

Transport Of Goods, Construction And Maintenance And Repair Services

At present more than 80 services are taxable under the provisions of Service Tax, yet some services occupy special positions not in terms of revenue generated from these services, but because of their peculiar

able service means any service provided to any person, by an aircraft operator, in relation to transport of goods by aircraft – Section 65 (105) (zzn). Transport of goods by road (by a goods transport agency): Taxable service means any ser-

(105) (zzz).

If one analyses these definitions critically, one will find the following common features:

Any service provided to any person, is taxable under these categories of services except in the case of transport of goods by road where these services are taxable when rendered to a customer.

The term ‘person’ has not been defined in the statutory provisions of Service Tax. As per section 3(42) of the General Clause Act, person shall include any company or association or body of individuals, whether incorporated or not. Normally ‘person’ is understood as a human being, but in the context of fiscal laws including Service Tax it includes artificial and juristic persons also. Hence, it includes individual, proprietorship firm, partnership firm, company, society, co-operative society, trust, body corporate, Hindu Undivided Family (H.U.F), club or any association of persons by whatever name called. Dictionary meaning of the term ‘customer’ is as under: “One who trades regularly at a particular shop; a patron; a purchaser or buyer” (*Webster’s Dictionary*)

“A person who buys goods or services from a shop or business” (*Oxford Dictionary*)
 “One who regularly or repeatedly makes purchases of, or has business dealing with, a tradesman or business. Ordinarily,

one who has repeated business dealings with another; a buyer, purchaser, consumer or patron. In banking, any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank.” (*Black’s Law Dictionary*)

(b) Nature of services

These services should be provided in relation to transport of goods. The term ‘goods’, has not been defined in Service Tax provisions. ‘Movable Property’ has been defined in section 3(36) of the General Clauses act, to mean property of every description except ‘immovable property’. Section 2(7) of The Sale of Goods Act, 1930 read as follows - “goods” means every kind of immovable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sales.

These services should be rendered by an aircraft operator, by a goods transport agency or any other person as the case may be. Services rendered by other agencies operating other modes of transport like rail, ship, animal cart or any other mode are not subject to Service Tax. In the case of *Kesoram Spun Pipes & Foundries Vs Comm. of C. Ex., Calcutta-IV [2002] 146 ELT 475 (Tribunal-Kolkata)*, it has been held that Service Tax is chargeable only on the services provided by the commercial concern engaged in transportation of goods and when goods are

supplied by supplier of goods, it shall not be subject to Service Tax.

(c) Value of taxable service

Taxable value shall be the gross amount charged by the service provider for such service rendered by him in all the cases. Gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service with effect from 13.05.2005 — Explanation 3 to Section 67. In the case of Transport of goods by air it has been clarified that in addition to the actual airfreight charges, all charges collected towards storing, handling, loading/unloading (done in relation to air transportation of cargo) by an airlines are also chargeable to this levy.

(d) Exemptions

Transport of goods by air: One time exemption was granted to that portion of the value of taxable services from the levy of Service Tax, which is received by the service provider prior to 10.09.2004 as this service was made taxable with effect from 10.09.2004 - Notification No. 18/2004 dated 10.09.2004. Further exemption has been granted to aircraft operators rendering services in respect of export cargo by aircraft – Notification No. 28/2004 dated 17.09.2004. This exemption has been withdrawn with effect from 15.03.2005 by Notification No. 10/2005 dated 03.03.2005.

Transport of goods by road (by a goods transport agency): Abatement (deduction) of 75 per cent of the gross amount

charged from any person by the service provider has been allowed with effect from 01.01.2005 (which is the date of applicability of this service) vide Notification No. 32/2004 dated 03.12.2004. As per the said notification the abatement of 75 per cent shall be available in those cases where...

- i) no credit of duty on inputs or capital goods has been taken under the provisions of Cenvat Credit Rules, 2004 and
- ii) benefit of Notification No. 12/2003 i.e. exemption of the value of goods and materials transferred during the course of rendering of service, has not been availed by Goods Transport Agency.

Exemption has been granted to the services of goods transport agency rendered to a customer in relation to transportation of fruits, vegetables, eggs or milk by road. (Notification No. 33/2004 dated 03.12.2004)

Further, exemption has also been granted to the services of goods transport agency rendered to a customer in relation to transport of goods by road in a goods carriage where;

- (i) the gross amount charged on consignments transported in a goods carriage does not exceed Rs. 1,500, or;
- (ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed Rs. 750. Here, individual consignment means all goods transported by a goods transport agency by road in a goods carriage for a consignee. (Notifi-



Ashok Batra
 The author is a member of the Institute. He can be reached at office@akbatraassociates.com

Transport of goods by road is one unique taxable service, which was brought into the tax net on 16.11.1997 and was withdrawn on 01.06.1998. It remained taxable only for a period of less than seven months. This service was introduced, once more by the Finance Act, 2004 in July 2004, but could be notified only from 01.01.2005 after protests from transporters. Construction contracts and maintenance or repair agreements are subject to Sales Tax by the State Governments as work contracts. Dealers/providers of these services also have to pay Service Tax on these contracts/agreements as these are taxable services under the provisions of Service Tax. This article provides an overview of these services.

features. These services are in relation to Transport of Goods, Construction Services, and Maintenance and Repair Services. Let us discuss taxable services in relation to transport of goods at the first stage.

Transport of goods

There are three taxable services that deal with the subject:

(a) Scope of services

Transport of goods by air: Tax-

vice provided to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage. – Section 65 (105) (zzp) with effect from 10.09.2004.

Transport of goods through pipeline or other conduit: Taxable service means any service provided to any person, by any other person, in relation to transport of goods other than water, through pipeline or other conduit. – Section 65

Name of taxable service	Date of applicability
Transport of goods by air	10.09.2004
Transport of goods by road (by a goods transport agency)	16.11.97 to 1.6.98 and w.e.f 1.1.2005
Transport of goods through pipeline or other conduit	16.06.2005

cation No.34/2004 dated 03.12.2004)

Further, it is clarified to the readers that the restriction with regard to individual consignment is in relation to consignee. However, there is no such restriction in relation to consignor. Thus, the consignor can claim the benefit of this exemption in respect of the goods sent to different consignees in one day if the value of individual consignment does not exceed Rs. 750.

Clarification by Director General Service Tax

In relation to abatement of 75

per cent in the case of transport of goods by road, Director General Service Tax, has clarified that there is widespread confusion over the applicability of benefit provided under notification no. 32/2004 dated 3.12.2004 *vis-à-vis* notification no. 35/2004 dated 3.12.2004. The matter has been examined in this Directorate and it is clarified that benefit of notification no. 32/2004 dated 3.12.2004 granting an abatement of 75 per cent from the gross amount charged by goods transport agency for providing the said taxable service is available

only in cases where the Goods Transport Agency is liable to pay Service Tax. The benefit is not available in cases where the provision of notification no.35/2004 dated 3.12.2004 are applicable i.e., where the consignee or consignor are from one of the seven categories mentioned therein. According to the author, this clarification was not in conformity with the Service Tax provision. There was wide spread criticism of the clarification. [Director General Service Tax, Letter F.No. V/DGST/43-GTO/02/2005/19879, dated 30.03.2005]. This clarification

was withdrawn and controversy has been put to rest. Refer to page A-38 of 183 ELT.

Transport of goods through pipeline or some other conduit

Transport of water through pipeline or some other conduit has been kept outside the purview of Service Tax looking to its social implication and also the fact that such utility is normally provided by Government Agencies such as municipal board/corporation etc. Transport of all type of gases, fluids etc. including PNG (Piped Natural Gas), CNG, LNG, Liquid fuel, etc. are likely to be included in this category of service.

(e) Person responsible for payment of Service Tax

Transport of goods by road (by a goods transport agency)
(A) In those cases where the consignor or consignee of the goods is:

- (i) a factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (ii) a company established by or under the Companies Act, 1956 (1 of 1956);
- (iii) a corporation established by or under any law;
- (iv) a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
- (v) a co-operative society es-

tablished by or under any law;

- (vi) a dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1of1944) or the rules made there under;
- (vii) a body corporate established, or a partnership firm, registered, by or under any law.

Any person who pays or is liable to pay the freight either himself or through his agent for the transportation of goods by road in a goods carriage, shall be liable for paying the Service Tax.

(B) In rest of the cases, the goods transport agency shall be liable to Service Tax. [Notification No. 35/2004 dated 03.12.2004].

An individual who is not registered under Excise law and not governed by the Factories Act, 1948 and the Government who is availing the services of goods transport agency, are not liable for making the payment of Service Tax.

Further, it does not mean that services rendered to these persons by the goods transport agency in relation to transport of goods by road are exempted from the levy of Service Tax. In case of these persons, the goods transport agency i.e. service provider will collect the Service Tax from them and deposit the same with the Government as is being done in all other cases where service providers are liable to pay Service Tax.

Constitutional Validity of Rule 2(1)(d)(v) upheld by Hon'ble Supreme Court

In a two-member judgement the Supreme Court has upheld the validity of Rule 2(1)(d)(v) read with Section 68(2) in the case of *Gujrat Ambuja Cement Ltd. Vs. Union of India (2005) 1 STJ 991 (SC)*. Judgment has been pronounced on 15.03.2005.

From the reading of Rule 2(1)(d) it can be safely inferred that the specified seven entities and any person who is liable to pay freight either himself or through his agent would be the person liable to get himself registered with the department, filing of return and payment of tax etc. Goods transport agency is not the assessee when services are provided to specific entities listed in notification no. 35/2004 and have no liability whatsoever. Thus, seven entities as listed in the said notification cannot be absolved from their responsibility of getting registered and making payment of Service Tax even if the Goods Transport Agency is willing to deposit Service Tax on their behalf.

Construction services

Two taxable services deal with the subject namely Commercial or Industrial Construction Services and Complex construction services.

(a) Scope of service

Commercial or Industrial Construction Services: Taxable service means any service provided to any person, by a commercial concern, in relation to construction service – Section 65 (105) (zzq)



Name of the taxable service	Date of applicability
Commercial or Industrial Construction Services	10.09.2004
Complex construction services	16.06.2005

Complex construction services: Taxable service means any service provided to any person, by any other person, in relation to construction of complex – Section 65 (105) (zzzh).

The term 'person' has not been defined in Service Tax provisions. For detailed discussion on the term person refer to para no. 1.1 of this article. Dictionary meaning of term 'commercial' is as under:

"Pertaining to commerce or trade; dealing with or depending on commerce; carrying

on commerce; produced for mass production with profit as a primary aim". (*Webster's Dictionary*)

"Of or engaged in commerce, having financial profit as its primary aim". (*Oxford Dictionary*)

"Commercial" relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. Generic term for most/all aspects of buying and selling". (*Black's Law Dictionary*). Thus, the term "commercial concern" means a business organisation carrying on activities related to commerce or trade with profit motive.

(b) Nature of service

"Construction Service" means:

(A) Construction of a new building or civil structure or a



part thereof; or

(B) Repair, alteration or restoration of, or similar services in relation to, building or civil structure, which is: -

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam – Section 65 (30a)

Scope of this service has been enlarged and the new definition of commercial or industrial construction service shall be as under with effect from 16.06.2005:

"Commercial or industrial construction service" means:

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

(ii) construction of pipeline or conduit; or

(iii) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(iv) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is –

♦ used, or to be used, primarily for; or

♦ occupied, or to be occupied, primarily with; or

♦ engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams'- (25b)

Scope of this service has been enlarged with effect from 16.06.2005 and clause (b) and (c) has been added into the existing definition. Now, it will include not only construction of a new building or a civil structure or a part thereof, but also construction of pipeline or

conduit, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure or repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit. It has been further provided that taxable services under this category of service must be provided in relation to building or a civil structure or a part thereof used, or to be used, primarily for; or occupied, or to be occupied, primarily with; or engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry.

Department has clarified in its Circular No.F.No.B2/8/2004-TRU, dated 10.09.2004 that estate builders, who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor(s), the payment made to such contractor would be subjected to Service Tax under this category of service. The tax is leviable only in cases where the services are provided by a commercial concern. Thus, service provided by a labourer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to Service Tax. The leviability of Service Tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The

information about this has to be gathered from the approved plan of the building or civil construction. Such constructions, which are for the use of organisations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, Government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally Government constructions would not be taxable. However, if such constructions are for commercial purposes like local Government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to Service Tax.



In case of multi-purpose buildings such as residential cum commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/municipal laws. The definition of service specifically excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard, long distance pipelines are clarified as any pipelines other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments. Thus, construction of a pipeline running within industrial and commercial establishment such as factory, refinery and similar industrial establishment is within the scope of the levy.

Complex construction services

“Construction of complex” means-

- (A) construction of a new residential complex or a part thereof, or,
- (B) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, or,
- (C) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex, - Section 65 (30a), “residential complex” means any complex comprising of-

- (i) a building or buildings, having more than twelve residential units,
- (ii) a common area, and
- (iii) any one or more facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by any authority under law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation-For the removal of doubts, it is hereby declared that for the purpose of this clause:

- ♦ “residential use” includes permitting the complex for use as residence by another person on rent or without consideration,
- ♦ “residential unit” means a single house or a single apartment intended for use as a place of residence.- Section 65 (91a)

The service should be in relation to construction of a complex. Construction of a complex means construction of a new residential complex or a part thereof, or completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming

The term “person” has not been defined in the statutory provisions of Service Tax. As per section 3(42) of the General Clause Act, ‘person’ shall include any company or association or body of individuals, whether incorporated or not. Normally ‘person’ is understood as a human being, but in the context of fiscal laws including Service Tax it includes artificial and juristic persons also

pools, acoustic applications or fittings and other similar services, or repair, alteration, renovation or restoration of, or similar services in relation to, residential complex.

Further, residential complex means any complex comprising of a building or buildings, having more than 12 residential units, a common area, and any one or more facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by any authority under law for the time being in force, but does not include a complex, which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. It is important to note that although a complex constructed by a person for his personal use as residence shall not be taxable under service tax but the services availed for designing or planning of the layout will add to his cost as the service providers of such services will charge service tax on the services provided to such persons.

(c) Value of taxable service

Taxable value shall be the gross amount charged by the service provider for such service rendered by him in both the cases. Gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service with effect from

13.05.2005 -Explanation 3 to Section 67

Commercial or industrial construction services

Exemption has been provided to that portion of the value of taxable services from the levy of Service Tax, which is received by the service provider prior to 10.09.2004.- Notification No. 18/2004 dated 10.09.2004

Abatement (deduction) of 67 per cent is being allowed from the gross amount charged from any person by service provider subject to the following two conditions:

- (i) no credit of duty on inputs or capital goods has been taken under the provisions of Cenvat Credit Rules, 2004 and
- (ii) benefit of Notification No. 12/2003 i.e. exemption of the value of goods and materials transferred during the course of rendering of service, has not been availed by him. (Notification no. 15/2004 dated 10.09.2004)

It has been further provided by Notification No 4/2005-Service Tax dated 01.03.2005 that abatement (deduction) of 67 per cent provided to the service provider vide Notification No. 15/2004 dated 10.09.2004 shall be available only in those cases in which the service provider raises a consolidated bill for its services inclusive of the value of the goods/material which have been supplied/provided in the course of rendering of the services. This notification has removed the anomaly of Notification No. 15/2004.

It is important to note abatement of 67 per cent will not be available where taxable

services provided are only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act, 1994 i.e. completion and finishing services which have been made taxable with effect from 16.06.2005. - [Notification No. 19/2005 dated 7.6.2005]. This restriction will be applicable with effect from 16.6.2005 when these services have been made taxable.

Exemption has been provided to the commercial or industrial construction service provided to any person by a commercial concern in relation to construction of port or other port, from the whole of service tax w.e.f. 16.06.2005.

Complex construction services

Abatement (Deduction) of 67 per cent of the gross amount charged from any person by such service provider subject

to condition that such service provider do not claim credit of duty on inputs or capital goods, bill issued is inclusive of goods supplied and services are not in relation to completion and finishing services in relation to residential complex w.e.f. 16.06.2005.- Notification No. 18/2005 dated 7.6.2005

Maintenance or repair services

The third and last service, is Maintenance or Repair Service. This service was brought into the tax net with effect from 01.07.2003 - [Notification No. 7/2003 dated 20.06.2003]

(a) Scope of service

Taxable service means any service provided to a customer, by any person in relation to maintenance or repair – Section 65 (105) (zzg).

For detailed discussion on the meaning of terms person &



customer refer to para 1.1 and 2.1 of this article

(b) Nature of service

- “Maintenance or repair” means any service provided by (A) any person under a maintenance contract or agreement; or

(B) a manufacturer or any person authorised by him, in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicle – Section 65 (64)

Any person under a maintenance contract or agreement or manufacturer rendering services in relation to maintenance or repair services are liable to pay Service Tax under this category of service. Thus, two types of persons are liable to pay Service Tax under this category of service:

♦ Any person who is rendering services under a maintenance contract or agreement to a customer in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicle, on the gross amount charged from such person excluding the cost of parts or other material, if any, sold to the customer during the course of providing such services;

♦ A manufacturer or any person authorised by him, in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicle, on the gross amount charged from such person excluding the cost of parts or other material, if any, sold to the customer during the course of providing such services.

Therefore two conditions are

required to be fulfilled to become taxable service in this category for service providers specified in clause (a) above.

1. Services rendered must relate to any goods or equipment excluding motor vehicle. Services related to other than goods or equipment like services provided in relation to land, building or any other immovable property or of any item not covered in the category of goods or equipment. Motor vehicle though falls in the category of ‘goods or equipment’ have been specifically excluded as services related to motor vehicle are taxable in a separate category of taxable service that is “Authorised service station services”.

2. Services must be provided under a maintenance contract or agreement. Such contract or agreement can be either verbal or in writing but existence of contract or agreement is a must. It is also important to note that the word “repair” is missing in the definition of “maintenance or repair” with reference to this category of service provider. What has been made taxable is services rendered “under maintenance contract or agreement.” In other words, solitary repair transactions are not likely to be taxed under this category and only services provided under maintenance contract or agreement are taxable. However, such contract/agreement can be for any period and need not be for a full year. In the opinion of the author it can cover any period say week, fortnight, month, quarter or half year or any odd period say 45 days or hundred days. In other words, solitary/single

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repair transaction will not be subject to Service Tax in the category of service.

Any manufacturer or any person authorised by him in relation to maintenance or repair or servicing of any goods or equipment excluding motor vehicle. Like first category of person, in this case also two conditions are to be fulfilled.

1. Service provider should be manufacturer or any person authorised by him.

2. Services must relate to any goods or equipment excluding motor vehicle. Motor vehicle though falls in the category of ‘goods or equipment’ have been specifically excluded as these services are taxable in a separate category of taxable service that is “Authorised service station services”.

Another important distinction in this category of service provider is that services rendered by this category of service provider may not be under maintenance contract/agreement but should be in relation to maintenance or repair or servicing of any goods or equipment excluding motor vehicle. In other words, individual repair jobs are also taxable in this case in addition to services provided under maintenance contract/agreement.

Service Tax is leviable in all such cases where during the guarantee period, the services are provided to the buyer of goods while payment for the same are received from the supplier of goods, irrespective of the fact that receiver of the service is different from the person making payments for such services. Therefore, for the services provided during the warranty period by the

dealer or any other authorised person, service tax would also be leviable on any amount received by such dealer or such authorised person from manufacturer of such goods- Circular No. 59/8/2003-ST dated 20.06.2003.

Maintenance of Software is not chargeable to service tax, as its repair is not of tangible goods but that of intangible program/software which is in installed condition and thus the maintenance and repair of software is not maintenance and repair of ‘goods’-Circular No. 70/19/2003 dated 17.12.2003.

Automatic Teller Machine is not a ‘Computer’, ‘Computer System’ or ‘Computer Peripherals’ and thus their maintenance and repair does not fall under exemption Notification No. 20/2003-ST, dated 21.08.2003. Accordingly such services are liable for service tax- Circular No.74/4/2004-ST dated 23.01.2004.

Maintenance of computer, computer system and its peripherals has been included w.e.f 09.07.04 as the exemption granted regarding it was been withdrawn – Notification No.9/2004 dated 09.07.04

Definition of “maintenance or repair” has been enlarged with effect from 16.06.2005 and read as under:

“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)

“motor vehicle” has the meaning assigned to it in clause (28) of Section 2 of the Motor Vehicles Act, 1988. [Section 65(73)]

Scope of service under this category of service has been enlarged, with effect from 16.06.2005, to include: -

- (i) Maintenance or management of immovable property or

- (ii) Maintenance or repair including reconditioning or restoration undertaken as part of any contract or agreement of any goods and equipment, excluding motor vehicle

The scope has been enlarged to include reconditioning and restoration of any goods or equipment into the ambit of maintenance or repair. Further, the scope has been enlarged to cover the service providers who are rendering services in relation to maintenance and management of immovable properties such as offices, show rooms, shopping malls, hotels, hospitals etc.

Equally important is to note the difference in clause (a) that earlier used to read as “under a maintenance contract or agreement” and now with effect from 16.06.2005 it has been worded as “under a contract or an agreement”. Word “maintenance” has been removed from this clause with the intent to cover all kind of activities including repair contracts in the hands

of persons who are neither a manufacturer nor any person authorised by him. Whereas, prior to this amendment activities in relation to maintenance contract only were taxable under this category. Now, with effect from 16.06.2005 all kind of services either under maintenance contract or under repair contract are taxable in the hands of assesses who are neither a manufacturer nor any person authorised by him.

(c) Value of taxable service and exemptions

Taxable value shall be the gross amount charged by the service provider for such service rendered by him but does not include the cost of parts or other material, if any, sold to the customer during the course of providing maintenance and repairs. Gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service with effect from 13.05.2005 -Explanation 3 to Section 67.

Exemption to services under a maintenance contract or agreement entered prior to 01.07.2003, bill is issued prior to 01.07.2003 and payment is also received prior to 01.07.2003-Notification No.11/2003 dated 20.06.2003

General abatements/ exemptions

(1) Exemption Limit of Rs. 4 lacs with effect from 1.4.2005

Exemption Limit has been provided to small service providers in respect of taxable services of aggregate value not

exceeding Rs 4 Lacs in any financial year vide Notification No. 6/2005 dated 1.3.2005 with effect from 1.4.2005. This exemption is subject to certain conditions as specified in the said notification. This exemption is not available to seven entities that have been made liable to pay service tax under the category of "Transport of goods by road".

(2) Export of Service Rules

(a) As per export of service rules commercial or industrial construction services and complex construction services are covered in rule 3(1) of such rules. These services shall be treated as export of services, when such immovable property, in relation to which services are rendered, is situated outside India- Rule 3(1) of Notification no. 9/2005 dated 3.3.2005 applicable with effect from 15.03.2005. However such services shall be treated as export of services if such services are delivered outside India and used in business or for any other purpose outside India and payment for such services provided is received by the service provider in convertible foreign exchange. – [Notification No. 28/2005 dated 7.6.2005 applicable with effect from 16.06.2005]

(b) Following services are covered in rule 3(2) of such rules.

- (i) Transport of goods by road
- (ii) Transport of goods by air
- (iii) Maintenance or repair services

These services shall be treated as export of services when such services are performed

outside India. Further provided, if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India- Rule 3(2) of Notification No. 9/2005 dated 3.3.2005 applicable with effect from 15.03.2005. However, such service shall be treated as export of service if such service is delivered outside India and used in business or for any other purpose outside India and payment for such service provided is received by the service provider in convertible foreign exchange. – Notification No. 28/2005 dated 7.6.2005 applicable with effect from 16.06.2005.

(c) Transport of goods other than water, through pipeline or other conduit services

(i) To be used in relation to commerce or industry

Transport of goods other than water, through pipeline or other conduit services shall be treated as export of service when such services are provided and used in or in relation to commerce and industry and the recipient of such services is located outside India- Rule 3(3) of Notification no. 9/2005 dated 3.3.2005 applicable with effect from 15.03.2005. Further provided, if such recipient has any commercial or industrial establishment or any office relating thereto in India such taxable services provided shall be treated as export of service if:

- ♦ order for provision of such service is made by the recipient of such service from

any of his commercial or industrial establishment or any office located outside India;

- ♦ services so ordered is delivered outside India and used in business outside India; and
- ♦ payment for such service provided is received by the service provider in convertible foreign exchange.

(ii) To be used in relation to other than commerce and industry

Transport of goods other than water, through pipeline or other conduit services, which are provided and used, other than in or in relation to commerce and industry, shall be treated as export of service if the recipient of the taxable service is located outside India at the time when such services are received by such recipient.

Conclusion

It is clear from the above discussion that the provisions of Service Tax are quite complex in relation to services discussed hereinabove. These provisions should be simplified so that a service provider can understand them easily. Exemptions should be provided in the taxable clauses rather than by issuing notifications. It is difficult to keep track of notifications even for the tax professionals not to talk of service providers. More revenue can be generated by keeping lower rate of taxes and better compliance can be ensured by making the law simpler, easy to understand and making procedures few and non complicated. □

Exemption Limit has been provided to small service providers in respect of taxable services of aggregate value not exceeding Rs. 4 Lacs in any financial year vide Notification No. 6/2005 dated 1.3.2005 with effect from 1.4.2005

