

Service Tax Proposals As Introduced In The Finance Bill, 2006

The Finance Bill, 2006 has proposed a number of amendments in the statutory provisions as contained in Chapter V of Finance Act, 1994, Service Tax Rules, 1994 and Notifications issued by the department. These changes can be broadly classified into three categories namely: -

- 1) Changes which are effective from 1st day of March, 2006;
- 2) Changes which will be effective at the enactment of the Finance Bill, 2006 i.e. the day when the Bill will receive assent of the President of India;
- 3) Changes which will be effective on the date when Notifications will be issued after the enactment of the Finance Bill, 2006.

Changes Which Are Effective From 1st Day Of March 2006

I. Following Service Tax exemptions are being withdrawn w.e.f. 01.03.2006:

A) General Insurance Services: The exemptions in relation to general insurance where premium is received from re-insurance both domestic and overseas and all business for which premium is booked outside India.

Notification No. 3/94-Service Tax dt. 30.06.1994 is being amended to withdraw the above said exemptions vide Notification No. 3/2006-Service Tax dt. 01.03.2006.

B) Practising Chartered Accountant / Company Secretary / Cost Accountant Services: Exemption for services, other than accounting, auditing,

and statutory certification services, provided by a practising chartered accountant, company secretary or cost accountant in his professional capacity has been withdrawn w.e.f. 01.03.2006.

Notification No. 59/9m8-Service Tax dt. 16.10.1998 which provides the above said exemptions is being rescinded vide Notification No. 2/2006-ST dt. 01.03.2006. It is important to note that the definition of taxable service as provided in Section 65(105)(s) in the case of Chartered Accountant, Section 65(105)(u) in the case of Company Secretary's Services and Section 65(105)(t) in the case of Cost Accountant services has not been changed and remains the same. In all the three cases, taxable service means any service provided or to be provided to a client, by a practising chartered accountant/company secretary/cost accountant in his professional capacity, in any manner. Presently all the services provided by these three professionals in their professional capacity have been made taxable. These professionals will have to collect and pay service tax on all the services rendered by them in their professional capacity including legal services. According to the author, this is against the spirit of Article 14 of the Constitution of India. The same taxable services when rendered by other professionals are not subject to service tax but has been made taxable in the case of above said three professionals is clearly violative of Article 14 of the Constitution of India. Moreover,

the above said amendment is against the spirit of the Kerala High Court Judgment the gist of which is reproduced hereunder: -

Institutions rendering services where degree or certificate awarded by agency created by law

Education institutions with requirement to write examination to obtain degree or certificate awarded by any agency created by law are entitled to exemption under Section 65(27) of the Finance Act, 1994. Petitioner is not liable to service tax, as no discrimination can be made under Article 14 of the Constitution of India. S.T. Anthony Educational Society Vs. Union of India [2006] 1 STR 137 (Kerala)

C) Business auxiliary services: Exemption for taxable services provided or to be provided by a Call Centre or a Medical Transcription Centre has been withdrawn w.e.f. 01.03.2006. This exemption was provided vide Notification No. 8/2003-ST dt. 20.06.2003. The said Notification is being rescinded vide Notification No. 2/2006-ST dt. 01.03.2006.

D) Management consultant's services: Exemption for taxable service provided or to be provided in relation to Enterprise Resource Planning (ERP) software system provided by a management consultant in connection with the management of any organisation has been withdrawn w.e.f. 01.03.2006. The said ex-

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emption was provided vide Notification No. 16/200-ST dt. 10.09.2004. The said Notification is being rescind vide Notification No. 2/2006-ST dt. 01.03.2006.

E) Outdoor caterer's services: Exemption for catering services provided on a railway train by an outdoor caterer has been withdrawn w.e.f. 01.03.2006. This exemption was provided vide Notification No. 19/2004 dt. 10.09.2004 and is being rescind vide Notification No. 2/2006-ST dt. 01.03.2006.

Exemption for catering services provided within the premises of an academic institution or medical establishment by an outdoor caterer has also been withdrawn w.e.f. 01.03.2006. This exemption was provided vide Notification No. 21/2004-ST dt. 10.09.2004 also is being rescind vide Notification No. 2/2006-ST dt. 01.03.2006.

F) Maintenance or repair services: An exemption was provided to maintenance or repair services provided under a maintenance contract or agreement entered into prior to 1st July, 2003 vide Notification No. 11/2003-ST dt. 20.06.2003. The said Notification is being rescind vide Notification No. 2/2006-ST dt. 01.03.2006 as the above said notification has outlived its utility.

G) Rationalisation of Abatement/deduction in respect of following services

*If the tour operator is providing services solely or arranging or booking accommodation for any person in relation to a tour then the taxable percentage of gross amount is 10 per cent and percentage of abatement/deduction is 90 per cent.

S. No	Name of Services	Taxable % of Gross Amount	% of Abatement/Deduction
1.	Mandap Keeper Services	60	40
2.	Tour Operator Services*	40	60
3.	Renting-a-Cab Services	40	60
4.	Convention Services	60	40
5.	Erection, Commissioning or Installation Services	33	67
6.	Transport of Goods by Road	25	75
7.	Commercial or Industrial Construction Services	33	67
8.	Catering Services	50	50
9.	Pandal or Shamiana Contractor's Services	70	30
10.	Construction of Complex Services	33	67

Educational institutions with requirement to write examination to obtain degree or certificate awarded by any agency created by law are entitled to exemption under Section 65(27) of the Finance Act, 1994.

Though there is no change in the percentage of taxable amount/abatement but all these abatements have been provided in one single Notification No. 1/2006-ST dt. 01.03.2006.

Earlier, these abatements were provided vide different Notifications, which have been now rescinded. A very important restriction has been further provided for claiming the abatement of value of taxable services. Till 28.02.2006, these abatements were available when the service provider was not availing credit of duty on inputs or capital goods and service provider was availing exemption under Notification No. 12/2003-ST dt. 20.06.2003. This notification provides exemption to so much of value of all the taxable services as is equal to the value of goods and materials sold by the service provider to the recipient of service, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials. However, the service provider

was eligible to avail the CENVAT credit of Service Tax on input services used for providing such taxable services. According to above said Notification i.e. 1/2006 now such service provider will also not be entitled to avail above said abatement if they avail CENVAT Credit of Service Tax on input services used for rendering taxable services. For the sake of clarity, it is being reiterated that above said abatements available to the service provider if he does not: -

- i) avail the CENVAT Credit of duty on inputs or capital goods under the provisions of CENVAT Credit Rules, 2004; or
- ii) the CENVAT Credit of Service Tax on input services, used for providing such taxable services under the provisions of CENVAT Credit Rules, 2004; or
- iii) The service provider has availed the benefit under Notification No. 12/2003-ST dt. 20.06.2003.

Condition No. (ii) has been made applicable vide

Notification No. 1/2006 whereas earlier on there was no such restriction.

Exemptions being allowed W.E.F. 01.03.2006

- 1) Banking And Other Financial Services: Exemption from service tax has been provided to financial leasing services including equipment leasing and hire-purchase, on that portion of the taxable value comprising of 90 per cent of an amount representing as interest i.e. the difference between the installment paid towards repayment of the lease amount and the principal. The said exemption has been provided vide Notification No. 4/2006-ST dt. 01.03.2006. However, it has been clarified in the Explanation to the said notification that this exemption shall not apply to any amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fees, processing fee, documentation charges and administration fee. In simple words service tax will be payable on the full amount received by the service provider as lease management fees, processing fee, documentation charges and administration fee etc. The abatement is only in respect of an amount representing as interest i.e. the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment paid.
- 2) Technical testing and analysis services: Exemption from service tax has been provided to

testing and analysis services provided in relation to water quality testing by Government owned State and District level laboratories vide Notification No. 6/2006-ST dt. 01.03.2006.

- 3) Taxable Services Provided By Reserve Bank Of India: Exemption from service tax has been provided to all taxable services provided or to be provided to any person by the Reserve Bank of India vide Notification No. 7/2006-ST dt. 01.03.2006..

Amendments in rules W.E.F. 01.03.2006

Amendment in Rule 4: In Rule 4(1) after sub-rule (5), Rule 5A has been inserted which require an assessee to intimate any change or any information or details furnished by an assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or detail. Such change or information or details shall be intimated, in writing by the assessee, to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of 30 days such change.

Rule 4(7) has been amended to provide that every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise. The italic words have been added vide Notification No. 5/2006-ST dt. 01.03.2006. It is only a technical correction and is not of substantive nature.

A new Rule 4(8) has been added vide Notification No. 5/2006-ST dt. 01.03.2006 to provide for that on receipt of the certificate under sub-rule (7), the Superintendent

of Central Excise shall ensure that the assessee has paid all moneys due to the Central Government under the provisions of the Act, and the Notifications issued thereunder, and thereupon cancel the registration certificate.

Amendment in Rule 5: Rule 5(1) has been amended to provide that the records including computerised data as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable. The words "including computerised data" were within brackets before this amendment is being carried out vide Notification No. 5/2006-ST dt. 01.03.2006. It is only a technical correction and is not of substantive nature.

Rule 5(3) has been inserted w.e.f. 01.03.2006 vide Notification No. 5/2006-ST 01.03.2006 to provide that all such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertained.

Further, Rule 5(4) has been inserted with effect from 01.03.2006 vide Notification No. 5/2006-ST dt. 01.03.2006 to provide that every assessee shall make available, at the registered premises, at all reasonable time, such records as mentioned in sub-rule (3), for inspection and examination by the Central Excise Officer authorised in writing by the Jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be. Explanation to the said rule further provides that for the purpose of this rule, "registered premises" includes all premises or offices from where an assessee is providing taxable services.

Changes that will be effective at enactment of the Finance Bill, 2006

Rate of service tax: The rate of service tax is being in-

Rule 5(3) has been inserted w.e.f. 01.03.2006 vide Notification No. 5/2006-ST 01.03.2006 to provide that all such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertained.

creased from 10 per cent to 12 per cent. The increase in service tax rate will be applicable from the date of enactment of the Finance Bill, 2006. Section 66 has been amended to give effect for the change in rate of tax.

Import of taxable services: section 66A is being inserted to levy service tax on taxable services provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India under reverse charge method. Explanation added at the end of Section 65(105) has been deleted in view of the insertion of this new Section. However, the intention has been made clear that taxable services rendered by non-resident person outside the territorial limit of India, will remain to be taxable.

Exemption has been provided to individuals in respect of services provided by non-resident persons where the said taxable services are received and consumed outside India by such individual not in the course of furtherance of commerce or industry or any other business.

Exemption in respect to certain specific services provided by a non-resident person outside India and consumed outside India in the course of sailing of a ship w.e.f. 16.06.2005 subject to certain conditions in specified services as provided in Notification No. 22/2005 dated. 07.06.2005 is still continuing.

Valuation of taxable services: The existing section 67 (which provides for valuation of taxable services for charging

ing service tax) is being substituted with a new section 67 to provide for determination of value of taxable service in cases where the consideration for the provision of service is in money, or where the consideration is not wholly or partly consisting of money or where the consideration is not ascertainable. At present, service tax is charged on the gross amount received. The proposed section provides determination of taxable value in cases where the consideration received for taxable services provided is not wholly in money terms and the consideration received is in money terms but not known explicitly. Separate valuation rules are proposed for this purpose.

Conclusion of adjudication proceedings: Section 73 (which provides for recovery of service tax) is being amended to provide for conclusion of adjudication proceedings in respect of a person to whom a notice is served under the proviso to sub-section (1) of section 73 and who has voluntarily deposited the service tax demanded in full and the interest payable thereon under section 75 and penalty equal to twenty five per cent. of the service tax specified in the notice.

Service tax collected from any person to be deposited with the Central Government: Section 73A is being inserted to provide for voluntary payment by an assessee of any amount collected in excess of the service tax leviable but not deposited with the Central Government or recovery of such excess amount and further provide for voluntary payment or recovery of any amount as representing service tax, that has been collected by a person but not deposited with the Central Government. It may be noted that any amount collected as Service Tax whether or not le-

gally required to be paid, is to be deposited with the Government under this Section. This Section is applicable not only to a person liable to pay service tax but also to any person, even if he is not an assessee.

Interest on amount collected in excess: Section 73B is being inserted to enable the Central Government to collect interest on the amount as determined under sub-section (4) of section 73A at such rate not below 10 per cent and not exceeding 24 per cent per annum, as may be notified by the Central Government.

Provisional attachment to protect revenue in certain cases: Section 73C is being inserted to provide for provisional attachment by the Central Excise Officer of any property belonging to the person on whom notice is served under sub-section (1) section 73 or sub-section (3) of section 73A, during the pendency of such proceedings.

Publication of information in respect of persons in certain cases: Section 73D is being inserted to provide for publishing the name of any person and any other particulars relating to any proceedings under the provisions of Chapter V of the Finance Act, 1994 in relation to such person, in public interest, in such manner as may be prescribed.

Penalty for failure to pay service tax: Section 76 (which provides for penalty for failure to pay service tax) is being substituted with a new section 76 to provide that penalty at the rate of two hundred rupees for every day of failure to pay service tax or at the rate of two per cent. of the tax per month, whichever is higher, shall be imposed for failure to pay service tax by the due date. To illustrate, X, an assessee, fails to pay service tax of Rs. 10 lakhs payable by 5th March. X pays the amount on 15th March.

Exemption has been provided to individuals in respect of services provided by non-resident persons where the said taxable services are received and consumed outside India by such individual not in the course of furtherance of commerce or industry or any other business.

Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in case of classifying, assessing the value of, or implementing any taxable service incorporated by the Finance Act, 2006 up to one year from the date of enactment of the Finance Bill, 2006.

The default has continued for 10 days. The penalty payable by X is computed as follows: -
 2 per cent of the amount of default for 10 days = $2 \times 10,00,000 \times 10/31 =$ Rs. 6,451.61

Penalty calculated @ Rs. 200 per day for 10 days = Rs. 2,000

Penalty liable to be paid is Rs. 6,452.00.”

Deletion of section 11 and section 11d of the Central Excise Act, 1944 made applicable to service tax provisions

In section 83, the reference to section 11 and section 11D of the Central Excise Act, 1944 is being omitted, in view of appropriate provisions for recovery any amount (viz. section 87 and section 73A) which are being inserted vide this Finance Bill, 2006.

Recovery of any amount due to Central Government: section 87 is being inserted to provide for recovery of any amount due to the Central Government by any one of the following modes, namely:-

- (i) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs, or
- (ii) the Central Excise Officer may require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person, or
- (iii) the Central Excise Officer may, on an authorisa-

tion by Commissioner of Central Excise, in accordance with the rules made in this behalf, restrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid, or

- (iv) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

Power to make rules: Section 94 is being amended so as to empower the Central Government to make rules for:

- (i) valuation of taxable services under section 67;
- (ii) prescribing the manner of provisional attachment of property during the pendency of any proceedings under section 73 or section 73A to protect revenue, under section 73C;
- (iii) prescribing the manner of publication of the name of any person and any other particulars in relation to any proceedings in respect of such person under section 73D;
- (iv) prescribing the manner of recovery of any amount due to the Central Government under section 87.

Power to remove difficulties: Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in case of classifying, assessing the value of, or implementing any taxable service incorpo-

rated by the Finance Act, 2006 up to one year from the date of enactment of the Finance Bill, 2006.

Scope of Advance Ruling enlarged: Section 96C is being amended to empower the Authority for Advance Rulings to determine the liability to pay service tax.

Changes that will be effective through notifications to be issued after the enactment of the Finance Bill, 2006. Such changes will be made applicable from the date of such notifications

Service tax is being imposed on the following individually specified services:

- 1) Service provided by a Registrar to an issue;
- 2) Service provided by a Share Transfer Agent;
- 3) Automated Teller Machine Operations, maintenance or management;
- 4) Service provided by a recovery agent;
- 5) Sale of space or time for advertisement, other than in print media;
- 6) Sponsorship services provided to any body corporate or firm, other than sponsorship of sports events;
- 7) Transport of passengers embarking on international journey by air, other than economy class passengers;
- 8) Transport of goods in containers by rail by any person, other than Government railway;
- 9) Business support services;
- 10) Auctioneers' service, other than auction of property under directions or orders of a court of law or auction by the Central Government;
- 11) Public relations service;
- 12) Ship management service;
- 13) Internet telephony service;

- 14) Transport of persons by cruise ship;
- 15) Credit card, debit card, charge card or other payment card related services.

The detailed discussion with regard to all the above said new services, are being discussed separately with regard to each service.

Scope of existing taxable services: It is being proposed that the following services provided by any person shall be subject to Service Tax. Presently these services are taxable when provided by a commercial concern: -

- a) Advertising agency services
- b) Banking & other financial services
- c) Business auxiliary services
- d) Credit rating agency services
- e) Commercial or industrial construction services
- f) Convention services
- g) Courier services
- h) Dry cleaning services
- i) Manpower recruitment or supply agency services
- j) Market research agency services
- k) Online information and database access or retrieval services
- l) Photography services
- m) Security agency services
- n) Sound recording services
- o) Transport of goods by air services
- p) Transport of goods by road services
- q) TV or radio programme production services

Hence the scope of these services has been enlarged to include all taxable services provided by any person including those who are not covered in the definition of commercial concern. The term “person” has not been defined in the statutory provisions of Service Tax. For detailed discussion on the subject refer to Appendix-8

of this book. According to the author, term “commercial concern” has been replaced by “any person” to avoid the confusion caused by the terms used in definitions of earlier taxable services/service providers. Now all the sub-service providers falling under these taxable services have to get themselves registered under service tax and will be responsible to collect service tax from main service provider. Of course, the main service provider will avail the input credit for such service tax, which has been paid to the sub-service provider under Cenvat Credit Rules, 2004. Though no additional revenue will accrue to the Government due to the same but it will provide audit trail to the department and will help in curbing evasion of service tax. It will also help in better administration of the provisions of service tax.

The scope of following taxable services have been proposed to be enlarged or clarified as the case may be: -

Banking & other financial services: Credit card services which are presently taxable under banking and other financial service has been proposed to be removed from this category of service and taxed under the separate category known as credit card related services. Following two types of services which are rendered by a banking company or a financial institution including a non banking financial company or any other body corporate or any person has been proposed to included: -

- a) Services in relation to transfer of money through different modes
- b) Services provided as a banker to an issue
“Banker to an issue” means a bank included in the Second Schedule of Reserve Bank of India Act, 1934, carrying on activities relating to an issue

including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants-Section 65 (9c).

Business auxiliary services: Computerised data processing services are specifically excluded from the definition of Business Auxiliary Services as the same is considered as information technology service at present. However, it has been proposed to amend the definition of Information Technology Service so as to exclude the same and make computerised data processing taxable under the category of Business Auxiliary Services.

Change in the definition of Information Technology Service has justified the service tax on maintenance of computer software under the category of Management, Maintenance or Repair Service. I would like to draw the attention of the readers to the clarification issued by the Board wherein maintenance of computer software was made taxable after the judgment of Tata Consultancy Services Ltd. wherein “off the shelf” softwares were held to be goods.

Consulting engineer’s services: Engineering consultancy services rendered by a body corporate has been proposed to be made taxable under the category of Consulting Engineer’s Services. It is important to note that presently body corporates are already liable to pay service tax under the category of Consulting Engineer’s Services as per the judgment pronounced by the Calcutta High Court in the case of M.N.Dastur & Co. Ltd. [2002] 140 ELT 341 and the judgment of Karnataka High Court in the case of Tata Consultancy Services [2001] 130 ELT 726.

Erection, commissioning or installation services: The

Credit card services which are presently taxable under banking and other financial services has been proposed to be removed from this category of service and taxed under the separate category known as credit card related services.

It has been proposed to clarify that Technical Testing and Analysis Services includes clinical testing of drugs and formulations and excludes testing or analysis done for the purpose of determination of nature of diseased condition, identification of disease, prevention of any disease or any disorder in human beings or animals.

definition of erection, commissioning or installation is being proposed to be amended so as to include erection, commissioning or installation of structures which may be pre fabricated or otherwise, along with Erection, Commissioning or Installation of Plant, Machinery or Equipment.

Insurance related services: The definition of insurer is proposed to be amended so as to tax-

- i) General Insurance/Life Insurance services rendered outside India by deleting the words "in India" in the definition of insurer.
- ii) Services rendered in respect of reinsurance shall also be subject to service tax for which the term "reinsurer" has been added to the definition of insurer.

Similarly, in respect to Insurance Auxiliary Services, the services provided to a policy holder or a reinsurer are being proposed to be made taxable under the category of Insurance Auxiliary Services.

Maintenance or repair services: It is being proposed that the service shall be renamed as "Management, maintenance or repair services" by substituting the definition of maintenance or repair which is reproduced hereunder: -

- "Maintenance or repair" means any service provided by-
- (i) any person under a contract or an agreement; or
 - (ii) a manufacturer or any person authorised by him, in relation to,-
 - (a) maintenance or repair including reconditioning or restoration, or servicing of any goods or equipment, excluding motor vehicle; or

- (b) maintenance or management of immovable property;- 65(64)

This definition is proposed to be substituted by the following definition: -

"Management, maintenance or repair" means any service provided by-

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him, in relation to -
 - (a) management of properties, whether immovable or not;
 - (b) maintenance or repair of properties, whether immovable or not; or
 - (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding motor vehicle;

It is important to note that management of movable property has been included in the new definition whereas the same is not taxable at present. In simple words, scope of the service is enlarged to include operational services in relation to movable property like machinery, generator etc.

Management Consultant's Services

"Management Consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance relating to conceptualising, devising, development, modification, rectification or up gradation of any working system of any organisation – Section 65 (65)

This definition of Management Consultant is proposed to be amended so as to specifically include Consultancy

Services in different areas of Management namely-

- a) Financial Management
- b) Human Resource Management
- c) Marketing Management
- d) Production Management
- e) Logistics Management
- f) Procurement & Management of Information Technology Resources
- g) Other similar areas of Management

Technical Testing and Analysis Services

It has been proposed to clarify that Technical Testing and Analysis Services includes clinical testing of drugs and formulations and excludes testing or analysis done for the purpose of determination of nature of diseased condition, identification of disease, prevention of any disease or any disorder in human beings or animals.

All Taxable Services

After clause 65 (121) the following explanation has been proposed to be inserted –

"For the purposes of this section taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration."

The purpose of this explanation is to make clear that the services provided by an unincorporated association or body of persons such as club or association to its members is treated as taxable service. In other words, club or association is treated as separate and different from their member for the purpose of levy of service tax. One cannot take refuge of concept of mutuality to avoid the liability of service tax under any category of taxable service wherever applicable. □