

Analysis of “Service” and Negative List



In the earlier system, only the services specified in clause (105) of Section 65 of the Finance Act, 1994 were taxed under the charging Section 66. In the new system, all services, other than the services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under Section 66B. The paradigm shift in the service tax law with the introduction of the definition of “service” and introduction of the negative list would require substantial efforts to understand and advise. Large scale changes are possible as one goes through the education guide issued in this regard as it raises many issues, while solving some doubts. In this article, we have discussed the important aspects as well as few possible issues which could/would arise in regard to the definition of service as well as the negative list.

What is Service?

Earlier there was no definition of service. Now, ‘service’ has been defined in clause (44) of the proposed Section 65B and means –

- a. any activity
- b. for consideration
- c. carried out by a person for another
- d. and includes a declared service.

The said definition further provides that ‘Service’ does not include –

- any activity that constitutes only a transfer in title of goods or immovable property by way of sale, gift or in any other manner
- a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
- a transaction only in money or actionable claim
- any service provided by an employee to an



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- employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

On a perusal of the above statutory definition, the service tax would be applicable ON ANY ACTIVITY done for a consideration other than the specific exclusions.

What would be the Taxable Services?

Earlier, the activities which were specified in sub clauses of Section 65(105) were taxable services. If a particular activity was not specified, it was not a taxable service. Now, the taxable services would be the following:

- Services satisfying definition of service
- Specified declared services
- Exclusions from the negative list of services

Negative List

W.e.f. 01.07.2012 there is a sea change in the way services are to be taxed. Taxation would be based on what is popularly known as “Negative List of Services”. This is a comprehensive method of taxation normally adopted by advanced/developed countries. This method does not differentiate between the organised and unorganised sector and covers all the service providers. Developing countries where the economy has not developed/ population not literate, avoid this method of taxation to avoid the disputes due to large scale non compliance on account of ignorance.

We analyse the negative list of services as under:

1. Services Provided by Government or Local Authority:

Most of the services provided by the Central or State Government or Local authorities are in the negative list except the following:

- Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services carried out on payment of commission on non government business;
- Services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;
- Transport of goods and/or passengers;
- Support services, other than those covered by clauses (a) to (c) above, to business entities.

What is the meaning of Government?

‘Government’ has not been defined in the Act, the

definition of ‘Government’ as contained in the General Clause Act, 1897 would be applicable as per which ‘Government’ includes both Central and State Governments. Further as per the General Clause Act 1897, State includes Union Territory. ‘Government’ would also include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

What is meant by Local Authority?

Local authority is defined in 65B and means the following:-

- A Panchayat as referred to in clause (d) of article 243 of the Constitution
- A Municipality as referred to in clause (e) of article 243P of the Constitution
- A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund
- A Cantonment Board as defined in Section 3 of the Cantonments Act, 2006
- A regional council or a district council constituted under the Sixth Schedule to the Constitution
- A development board constituted under article 371 of the Constitution, or
- A regional council constituted under article 371A of the Constitution.

What is meant by Support Services?

Support services have been defined in Section 65B of the Act as ‘infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities, carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and would include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis’. Thus, services which are provided by Government in terms of their sovereign right to business entities are not support services e.g. grant of mining or licensing rights.

Whether subsidy granted by Government for setting up of business is taxable?

Subsidy granted by business is generally in the nature of open offer to large public. Any person fulfilling the conditions of the subsidy may be granted the subsidy.

There is no counter obligation to the Government by the business receiving the subsidy. Complying with the conditions of the subsidy is merely for the purpose of gaining own business advantage. There are no services rendered to Government which can be made liable to tax.

Whether CFTRI (Central Food technological Research Institute) undertaking testing and analysis services for prelaunch of edible items is covered by support services?

It is the statutory obligation of the CFTRI to carry out the testing of edible items before launch in the market. The activity performed by CFTRI is not outsourced to them by business entity and is not covered by the first limb of the definition of the support services. However, testing and analysis is specifically covered by the inclusive part of the definition and accordingly is in the nature of support service.

2. Services Provided by Reserve Bank of India:

All services provided by the Reserve Bank of India are in the negative list. Services provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

3. Services by a Foreign Diplomatic Mission Located in India:

Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organisation.

4. Services Relating to Agriculture or Agriculture Produce:

The services relating to agriculture that are specified in the negative list are services relating to

- agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
- supply of farm labor;
- processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but makes it only marketable for the primary market;

- renting of agro machinery or vacant land with or without a structure incidental to its use;
- loading, unloading, packing, storage and warehousing of agricultural produce;
- agricultural extension services;
- services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

Further, the activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture alongwith forestry also are included in the definition of agriculture. The plantation crops like coffee, tea are also covered in agricultural produce.

What is the meaning of ‘agriculture’?

‘Agriculture’ has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre, fuel, raw materials or other similar products but does not include rearing of horses.

What is agricultural produce?

Agricultural produce means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like *tending, pruning, grading, sorting* etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.

For example: Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case) therefore, it does not qualify as agricultural produce.

Whether letting of shed for storage of agricultural produce is also covered?

Yes. In terms of the specified services relating to agriculture ‘leasing’ of vacant land with or without structure incidental to its use’ is covered in the negative list.

Whether agriculture operations carried out in rural area are only covered under negative list?

No. There is no condition that the agriculture activities should be performed in rural area only.

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Whether activities of horticulture, animal husbandry or dairying etc are covered by the agriculture operations?

Yes. These activities are also in the nature of agriculture only. Animal husbandry and dairying are specifically used in the definition of agriculture.

Whether activities of fishing are also covered under agriculture as the activities are not carried out on the land?

Yes. There is no requirement that the activities should be performed on land only.

5. Trading of Goods:

Transfer of title of goods is one of the essential conditions for a transaction to come under the ambit of trading of goods. However, the services supporting or ancillary to the trading of goods would not come under the above item of Negative List.

What is covered?

- Futures contracts would be covered as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.
- In commodity futures, actual delivery of goods does not normally take place and the purchaser under a futures contract normally offsets all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. There are, therefore, two contracts of sale/purchase involved which would fall in the category of trading of goods.

What is not covered?

- Activities of a commission agent or a clearing and forwarding agent who sell goods on behalf of another for a commission would not be included in trading of goods.
- Auxiliary services relating to future contracts or

commodity futures would not be covered in the negative list entry relating to trading of goods.

Whether service tax is applicable when there is a right to use the goods given by X to Y in exchange for a consideration?

No, as it is a transfer of right to use goods. This is specifically liable to VAT. There is no service involved in the same.

Whether the lump sum single contract for sale of goods followed by installation is covered in negative list?

When it is a single contract, a view is possible that the installation charges collected could be treated as a part of the composite contract, the dominant nature of which is to make a sale of goods. However, the entry of “service portion of works contract” in declared services would cover such transactions.

6. Processes Amounting to Manufacture or Production of Goods:

The phrase ‘processes amounting to manufacture or production of goods’ has been defined in Section 65B of the Act as a process on which duties of excise are leviable under Section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act.

This entry, therefore, covers manufacturing activity carried out on contract or job work basis provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

Whether processing of goods resulting in manufacture of goods that are exempted or nil duty is covered?

The manufacture of excisable goods is covered in negative list irrespective of whether leviable to a rate of duty or exempted from such duty by exemption notification. It would also cover the excisable goods, which are at “nil” rate of duty.

Whether the process undertaken by a job worker not amounting to manufacture but used by principal in manufacturing of goods subject to ‘Nil’ rate of duty is covered in negative list?

Service tax would be levied on processes, not amounting to manufacture or production of goods carried out by a person for another for consideration. But there is an

exemption under notification no.12/2012-ST dated 17-3-2012 for the intermediate production process as job work, where appropriate duty is paid by manufacturer. Appropriate rate of duty **would not** include 'Nil' rate of duty or duty wholly exempt. It could be liable.

Whether the coverage in negative list is available in case where the manufactured excisable goods resulting from process are returned to another processor and not to the principal manufacturer?

The returning of the goods to the principal manufacturer is constructive when the same are sent to another processor as per the direction of the principal. Therefore, the benefit would be available.

7. Selling of Space or Time Slots for Advertisements Other Than Advertisements Broadcast by Radio or Television:

When is Sale of space and time Taxable?

Taxable	Non-taxable
Sale of space or time for advertisement to be broadcast on radio or television.	Sale of space for advertisement in print media.
Sale of time slot by a broadcasting organisation.	Sale of space for advertisement in bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet.
	Aerial advertising

Whether sale of space or time sold to advertisement agency on lump sum basis would be covered by the negative list entry?

Any sale of space or time for advertisement purpose is covered under the negative list entry. There is no condition in the definition that the sale of space or time should be directly made to the advertiser. Bulk selling of space or time to advertisement agency for a specified period which in turn sells it to different advertisers on piecemeal basis would also be covered by the negative list entry and exempted from service tax. However, it does not include broadcasting on TV or radio.

An advertiser approaches advertisement agency to undertake advertisement activities for its company for the entire year for a contractual amount. Scope of



work includes advertisement consultancy, choosing of different advertising medium, preparation of advertisement and display on mediums, purchase of space or time for display of advertisement on public places Could this be covered in negative list entry?

Composite contract is given to advertisement agency for handling entire advertisement activity for the year on lump sum basis. This would be a case of bundled services taxability which has to be determined in terms of the principles laid down in Section 66F of the Act. Here the dominant nature of the transaction needs to be determined in order to check if it could be chargeable to service tax. Here the following two services are bundled, namely, taxable service of advertising agency services in relation to design, conceptualisation, preparation of advertisement and non taxable service of display in public spaces. In the opinion of the paper writer, the dominant nature would be the services which are being offered by advertising agency related to creativity including designing, planning, preparation and display of the advertisement would be only the incidental activity.. Therefore the contract would be liable to service tax.

Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?

No. Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this negative list entry and would thus be taxable. This would also not cover commissions received by advertisement agencies

from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

How would the Service Tax liability be determined when an advertisement agency raises separate bill towards its commission and sale of space charges?

Charges received by advertisement agency towards its commission are not covered by the negative list entry. Consideration received towards sale of space or time slots for advertisements other than advertisements broadcast by radio or television would not be liable to service tax if contracted and amount invoiced separately.

Whether the sale of space in a private circulation magazine is taxable?

Sale of space or time on any medium except broadcasting by TV or radio is covered by the negative list entry. Accordingly, sale of space in private circulation magazine is not liable to service tax.

What would be the taxability of space allowed in buses and public transport system to run display of advertisement?

Comments: Not liable to service tax as per discussion in previous question.

Whether advertisement in a movie is covered under the entry “sale of space or time for advertisement”?

Advertisement in a movie may not be said to be a sale of space or time for advertisement as it is not a sale of space or time for advertisement on radio or television.

Whether purchase of slots from broadcaster and sold to advertising agency is liable to service tax?

Broadcasting is not covered under the negative list entry. Accordingly, it would be liable to service tax.

Whether advertisement service rendered to Government departments is exempted from service tax?

There is no exemption on the advertisement services provided to government department. It is liable to service tax.

Whether canvassing advertisements for publishing on a commission basis is liable to service tax?

Canvassing refers to selling or reselling of space. It

is not covered by the negative list and is liable to service tax.

Whether the agency commission paid by print media to advertising agency is taxable?

Sale of space or time in print media is not liable to service tax. However, commission or discount received by the advertisement agency is not in the nature of sale of space or time. It is liable to service tax.

Whether printing and publishing of yellow pages or business directory is liable to service tax?

Printing and publishing of yellow pages and business directory is not in the nature of sale of space or time for advertisement and hence are liable to service tax.

8. Access to a Road or a Bridge on Payment of Toll Charges:

What are the services which are covered?

The negative list entry covers access to a road or a bridge on payment of toll charges. The access to National highways or state highways, which are also roads, is hence, covered in this entry.

Whether services provided in relation to collecting toll charges are liable to service tax?

Where a toll collecting agency is engaged for collecting the above mentioned toll charges, then the collecting agency would be liable to pay service tax on its charges.

9. Betting, Gambling or Lottery:

“Betting or gambling” has been defined in Section 65B of the Act as ‘putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring’. The State Government levy a betting tax on such activities.

Whether payment for admission to horse race as a spectator is covered under this entry?

This entry seeks to cover the amount which is involved in the betting. Therefore, the amount collected by the Club from the viewer is not covered since it does not pertain to betting. However, the same gets excluded from the levy of service tax net because this transaction is covered under the entry relating to “admission to

entertainment event or access to amusement facility". Since, horse race is a sporting event, it gets excluded.

Suppose 'Mr. X' bets an amount of ₹5000/- on a horse in a race event. The race club has only paid betting tax to the State Government on ₹3000/- and ₹1000/- is charged for the entry into the race and balance transferred to a common pool account from which the prize amount is awarded. Whether entire amount is covered by this entry?

This entry reads as "services by way of betting, gambling or lottery". Mr. X with the consciousness of risk and hope has bet an amount of ₹5000/- and therefore in the opinion of the paper writer, the entire amount is covered by the subject entry irrespective on what amount the betting tax is paid to the state government.

Mr. Y, member of the Horse racing Club has sponsored certain amount for a particular race in the club. Is the amount paid by Mr. Y covered under this entry?

No, the betting or gambling has been defined under

the Finance Act. The amount paid by the member is not with the 'consciousness of risk and hope of gain and the outcome of game' which is primary requisite to be covered under this entry. Since the amount sponsored by Mr. Y does not have this attribute, it falls into the definition of service and hence service tax is applicable.

Whether any support services rendered by the Club and certain amount collected from the members would be covered by this entry?

Any amount received by club for rendering support services does not have the attribute of consciousness of risk and hope of gain on the outcome of game and therefore, is liable to service tax.

Whether auxiliary services used to provide betting/gambling services are liable to service tax?

Auxiliary services that are used for organising or promoting betting or gambling events, which are not betting per se or a part thereof are not covered in the negative list. They could be liable to service tax.

10. Entry to Entertainment Events and Access to Amusement Facilities:

What is 'Entertainment event'?

'Entertainment event' has been defined in Section 65B of the Act 'as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or program.

What is amusement facility?

'Amusement facility' has been defined in the Act as 'a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided'.

X Ltd wishes to display its products in a musical event conducted by Z Ltd. The company has brought the admission rights for the entry to the event and displayed its products. Is the income received by Z Ltd covered under this entry?

No, the entry to the event is covered only when it is for fun, recreation, pastime or enjoyment. If the person



This article is the collation of the provisions with a little analysis. A conservative approach, in the opinion of the author, is the preferred method of going forward as the onus of classification which hitherto was on the revenue has shifted to the assessee with exemption to be claimed by the person carrying on the activity. It should be kept in mind that the tax payer claiming an exemption has to prove that he/she is entitled for the exemption.

has any other motive, it would be liable to service tax. Since X Ltd. has taken admission rights for promoting its products, this is in the nature of business and not covered under this entry.

Mr. H goes to an amusement park by paying the entry fee of ₹50/-. The park has various amusement facilities for which separate fee is charged. Whether the amount received by park is chargeable to service tax?

Yes. The amount is not covered by the entry. The fee only gives admission to the park but not the access to the amusement facility. Therefore, the entry fee of ₹50/- is liable to service tax.

Mr. A goes to an amusement park by paying the entry fee of ₹500/-. The park has various amusement facilities for which ₹300/- is collected at the entry itself. Whether the entire amount received by park is chargeable to service tax?

Since ₹300/- is giving an access to amusement facility, it would be covered by this entry. However, the amount of ₹200/- is collected only for admission to the park and not for accessing any amusement facility. Therefore, ₹200/- would not be liable.

Z Ltd owns and manages a resort wherein the property has facilities for convention center, amusement facilities, accommodation services and others. A family books the entire resort for 5 days for conducting marriage. The family has unlimited access to amusement facilities and also uses the convention center and accommodation services. Whether the entire amount received by Z Ltd. is liable?

Yes, it is liable as the amount received by Z Ltd. is not for the access to amusement facilities. Therefore, by applying the principles of classification as provided

under Section 66F, the said amount would not be covered under this entry since the essential character of service is to hire convention centre.

11. Transmission or Distribution of Electricity:

An 'electricity transmission or distribution utility' has also been defined in Section 65B of the act to mean the following:

- the Central Electricity Authority
- a State Electricity Board
- the Central Transmission Utility (CTU)
- a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003)
- a distribution or transmission licensee licensed under the said Act
- any other entity entrusted with such function by the Central or State Government

Whether the 'generation' of electricity for a consideration is chargeable to service tax?

Electricity is specified "goods" in the First Schedule of Central Excise Tariff Act, 1985. It has been held in the case of *CMS(I) Operations & Maintenance Co. P. Ltd. v. CCE, Pondicherry - 2007 (7) S.T.R. 369 (Tri.-Chennai)* that generation of electricity amounts to process of manufacture. Therefore, would not be liable to service tax.

Whether the charges collected by a developer for distribution of electricity within a residential complex are covered in this entry?

Charges collected by a developer of a housing society for distribution of electricity within a residential complex are not covered in the Negative List. They would be liable to service tax.

12. Specified Services Relating to Education:

The following services relating to education are specified in the negative list –

- pre-school education and education up to higher secondary school or equivalent
- education as a part of a prescribed curriculum for obtaining a qualification recognised by any law for the time being in force;
- education as a part of an approved vocational education course

What are the courses which would qualify as approved vocational education courses?

Approved vocational education courses have been specified in Section 65B of the Act. These are –



- a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961)
- a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India
- a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

Whether services provided by international schools are also covered?

Yes. Services provided by international schools are not liable as they are equivalent to the 12th standard.

Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognised by a foreign law covered in the negative list entry?

No. To be covered in the negative list, a course should be recognised by an Indian law.

Whether services provided by Boarding schools are covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability would be determined in terms of the principles laid down in Section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore, the bundle of services would be treated as consisting entirely of education service. But the other dominant service of providing residential dwelling is also covered in a separate entry of the negative list. Therefore, the entire bundle is a negative list service.

Are private tuitions covered in the entry relating to education?

There is an ambiguity as the tuition covers parts of the curriculum and is an education. However Education guide issued by CBEC in this regard provides that private tuitions would be covered in the entry and that the private tutors can avail the benefit of threshold exemption. Thus, this could lead to disputes.

If a course in a college leads to dual qualification only one of which is recognised by law, would the service provided by the college by way of such education be covered in this entry?

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognised by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in Section 66F of the Act, it is liable to be treated as a course which attracts the highest liability of service tax.

Are services of conducting admission tests for colleges exempt?

Yes, in case the educational institutions are providing qualification recognised by law for the time being in force.

Whether providing vocational training in the field of biotechnology through computer is covered under this entry?

The entry provides exemption for an approved vocational training. The approved vocational education course is defined. If the service is covered under the approved list the same would not be taxable. Otherwise, it is subjected to service tax.

Whether the value pertaining to building fee, capitation fee and others collected at the time of admission into the institution is covered under this entry?

No, the services provided by an educational institution in relation to admission are exempt where the educational services provided by the institution are also exempt. Therefore, all the fees mentioned above would be excluded only if the educational services provided by the institution are also in the negative list.

13. Services by Way of Renting of Residential Dwelling for Use as Residence:

‘Renting’ has been defined in Section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes

letting, leasing, licensing or other similar arrangements in respect of immovable property’.

Snap shot on taxability/non-taxability of Renting Transactions:

If	Then
A residential house taken on rent is used only or predominantly for commercial or non-residential use.	The renting transaction is not covered in this negative list entry.
A house is given on rent and the same is used as a hotel or a lodge.	The renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.
Rooms in a hotel or a lodge are let out whether or not for temporary stay.	The renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.
Government department allots houses to its employees and charges a license fee.	Such service would be covered in the negative list entry relating to services provided by Government and hence non-taxable.
Furnished flats given on rent for temporary stay.	These are in the nature of lodges or guest houses and hence not treatable as a residential dwelling.

Would renting of a residential dwelling partly used as a residence and partly for non residential purpose like an office be covered under this entry?

Renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an Office would be a case of bundled services. Taxability of such bundled services has to be determined in terms of the principles laid down in Section 66F of the Act. The taxability would be based on the predominant service.

14. Financial Sector:

The services of loans, advances or deposits are in the list in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Some examples:

- Fixed deposits or saving deposits or any other such deposits in a bank for which return is received by way of interest.
- Providing a loan or over draft facility for a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

The Invoice discounting is covered only to the extent of consideration it is represented by way of discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Services provided by banks or authorised dealers of foreign exchange by way of sale of foreign exchange to general public are not covered in Negative List.

15. Service Relating to Transportation of Passengers:

The following services relating to transportation of passengers, with or without accompanied belongings, have been specified in the negative list. Services by:

- a stage carriage;
- railways in a class other than (i) first class; or (ii) an AC coach;
- metro, monorail or tramway;
- inland waterways;
- public transport, other than predominantly for tourism purpose, in a vessel between places located in India ; and
- metered cabs, radio taxis or auto rickshaws.

The various other equivalent modes of transport not specified herein could be cause of dispute as the above list is not complete within each segment.

Are services by way of giving on hire of motor vehicles to state transport undertakings covered in this negative list entry?

Services by way of giving on hire of motor vehicles to state transport undertakings are not covered in the negative list. However such services provided by way of hire of motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt.

Would services by contract carriages which get permission or temporary permits to ply as stage carriages be taxable?

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire.

16. Service Relating to Transportation of Goods:

The following services provided in relation to transportation of goods are specified in the negative list:-

- by road except the services of (i) a goods transportation agency; or (ii) a courier agency
- by aircraft or vessel from a place outside India upto the customs station of clearance in India; or
- By inland waterways. (Services provided as agents for inland waterways are not covered in the negative list.)

Are GTA services excluded?

All services provided by goods transport agency are excluded from the negative list. However, there are separate exemptions available to the services provided by the goods transport agency. These are services by way of transportation of –

- fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- Goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.

The provisions relating to reverse charge, i.e. service tax is liable to be paid by the consignor or consignee in specified cases, are applicable even after the introduction of negative list.

Whether all kinds of transportation of goods are covered in negative list?

Nature of service relating to transportation of goods	Covered in the negative list?
By railways	No
By air within the country or abroad	No
By a vessel in the coastal waters	No
By a vessel on a national waterway	Yes
Services provided by a GTA	No

Whether transportation service provided by the truck owner and truck operator to end user directly is liable to service tax?

Service provided by truck owner directly to end user is covered by the negative list entry and is not liable to service tax.

17. Funeral, Burial, Crematorium or Mortuary Services Including Transportation of the Deceased:

This entry exempts services in relation to cremation etc. of dead.

Break of Cenvat Chain

It is important to note that there is no corresponding exclusion from service tax levy to the auxiliary services or to the service providers who are rendering services to such service providers who are rendering services covered in negative list. This leads to a break in tax chain. It adds to cascading effect, which was the very thing that was sought to be avoided.

An option could be given to such input service providers who are rendering services to negative list service providers to go for a cenvat credits refund w.r.t. the services provided by them to recipients whose services are covered in negative list.

Conclusion

This article is the collation of the provisions with a little analysis. A conservative approach, in the opinion of the author, is the preferred method of going forward as the *onus of classification which hitherto was on the revenue has shifted* to the assessee with exemption to be claimed by the person carrying on the activity. It should be kept in mind that the tax payer claiming an exemption has to prove that he/she is entitled for the exemption. Further the settled position of law that exemptions are to be read strictly and only procedural condition of the exemption notification could be overlooked would be equally applicable to the negative list. Also being an Indirect tax, the opportunity to collect the service tax not charged [earlier] at a later point of time is normally not possible due to closing of books as well as the possible denial of credit. It maybe remembered that the interest rate is 18% and penalty could be equal to the tax demand.

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