment [Sub-rule (6A)]

With effect from 01.04.2011, sub-rule (6A) has been inserted vide *Notification No. 03/2011-ST dated 01.03.2011* which provides as follows:-

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.

(c) Special rate of service tax leviable on life insurance increased from 1% to 1.5% [Sub-rule (7A)]

Prior to amendment

An insurer carrying on life insurance business liable for paying the service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax@ 10%.

Amendment made by *Notification No. 35/2011 ST dated 25.04.2011*

With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax 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. In all other cases, the insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.

However, such option would not be available if the entire premium is only towards risk cover in life insurance.

(d) Special rate of service tax in case of sale/purchase of foreign currency including money changing amended [Sub-rule (7B)]

Prior to amendment

Hitherto, sub-rule (7B) to rule 6 provided a special rate of service tax in case of sale/purchase of foreign currency including money changing at the rate of 0.25% of the gross amount of currency exchanged.

However, such option was not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider [Proviso to sub-rule (7B)].

Amendment made by *Notification No. 26/2011-ST dated 31.03.2011*

With effect from 01.04.2011, sub-rule (7B) to rule 6 has been amended to provide as follows:-

Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount at the following rates instead of paying service tax @ 10%:-

S.No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto ₹ 100,000	0.1 % of the gross amount of currency exchanged or ₹ 25 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto Rs. 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged or ₹ 5,000 whichever is lower

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 [Proviso to sub-rule (7B)].

(e) Optional Composition Scheme for Distributor or Selling Agents of Lotteries

An optional mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule 6 of the Service Tax Rules, 1994. The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10%:

Where the guaranteed lottery prize payout is > 80%	₹ 6000/- 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%	₹ 9000/- 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.
4. For the financial year 2010-11, the distributor or selling agent will have to exercise such option by 07.11.2010.

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].

[Notification No. 49/2010 ST dated 08.10.2010]

E. AMENDMENTS MADE IN THE EXPORT OF SERVICES RULES, 2005 & TAXATION OF SERVICES (PROVIDED FROM OUTSIDE INDIA AND RECEIVED IN INDIA) RULES, 2006

1. New services introduced vide the Finance Act, 2010 to be classified under the residual category

New services notified through the Finance Act, 2010 fall under rule 3(1)(iii) and rule 3(iii) of the Export of Services Rules 2005 and the Taxation of Services (Provided from

Outside India and Received in India) Rules, 2006 respectively. In other words, under both the Export and Import Rules, the new services will fall under the residual category [Category (III)].

[Circular No. 129/11/2010-ST dated 21.09.2010]

2. Re-categorisation of certain services

S. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005		Taxation of Services (Provided from Outside India and Received in India) Rules, 2006	
			Prior to amendment	After the amendment	Prior to amendment	After the amendment
1.	Special services provided by builder etc. to the prospective buyers	(zzzzu)	(III)	(I)	(III)	(I)
2.	Credit rating agency's services	(x)	(II)	(III)	(II)	(III)
3.	Market research agency's services	(y)	(II)	(III)	(II)	(III)
4.	Technical testing and analysis services	(zzh)	(II)	(III)	(II)	(III)
5.	Transport of goods by air services	(zzn)	(II)	(III)	(II)	(III)
6.	Transport of goods by road	(zzp)	(II)	(III)	(II)	(III)
7.	Opinion poll services	(zzs)	(II)	(III)	(II)	(III)

8.	Rail travel agent's services	(zz)	(III)	(II)	(III)	(II)
9.	Games of chance service	(zzzzo)	(III)	(II)	(III)	(II)

[Notification No. 12-13/2011-S.T. dated 01.03.2011 & Notification No. 22-23/2010-S.T. dated 31.03.2011]

Note: In the table above, please note that (I), (II) and (III) are as follows:-

(I) Immovable property related services [Rule 3(1)(i) of the Export of Service Rules, 2005/rule 3(i) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006]

For services under this category, criterion of services being in relation to an immovable property situated outside India is prescribed.

(II) Performance related services [Rule 3(1)(ii) of the Export of Service Rules, 2005/rule 3(ii) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006]

For services under this category, criterion of performing the services, at least in part, outside India is prescribed.

(III) Location of recipient related services [Rule 3(1)(iii) of the Export of Service Rules, 2005/rule 3(iii) of Taxation of Services (Provided From Outside India and Received in India) Rules, 2006]

For services under this category, criterion of location of recipient of service outside India is prescribed.

3. Amendment of second proviso to rule 3(1)(ii)/ second proviso to rule 3(ii) of the said rules

Second proviso to rule 3(1)(ii) of the Export of Services Rules, 2005 lays down that where management, maintenance or repair service, technical testing and analysis agency's service and technical inspection and certification service provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, would be treated as the taxable service performed outside India.

The said proviso has been amended so as to exclude the technical testing and analysis agency's service from the purview of the said proviso.

Similarly, the technical testing and analysis agency's service has also been removed from the purview of second proviso to rule 3(ii) of the Taxation of Services (Provided From Outside India and Received in India) Rules, 2006.

[Notification No. 22/2011-S.T. dated 31-3-2011]

F. CLARIFICATIONS

1. Clarification on applicability of service tax on laying of cables under or alongside roads and similar activities

The taxability of following activities has been clarified:

- laying of cables under or alongside roads,
- shifting of overhead cables to underground on account of renovation/widening of roads;
- laying of electrical cables under or alongside roads/railway tracks;
- electrification of railways, installation of street-lights, traffic lights, flood-lights etc.

The chargeability of the above activities under specific categories of service has been explained in the following table:

S. No.	Taxable service	Coverage of the above activities under the respective services
1.	Commercial or industrial construction services	Only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits are covered under this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.
2.	Erection, commissioning or installation services	Activity resulting in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or resulting in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) are covered under this taxable service.
3.	Works Contract	Activities excluded from aforesaid two services would generally remain excluded from this taxable service as well.
4.	Site formation and clearance, excavation,	Services provided independently and not as part of a complete work are covered under this

	earthmoving and demolition services	taxable service. Thus, site formation and excavation activities provided in respect of a complete work like that of laying of cables under the road will not be taxable.

Further, the taxable status of various activities, on which disputes have arisen is clarified in the following table:

S. No.	Activity	Taxable Service/Non-taxable service	Relevant category of service	Relevant clause of Section 65(105) of the Finance Act, 1994
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Non-taxable service	-	-
2.	Laying of cables under or alongside roads	Non-taxable service	-	-
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Non-taxable service	-	-
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service	Erection, commissioning or installation services	(zzd)
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Non-taxable service	-	-
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service	Commercial or industrial construction' or 'Construction of complex' service	(zzq)/(zzzh)
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service	Erection, commissioning or installation services	(zzd)

8.	Railway electrification, electrification along the railway track	Non-taxable service	-	-

The clarifications are essentially general in nature. Thus, facts and circumstances of each case will have to be considered while applying these clarifications. The pending disputes /cases may be decided based on the clarifications contained in this circular.

[Circular No.123/5/2010-TRU dated 24.05.2010]

2. Architect/Chartered Engineer/Licensed Surveyor notified as 'authority competent' to issue a completion certificate in respect of residential/commercial complex

With effect from 01.07.2010, a registered architect or a registered chartered engineer or a licenced surveyor of the local body of the city/town/village/development or planning authority (in addition to any Government authority) have been notified as competent authority to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

[M.F.(D.R.) Order No. 1/2010 dated 22.06.2010]

3. Services provided by State Governments under Centrally Sponsored Schemes (CSS) are not liable to service tax

It is clarified that levy and collection of service tax on State Government agencies/ departments implementing CSS under a central grant, is not legally tenable. The fact that State Governments are implementing agencies for the Central Government within the framework of CSS does not make them service providers. Consequently, Central Government cannot be taken as service receiver. Grant released by the Central Government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

[Circular No. 125/7/2010-S.T. dated 30-7-2010]

CENTRALLY SPONSORED SCHEMES

CSSs are special purpose grants extended by the Central Government to States to encourage and motivate State Governments to plan and implement programmes that help attain national goals and objectives, for instance, extending clean drinking water and sanitation to every habitation, eradicating polio and tuberculosis, making primary education universal for every female and male child, and so on. CSSs are formulated by concerned Ministries and Departments and implemented through counterpart State level departments and para-statal bodies identified for the purpose.

For instance, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State Government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State Governments or their departments/agencies during the

course of setting up of such bio-gas plants were reimbursed by the Central Government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State Government department/agency, saying that the reimbursements received by the concerned State Government department/ agency (as service provider) are nothing but consideration for installation and commissioning service received from the Central Government (service receiver).

4. Underwriting commission received by the Primary Dealers for the auction of Government Securities not liable to service tax

The terms 'underwriting' and 'underwriter' as provided in the Finance Act, 1994 and further defined in the Securities and Exchange Board of India (Underwriters) Rules, 1993, pertain to dealing in securities of a body corporate. In other words, service tax is leviable on underwriting only when the securities of a body corporate are underwritten.

Though the Government securities are issued by the Reserve Bank of India (RBI), which is a 'body corporate' in terms of section 3(2) of the RBI Act, 1934, Government securities are not securities of a body corporate as the Government securities are sovereign securities having zero default risk and RBI of India only manages the issue as also the auction of Government Securities on behalf of the Government of India.

The Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the Central Government's market borrowing program.

Therefore, it has been clarified that service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

[Circular No.126/08/2010 ST dated 10.08.2010]

5. Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth not liable to service tax

It has been clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, will not be treated as 'consideration' received for such training and thus not subjected to service tax under 'commercial training or coaching service as donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

[Circular No.127/09/2010 ST dated 16.08.2010]

6. Construction; erection, commissioning or installation; repair services etc. in the nature of on-going works contract to be classified as works contract service from 1st June 2007 even if the contract is entered before that date

In respect of on-going works contracts entered till 31st May, 2007, composition scheme to be available only when service tax has not been paid till 31st May, 2007

(i) With effect from 01.06.2007, when the new service 'Works Contract' service was made effective, classification of construction; erection, commissioning or installation; repair services in the nature of works contract would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007 as 'works contract' describes the nature of the activity more specifically. Therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

(ii) The on-going works contract, entered till 31.05.2007, satisfying rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 only would be entitled for Composition Scheme. Rule 3(3) casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered.

Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

The Board's previous *Circular No. 98/1/2008-ST dated 04.01.2008* and the ratio of judgment of the High Court of Andhra Pradesh in the matter of M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST) are in line with the above interpretation.

[Circular No.128/10/2010 ST dated 24.08.2010]

7. Monetary limits of adjudication under section 73 revised

The monetary limits for adjudication of penalty by Central Excise Officers have been revised by the Central Board of Excise and Customs vide *Notification No. 48/2010 ST dated 08.09.2010.* Under the revised limits, Superintendents have been empowered to adjudicate cases involving service tax upto Rs. 1 lakh in a show cause notice. Similar

monetary limits for the purpose of adjudication under section 73 have been prescribed vide *Circular No. 130/12/2010 ST dated 20.09.2010*.

Further, in respect of the above powers of adjudication conferred on the Superintendents, the following has been clarified vide the circular:

(i) The Superintendents would be competent to decide cases that involve service tax and / or CENVAT credit upto Rs. one lakh in individual show cause notices.

(ii) They would not be competent to decide cases that involve taxability of services, valuation of services, eligibility of exemption and cases involving suppression of facts, fraud, collusion, willful mis-statement etc.

(iii) They would be competent to decide cases involving wrong availment of CENVAT credit upto a monetary limit of Rs. one lakh.

[Circular No. 130/12/2010 ST dated 20.09.2010]

8. Electricity meter installed in consumers' premises and hire charges collected are eligible for exemption for transmission and distribution of electricity

Issue	Clarification
Whether renting of electricity meter by a service provider rendering the service of transmission or distribution of electricity is covered by the exemption available under *Notification No. 11/2010-ST dated 27.02.2010* and/or *32/2010-ST dated 22.06.2010*?	· It is a general practice among electricity transmission(TRANSCO)/distribution companies (DISCOM) to install electricity meters at the premises of the consumers, to measure the amount of electricity consumed by them and 'hire charges' are collected periodically. · Supply of electricity meters for hire to the consumers being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications.

[Circular No. 131/13/2010 – ST dated 07.12.2011]

9. Fumigation of export cargo in compliance of export obligation is not taxable under 'cleaning services'

Issue	Clarification
Whether the activity of fumigation of export cargo including	· It is clarified that fumigation*, per se, is a cleaning activity. However, fumigation of export cargo including agricultural/horticultural produce, whether loaded into containers or otherwise, does not satisfy the statutory definition of 'cleaning activity' under section 65(24b) of the

agricultural/horticultural produce, whether loaded into containers or otherwise is a taxable service falling under 'cleaning services' or not?	Finance Act, 1994. · Specialised cleaning services of containers used for export goods are exempt from the service tax by virtue of an exemption notification. This is in line with the international practice of making the export consignments free from taxation in the country of its origin. However, the wordings of the exemption notification cannot be used to interpret the scope of service defined under Section 65(105)(zzzd) of the Finance Act, 1994.

[Circular No. 132/1/2011 ST dated 12.01.2011]

*Note: Fumigation is the method of pest control. In this method, a lethal chemical (fumigant) is released in gaseous state into an enclosed area to eliminate an infestation of pests by poisoning or suffocating them.

10. Clarification of the scope and meaning of 'Janata Personal Accident Policy (JPAP)' exempt under *Notification No. 3/1994 dated 30.06.1994*

Notification No. 3/1994 dated 30.06.1994 inter alia provides that 'Janata Personal Accident Policy (JPAP)' is exempt from whole of the service tax leviable thereon.

Since a description of JPAP is not available in the relevant notification, it is clarified that customized group JPAP insurance schemes floated by various insurance companies as per the specifications of State Governments concerned, to extend risk cover to target populations, and to fulfill the prescribed 'rural or social sector' obligation, are covered by the subject service tax exemption.

[Circular No. 133/2/2011-S.T., dated 18-1-2011]

Janata Personal Accident Policy (JPAP)
JPAP is a customized group insurance policy scheme floated by various insurance companies as specified by State Governments, to extend risk cover to certain specified target populations, under varying terms of insurance. Generally, a standard JPAP is an individual oriented policy with a fixed 'sum assured'. The sum assured in these JPAP policies is often as low as Rs. 25,000/- , so that even people without regular income can afford to purchase a risk cover for themselves. For the insurers, JPAP offers a vehicle to fulfill the 'rural or social sector' obligation prescribed by the Insurance Regulatory Development Authority (IRDA).

11. Visa facilitators not liable to service tax

Service provided by a visa facilitator, in the form of assistance to individuals directly, to obtain a visa, does not fall under any of the taxable services under section 65(105) of the Finance Act, 1994. Hence service tax is not attracted. Visa facilitators collect certain statutory charges like visa fee, certification fee, attestation fee, emigration fee, etc. from the visa applicant, which are

remitted to the respective authorities, and in addition collect service charges for themselves as remuneration for the assistance provided by them to obtain the visa.

It has been clarified that assistance provided by a visa facilitator, for obtaining visa, to a visa applicant or for foreign employer does not fall within the scope of supply of manpower service or business auxiliary service as visa facilitator does not act on behalf of the embassies, as agents of the principal. Such services can also not be classified as business support services as the visa applicant pays the service charge on his own meaning such service charge is not borne by any business entity.

However, service tax would be leviable on any service provided other than direct assistance to individuals for obtaining visa, falling under the description of any taxable service, as classifiable under the appropriate heading. For example, where visa facilitators also act as agents of recruitment or of foreign employer, service tax would be leviable to the extent under the service of 'supply of manpower'. Where the visa facilitator renders visa assistance to individuals who are employed in a business entity and the service charges are paid by the business entity on behalf of those individuals, to the visa facilitator, service tax would be leviable under 'business support service'.

[Circular No. 137/6/2011 ST dated 20.04.2011]

12. Service tax exemption applies to Education Cess and Secondary and Higher Education Cess as well

It has been clarified that since Education Cess and Secondary and Higher Education Cess are levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess and Secondary and Higher Education Cess would also be NIL.

According to section 95(1) of the Finance (No.2) Act, 2004 and section 140(1) of the Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess and secondary and higher education cess as well.

[Circular No. 134/3/2011 ST dated 08.04.2011]

13. Audit of service tax assessees — Frequency norms

Director General of Audit, New Delhi has published Service Tax Audit Manual, 2010. As per the guidelines, frequency of audit the taxpayers would be as per following norms:-

S.No.	Taxpayers with Service tax payment (Cash + CENVAT)	To be audited
1.	above ₹ 3 crores (Mandatory Units)	every year
2.	between ₹ 1 crore and ₹ 3 crores	once every two years
3.	between ₹ 25 lakhs and ₹ 1 crore	once every five years
4.	upto ₹ 25 lakhs	2% of taxpayers to be audited every year

G. OTHER AMENDMENTS

1. Monetary limits for adjudication of penalty under service tax revised

Central Board of Excise and Customs has revised the monetary limits for adjudication of penalty by Central Excise Officers by amending *Notification No. 30/2005-ST dated 10.08.2005* in the following manner:

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	Superintendent of Central Excise	Up to ₹ 1,00,000 (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)
(2)	Assistant/Deputy Commissioner of Central Excise	Up to ₹ 5,00,000 (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	₹ 5,00,000 to ₹ 50,00,000
(4)	Additional Commissioner of Central Excise	₹ 20,00,000 to ₹ 50,00,000
(5)	Commissioner of Central Excise	Without limit.

[Notification No. 48/2010 ST dated 08.09.2010]

2. Rate of interest for amount collected of service tax in excess increased by 5% per annum [Section 73B]

Earlier, the rate of interest notified by the Central Government under section 73B was 13% per annum vide *Notification No. 8/2006 dated 19.04.2006.*

Amendment made by *Notification No. 15/2011 dated 01.03.2011*

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

2. Rate of interest for delayed payment of service tax increased by 5% per annum [Section 75]

Earlier, the rate of interest notified by the Central Government under section 75 was 13% per annum vide *Notification No. 26/2004 dated 10.09.2004.*

Amendment made by *Notification No. 14/2011 dated 01.03.2011*

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.