

## CHAPTER V Service Tax

### Section 64. Extent, commencement and application.

- (1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (3) It shall apply to taxable services provided on or after the commencement of this chapter.

### Section 65B. In this Chapter, unless the context otherwise requires,-

- (1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;
- (2) "**advertisement**" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;
- (3) "**agriculture**" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;
- (4) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training;
- (5) "**agricultural produce**" means any produce of agriculture on which either no further 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;
- (6) "**Agricultural Produce Marketing Committee or Board**" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;
- (7) "**aircraft**" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934;
- (8) "**airport**" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994;
- (9) "**amusement facility**" means 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 places but does not include a place within such facility where other services are provided;
- (10) "**Appellate Tribunal**" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962;
- (11) "**approved vocational education course**" means,—
  - (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or
  - (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training or State Council run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment;

- (12) "**assessee**" means a person liable to pay tax and includes his agent;
- (13) "**associated enterprise**" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961;
- (14) "**authorised dealer of foreign exchange**" shall have the meaning assigned to "authorized person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;
- (15) "**betting or gambling**" means 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;
- (16) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;
- (17) "**business entity**" means any person ordinarily carrying out any activity relating to industry, commerce or any other business;
- (18) "**Central Electricity Authority**" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948.;
- (19) "**Central Transmission Utility**" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003;
- (20) "**courier agency**" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
- (21) "**customs station**" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962;
- (22) "**declared service**" means any activity carried out by a person for another person for consideration and declared as such under section 66E;
- (23) "**electricity transmission or distribution utility**" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;
- (24) "**entertainment event**" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;
- (25) "**goods**" means every kind of movable property other than actionable claim and money; and includes securities, 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 sale;
- (26) "**goods transport agency**" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;
- (27) "**India**" means,—
- (a) the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;
  - (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

- (c) the seabed and the subsoil underlying the territorial waters;
  - (d) the air space above its territory and territorial waters; and
  - (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;
- (28) **"information technology software"** means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;
- (29) **"inland waterway"** means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917;
- (30) **"interest"** has the meaning assigned to it in clause (28A) of section 2 of the Income-tax Act, 1961;
- (31) **"local authority"** means –
- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;
  - (b) a Municipality as referred to in clause (e) of article 243P of the Constitution;
  - (c) 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;
  - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
  - (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;
  - (f) a development board constituted under article 371 of the Constitution; or
  - (g) a regional council constituted under article 371A of the Constitution;
- (32) **"metered cab"** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder;
- (33) **"money"** means Indian legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;
- (34) **"negative list"** means the services which are listed in section 66D;
- (35) **"non-taxable territory"** means the territory which is outside the taxable territory;
- (36) **"notification"** means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;
- (37) **"person"** includes,–
- (i) an individual,
  - (ii) a Hindu undivided family,
  - (iii) a company,
  - (iv) a society,
  - (v) a limited liability partnership,
  - (vi) a firm,
  - (vii) an association of persons or body of individuals, whether incorporated or not,
  - (viii) Government,
  - (ix) a local authority, or
  - (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

- (38) "**port**" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 or in clause (4) of section 3 of the Indian Ports Act, 1908;
- (39) "**prescribed**" means prescribed by rules made under this Chapter;
- (40) "**process amounting to manufacture or production of goods**" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 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 for the time being in force;
- (41) "**renting**" means allowing, permitting or granting access, entry, occupation, use 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;
- (42) "**Reserve Bank of India**" means the bank established under section 3 of the Reserve Bank of India Act, 1934;
- (43) "**securities**" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956;
- (44) "**service**" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
- (a) an activity which constitutes merely,—
    - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
    - (ii) a transaction in money or actionable claim;
  - (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
  - (c) fees taken in any Court or tribunal established under any law for the time being in force.

**Explanation 1.**— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

**Explanation 2.**— For the purposes of this Chapter,—

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

**Explanation 3.**— A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

- (45) "**Special Economic Zone**" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

- (46) "**stage carriage**" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988;
- (47) "**State Electricity Board**" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948;
- (48) "**State Transmission Utility**" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003;
- (49) "**support services**" means 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 shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;
- (50) "**tax**" means service tax leviable under the provisions of this Chapter;
- (51) "**taxable service**" means any service on which service tax is leviable under section 66B;
- (52) "**taxable territory**" means the territory to which the provisions of this Chapter apply;
- (53) "**vessel**" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963;
- (54) "**works contract**" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land;
- (55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.

**Section 66B.** There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

**Section 66BA. Reference to section 66 to be construed as reference to section 66B.**

- (1) For the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 (32 of 1994) or any other Act for the time being in force, shall be construed as reference to section 66B thereof.
- (2) The provisions of this section shall be deemed to have come into force on the 1st day of July, 2012.

**Section 66C.** (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

- (2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

**Section 66D.** The negative list shall comprise of the following services, namely –

- (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -
  - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
  - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - (iii) transport of goods or passengers; or
  - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture by way of -
  - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
  - (ii) supply of farm labour;
  - (iii) processes carried out at an 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 the essential characteristics of agricultural produce but make it only marketable for the primary market;
  - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
  - (vi) agricultural extension services;
  - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of -
  - (i) pre-school education and education up to higher secondary school or equivalent;
  - (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
  - (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of -
  - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
  - (ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by -
  - (i) a stage carriage;
  - (ii) railways in a class other than -
    - (A) first class;
    - (B) an airconditioned coach;
  - (iii) metro, monorail or tramway;
  - (iv) inland waterways;
  - (v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and
  - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods -
  - (i) by road except the services of -
    - (A) a goods transportation agency; or

- (B) a courier agency;
- (ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
- (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

**Section 66E.** The following shall constitute declared services, namely -

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

**Explanation.—** For the purposes of this clause, -

- (I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
  - (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
  - (B) chartered engineer registered with the Institution of Engineers (India); or
  - (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- (h) service portion in the execution of a works contract;
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.

**Section 66F.** (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service, which is used for providing main service.

- (2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.
- (3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely -
  - (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;
  - (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

**Explanation.—** For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.';

#### **Section 67. Valuation of taxable services for charging Service tax -**

- (1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall, -
  - (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
  - (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
  - (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.
- (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
- (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
- (4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

**Explanation.—** For the purposes of this section, -

- (a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;
- (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

**Section 67A.** The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

**Explanation.—** For the purposes of this section, "rate of exchange" means the rate of exchange service and referred to in the Explanation to section 14 of the Customs Act, 1962.';

#### **Section 68. Payment of service tax.**

- (1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.
- (2) Notwithstanding anything contained in sub-section (1), in respect of such taxable service as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

**Provided** that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.



### **Section 69. Registration.**

- (1) Every person liable to pay the service tax under this chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise.
- (2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

### **Section 70. Furnishing of Returns.**

- (1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding two thousand rupees, for delayed furnishing of return, as may be prescribed.
- (2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

### **Section 71. Scheme for Submission of Returns through Service Tax Preparers.**

- (1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.
- (2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.
- (3) For the purposes of this section, -
  - (a) **"Service Tax Return Preparer"** means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;
  - (b) **"person or class of persons"** means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.
- (4) The Scheme framed by the Board under this section may provide for the following, namely -
  - (a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);
  - (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Prepare
  - (c) the code of conduct for the Service Tax Return Preparer;
  - (d) the duties and obligations of the Service Tax Return Preparer;
  - (e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;
  - (f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

### **Section 72. Best Judgment Assessment.**

If any person, liable to pay service tax –

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made there under, the Central Excise Officer, may require the person to

produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

**Section 72A.** (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),—

- (i) has failed to declare or determine the value of a taxable service correctly; or
  - (ii) has availed and utilised credit of duty or tax paid—
    - (a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or
    - (b) by means of fraud, collusion, or any wilful misstatement or suppression of facts; or
  - (iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.
- (2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.
- (4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

**Explanation.**— For the purposes of this section,—

- (i) "**chartered accountant**" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;
- (ii) "**cost accountant**" shall have the meaning assigned to it in clause (b) of sub-section (1) of 35

**Section 73. Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded.**

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within eighteen months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

**Provided** that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "eighteen months", the words "five years" had been substituted.

**Explanation.** — Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of 'eighteen months' or five years, as the case may be.

- (1A) Notwithstanding anything contained in sub-section (1), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices;
- (2) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.
- (2A) Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,
- (a) fraud; or
  - (b) collusion; or
  - (c) wilful mis-statement; or
  - (d) suppression of facts; or
  - (e) contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,
- has not been established against the person chargeable with the service tax, to whom the notice was issued, the Central Excise Officer shall determine the service tax payable by such person for the period of eighteen months, as if the notice was issued for the offences for which limitation of eighteen months applies under sub-section (1)
- (3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Central Excise Officer of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

**Provided** that the Central Excise Officer may determine the amount of short payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Central Excise Officer shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

**Explanation (1)** — For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Central Excise Officer, but for this sub-section.

**Explanation (2)**—For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of service-tax under this sub-section and interest thereon.

- (4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short- paid or erroneously refunded by reason of—

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made there under with intent to evade payment of service tax.

(4A) Notwithstanding anything contained in sub-section (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent. of such tax, for each month, for the period during which the default continues, up to a maximum of twenty-five per cent. of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded:

**Provided** that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).

**Explanation.**— For the purposes of this sub-section and section 78, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

- (5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.
- (6) For the purposes of this section, “relevant date” means, -
  - (i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid -
    - (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;
    - (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;
    - (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made there under;
  - (ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof;
  - (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.

### **Section 73A. Service Tax collected from any person to be deposited with Central Government.**

- (1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made there under from the recipient of taxable service in any

manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.

- (2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.
- (3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.
- (4) The Central Excise Officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (3), determine the amount due from such person, not being in excess of the amount specified in the notice, and thereupon such person shall pay the amount so determined.
- (5) The amount paid to the credit of the Central Government under sub-section (1) or subsection (2) or sub-section (4), shall be adjusted against the service tax payable by the person on finalisation of assessment or any other proceeding for determination of service tax relating to the taxable service referred to in sub-section (1).
- (6) Where any surplus amount is left after the adjustment under sub-section (5), such amount shall either be credited to the Consumer Welfare Fund referred to in section 12C of the Central Excise Act, 1944 or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 11B of the said Act and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Central Excise Officer for the refund of such surplus amount.

#### **Section 73B. Interest on amount collected in excess.**

Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made there under from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount:

**Provided** that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944, and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

**Provided** further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent. per annum.

**Explanation 1.**— Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

**Explanation 2.**— Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.

**Section 73C. Provisional attachment to protect revenue in certain cases.**

- (1) Where, during the pendency of any proceeding under section 73 or section 73A, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Central Excise, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 73 or sub-section (3) of section 73A, as the case may be, in such manner as may be prescribed.
- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub- section (1):

**Provided** that the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years.

**Section 73D. Publication of information in respect of persons in certain cases.**

- (1) If the Central Government is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings under this Chapter in respect of such person, it may cause to be published such names and particulars in such manner as may be prescribed.
- (2) No publication under this section shall be made in relation to any penalty imposed under this Chapter until the time for presenting an appeal to the Commissioner (Appeals) under section 85 or the Appellate Tribunal under section 86, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

**Explanation.**— In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, shall also be published if, in the opinion of the Central Government, circumstances of the case justify it.

**Section 74. Rectification of mistake.**

- (1) With a view to rectifying any mistake apparent from the record, the [Central Excise Officer] who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
- (2) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub- section (1), the Central Excise Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
- (3) Subject to the other provisions of this section, the Central Excise Officer concerned
  - (a) may make an amendment under sub-section (1) of his own motion; or
  - (b) shall make such amendment if any mistake is brought to his notice by the assessee or the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals).

- (4) An amendment, which has the effect of enhancing the liability of the assessee or reducing a refund, shall not be made under this section unless the Central Excise Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.
- (5) Where an amendment is made under this section, an order shall be passed in writing by the Central Excise Officer concerned.
- (6) Subject to the other provisions of this Chapter where any such amendment has the effect of reducing the liability of the assessee or increasing the refund, the Central Excise Officer shall make any refund which may be due to such assessee.
- (7) Where any such amendment has the effect of enhancing the liability of the assessee or reducing the refund already made, the Central Excise Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

#### **Section 75. Interest on delayed payment of Service Tax.**

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.

**Provided** that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum

#### **Section 76. Penalty for failure to pay service tax.**

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than one hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

**Provided** that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable in terms of this section shall not exceed fifty per cent of the service tax payable.

#### **Illustration**

X, an assessee, fails to pay service tax of ten lakh rupees payable by 5th March. X pays the amount on 15th March. The default has continued for ten days. The penalty payable by X is computed as follows:-

1% of the amount of default for 10 days =  $1/100 \times 10,00,000 \times 10/31$  = Rs. 3,225.80

#### **Section 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere.**

- (1) Any person, -
  - (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to ten thousand rupees;

- (b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to ten thousand rupees;
  - (c) who fails to -
    - (i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made thereunder; or
    - (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or
    - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
  - (d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to ten thousand rupees;
  - (e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.
- (2) Any person, who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

#### **Section 78. Penalty for suppressing value of taxable service.**

- (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of —
- (a) fraud; or
  - (b) collusion; or
  - (c) wilful mis-statement; or
  - (d) suppression of facts; or
  - (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,
- the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:

**Provided** that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to fifty per cent. of the service tax so not levied or paid or short-levied or short-paid or erroneously refunded:

**Provided** further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent. of such service tax:

**Provided** also that the benefit of reduced penalty under the second proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

**Provided** also that in case of a service provider whose value of taxable services does not exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.

- (2) Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then,



for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account:

**Provided** that in case where the service tax to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days or ninety days, as the case may be, of communication of the order by which such increase in service tax takes effect:

**Provided** further that if the penalty is payable under this section, the provisions of section 76 shall not apply.

**Explanation.—** For the removal of doubts, it is hereby declared that any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first proviso to sub-section (2) shall be adjusted against the total amount due from such person.

#### **Section 78A. Penalty for offences by director etc., of company.**

Where a company has committed any of the following contraventions, namely:-

- (a) evasion of service tax; or
- (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or
- (c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
- (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

#### **Section 80. Penalty not to be imposed in certain cases.**

- (1) Notwithstanding anything contained in the provisions of section 76, 77 or first proviso to sub-section (1) of section 78, no penalty shall be imposable on the assessee for any failure referred to in said provisions, if the assessee proves that there was reasonable cause for the said failure.
- (2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

#### **Section 82. Power to search premises.**

- (1) If the Joint Commissioner of Central Excise has reason to believe that any documents or book or things which in his opinion will be any useful for or relevant to proceedings under this Chapter are secreted in any place, he may authorize any Superintendent of Central Excise to search for and seize or may himself search for and seize, such documents or books or things.
- (2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply or searches under this section as they apply to searches under that Code.

### **Section 83. Application of certain provisions of Act 1 of 1944**

The provisions of the following section of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise -

Sub-section (2) of Section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P (both inclusive), 33A, 34A, 35EE, 35F, 35FF to 35O (both inclusive), 35Q, 35R, 36, 36A, 37A, 37B, 37C, 37D, 38A and 40.

**Section 83A. Power of adjudication.** Where under this Chapter or the rules made thereunder any person is liable to a penalty, such penalty may be adjudged by the Central Excise Officer conferred with such power as the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, by notification in the Official Gazette, specify.

### **Section 84. Appeals to Commissioner of Central Excise (Appeals).**

- (1) The Commissioner of Central Excise may, of his own motion, call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under this Chapter for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any Central Excise Officer subordinate to him to apply to the Commissioner of Central Excise (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Central Excise in his order.
- (2) Every order under sub-section (1) shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.
- (3) Where in pursuance of an order under sub-section (1), the adjudicating authority or any other officer authorised in this behalf makes an application to the Commissioner of Central Excise (Appeals) within a period of one month from the date of communication of the order under sub-section (1) to the adjudicating authority, such application shall be heard by the Commissioner of Central Excise (Appeals), as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Chapter regarding appeals shall apply to such application.

**Explanation.—** For the removal of doubts, it is hereby declared that any order passed by an adjudicating officer subordinate to the Commissioner of Central Excise immediately before the commencement of clause (C) of section 112 of the Finance (No. 2) Act, 2009, shall continue to be dealt with by the Commissioner of Central Excise as if this section had not been substituted.

### **Section 85. Appeals to the Commissioner of Central Excise (Appeals).**

- (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).
- (2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority relating to service tax, interest or penalty under this Chapter, made before the date on which the Finance Bill, 2012 receives the assent of the President

**Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the

aforesaid period of three months, allow it to be presented within a further period of three months.

- (3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

**Provided** that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

- (4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeals and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:

**Provided** that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

- (5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

#### **Section 86. Appeals to Appellate Tribunal.**

- (1) Any assessee aggrieved by an order passed by a Commissioner of Central Excise under section 83A or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order "within three months of the date of receipt of the order.

- (1A) (i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.  
(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.
- (2) The Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or section 83A, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

**Provided** that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

- (2A) The Committee of Commissioners may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on his behalf to the Appellate Tribunal against the order:

**Provided** that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

**Explanation.—** For the purposes of this sub-section, “jurisdictional Chief Commissioner” means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.

- (3) Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.
- (4) The Commissioner of Central Excise or any Central Excise Officer subordinate to him or the assessee, as the case may be, on receipt of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, —
  - a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
  - b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;
  - c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

**Provided** that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

- (6A) Every application made before the Appellate Tribunal, —
  - a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
  - b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees :

**Provided** that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.

- (7) Subject to the provisions of this Chapter, in hearing the appeal and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944 (1 of 1944).

## **Section 87. Recovery of any amount due to Central Government.**

Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:-

- (a) 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;
- (b)
  - (i) the Central Excise Officer may, by notice in writing, 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 either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
  - (ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
  - (iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;
- (c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (d) 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.

#### **Section 88. Liability under Act to be first charge.**

Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of tax, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person as the case may be.

#### **Section 89. Offences and Penalties.**

- (1) Whoever commits any of the following offences, namely, -
  - (a) knowingly evades the payment of service tax under this Chapter; or
  - (b) avails and utilises credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

- (c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable, -
  - (i) in the case of an offence specified in clause (a), (b) or (c) where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years;

**Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

- (ii) in the case of the offence specified in clause (d), where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to seven years:

**Provided** that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

- (iii) in the case of any other offences, with imprisonment for a term, which may extend to one year.
- (2) If any person is convicted of an offence punishable under -
    - (a) clause (i) or clause (iii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to three years;
    - (b) clause (ii), then, he shall be punished for the second and for every subsequent offence with imprisonment for a term which may extend to seven years.
  - (3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:-
    - (i) the fact that the accused has been convicted for the first time for an offence under this Chapter;
    - (ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;
    - (iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;
    - (iv) the age of the accused.
  - (4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.

#### **Section 90. Cognizance of offences.**

- (1) An offence under clause (ii) of sub-section (1) of section 89 shall be cognizable.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences, except the offences specified in sub-section (1), shall be non-cognizable and bailable.

#### **Section 91. Power to arrest.**

- (1) If the Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) of clause (ii) of sub-section (1) of section 89,

he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

- (2) Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.
- (3) In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973.
- (4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

### **Section 93. Power to grant exemption from service tax.**

- (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.
- (2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.

### **Section 93A. Power to grant Rebate.**

Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing or removal or export of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed:

**Provided** that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reserve Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), such rebates shall except under such circumstances or conditions as may be prescribed, be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.

**Section 93B.** All rules made under section 94 and applicable to the taxable services shall also be applicable to any other service in so far as they are relevant to the determination of any tax liability, refund, credit of service tax or duties paid on inputs and input services or for carrying out the provisions of Chapter V of the Finance Act, 1994.

### **Section 94. Power to make rules.**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - (a) collection and recovery of service tax under sections 66 and 68;
  - (aa) the determination of amount and value of taxable service under section 67;
  - (b) the time and manner and the form in which application for registration shall be made under sub-sections (1) and (2) of section 69;

- (c) the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70;
  - (cc) the manner of provisional attachment of property under sub-section (1) of section 73C;
  - (ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;
  - (d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;
  - (e) the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;
  - (eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service
  - (eeee) the manner of recovery of any amount due to the Central Government under section 87;
  - (f) provisions for determining export of taxable services;
  - (g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;
  - (h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;
  - (hh) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under Section 93A;
  - (hhh) the date for determination of rate of service tax and the place of provision of taxable service under section 66C;
  - (i) provide for the amount to be paid for compounding and the manner of compounding of offences;
  - (j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 as made applicable to service tax vide section 83;'
  - (k) any other matter which by this Chapter is to be or may be prescribed.
- (3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Chapter come into force.
- (4) Every rule made under this Chapter, Scheme framed under section 71 and every notification issued under section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

#### **Section 95. Power to remove difficulties in implementing new services.**

- (1) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter remove the difficulty:



**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

- (1A) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2003, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty :

**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the Finance Act, 2003 incorporating such taxable services in this chapter come into force.

- (1B) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2004, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.

- (1C) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2006, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2006 receives the assent of the President.

- (1D) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2007, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2007 receives the assent of the President.

- (1E) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2008, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2008 receives the assent of the President.

- (1F) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance (No.2) Act, 2009, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance (No. 2) Bill, 2009 receives the assent of the President.

- (1G) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2010, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2010 receives the assent of the President.

- (1H) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2011, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2011 receives the assent of the President.

- (1-I) If any difficulty arises in giving effect to section 143 of the Finance Act, 2012, in so far as it relates to insertion of sections 65B, 66B, 66C, 66D, 66E and section 66F in Chapter V of the Finance Act, 1994, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, make such provisions, as may be necessary or expedient for the purpose of removing the difficulty from such date, which shall include the power to give retrospective effect from a date not earlier than the date of coming into force of the Finance Act, 2012:

**Provided** that no such order shall be made after the expiry of a period of two years from the date of coming into force of these provisions.

- (1J) If any difficulty arises in giving effect to section 103 of the Finance Act, 2013, in so far as it relates to amendments made by the Finance Act, 2013 in Chapter V of the Finance Act, 1994, the Central Government may, by an order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2013 receives the assent of the President.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament.

#### **Section 96. Consequential amendment.**

In the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), in the Schedule, after entry 7 relating to the Central Excise Act, 1944 (1 of 1944), the following entry shall be inserted, namely:-

“7A. Chapter VA of The Finance Act, 1994”

## Chapter VA ADVANCE RULINGS

**Section 96A. Definitions.** In this Chapter, unless the context otherwise requires,-

- (a) **“advance ruling”** means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant;
- (b) **“applicant”** means –
  - (i) (a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
  - (b) a resident setting up a joint venture in India in collaboration with a non-resident; or
  - (c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which, as the case may be, proposes to undertake any business activity in India;
  - (ii) a joint venture in India; or
  - (iii) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf, and which or who, as the case may be, makes application for advance ruling under sub-section (1) of section 96C;

**Explanation.-** For the purposes of this clause, “joint venture in India” means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement;

- (c) **“application”** means an application made to the Authority under sub-section (1) of section 96C
- (d) **“Authority”** means the Authority for Advance Rulings, constituted under sub-section (1), or authorized by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962 (52 of 1962);
- (e) **“non-resident”, “Indian company”** and **“foreign company”** have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (f) words and expressions used but not defined in this Chapter and defined in the Central Excise Act of 1944 (1 of 1944) or the rules made thereunder shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

**Section 96B. Vacancies, etc., not to invalidate proceedings.**

No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

**Section 96C. Application for advance ruling.**

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought shall be in respect of,-
  - (a) classification of any service as a taxable service under Chapter V;
  - (b) the valuation of taxable services for charging service tax;
  - (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;

- (d) applicability of notifications issued under Chapter V;
  - (e) admissibility of credit of duty or tax in terms of the rules made in this regard;
  - (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.
- (3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.
- (4) An applicant may withdraw an application within thirty days from the date of the application.

**Section 96D. Procedure on receipt of application.**

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records:

**Provided** that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.

- (2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

**Provided** that the Authority shall not allow the application where the question raised in the application is,-

- (a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;
- (b) the same as in a matter already decided by the Appellate Tribunal or any Court:

**Provided** further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

**Provided** also that where the application is rejected, reasons for such rejection shall be given in the order.

- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise.
- (4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.
- (5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

**Explanation.-** For the purposes of this sub-section, "authorised representative" has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944. (1 of 1944).

- (6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.
- (7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

**Section 96E. Applicability of advance ruling. -**

- (1) The advance ruling pronounced by the Authority under section 96D shall be binding only-
  - (a) on the applicant who had sought it;
  - (b) in respect of any matter referred to in sub-section (2) of section 96C;
  - (c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**Section 96F. Advance ruling to be void in certain circumstances.**

- (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.
- (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

**Section 96G. Powers of Authority.**

- (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908);
- (2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860);

**Section 96H. Procedure of Authority.**

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

**Section 96-I. Power of Central Government to make rules.**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - (a) the form and manner for making application under sub-section (1) of section 96C;
  - (b) the manner of certifying a copy of advanced ruling pronounced by the Authority under sub-section (7) of section 96D;
  - (c) any other matter which, by this Chapter, is to be or may be prescribed.
- (3) Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both

Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**Section 96-J. Special exemption from service tax in certain cases.**

- (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).
- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.
- (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President.

**Section 97.** (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times
- (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

**Section 98.** (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of non-commercial Government buildings, during the period on and from the 16th day of June, 2005 till the date on which section 66B comes into force.

- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.
- (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.

**Section 99. Special provision for taxable services provided by Indian Railways.**

Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st day of July, 2012, to the extent notices have been issued under section 73, upto the 28th day of February, 2013.

**CHAPTER VI**  
**Service Tax Voluntary Compliance Encouragement Scheme, 2013**

**Section 104. Short title.**

This Scheme may be called the Service Tax Voluntary Compliance Encouragement Scheme, 2013.

**Section 105. Definitions.**

- (1) In this Scheme, unless the context otherwise requires,-
- (a) **"Chapter"** means Chapter V of the Finance Act, 1994;
  - (b) **"declarant"** means any person who makes a declaration under sub-section (I) of section 107;
  - (c) **"designated authority"** means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
  - (d) **"prescribed"** means prescribed by rules made under this Scheme;
  - (e) **"tax dues"** means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.
- (2) Words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

**Section 106. Person who may make declaration of tax dues.**

- (1) Any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before the 1st day of March, 2013:

**Provided** that any person who has furnished return under section 70 of the Chapter and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return:

**Provided** further that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.

- (2) Where a declaration has been made by a person against whom,-
- (a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of-
    - (i) search of premises under section 82 of the Chapter; or
    - (ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof: or **(1 of 1944)**
    - (iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or
  - (b) an audit has been initiated,
- and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

**Section 107. Procedure for making declaration and payment of tax dues.**

- (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2013 in such form and in such manner as may be prescribed.
- (2) The designated authority shall acknowledge the declaration in such form and in such manner as may be prescribed.
- (3) The declarant shall, on or before the 31st day of December, 2013, pay not less than fifty per cent, of the tax dues so declared under sub-section (1) and submit proof of such payment to the designated authority.
- (4) The tax dues or part thereof remaining to be paid after the payment made under sub-section (3) shall be paid by the declarant on or before the 30th day of June, 2014:

**Provided** that where the declarant fails to pay said tax dues or part thereof on or before the said date, he shall pay the same on or before the 31st day of December, 2014 along with interest thereon, at such rate as is fixed under section 75 or, as the case may be, section 73B of the Chapter for the period of delay starting from the 1st day of July, 2014.

- (5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January, 2013 and subsequent months shall be paid by him in accordance with the provisions of the Chapter and accordingly, interest for delay in payment thereof, shall also be payable under the Chapter.
- (6) The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-section (2).
- (7) On furnishing the details of full payment of declared tax dues and the interest, if any, payable under the proviso to sub-section (4), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in such form and in such manner as may be prescribed.

**Section 108. Immunity from penalty, interest and other proceeding.**

- (1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter.
- (2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration.

**Section 109. No refund of amount paid under the Scheme.**

Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances.

**Section 110. Tax dues declared but not paid.**

Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.



#### **Section 111. Failure to make true declaration.**

- (1) Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid.
- (2) No action shall be taken under sub-section (1) after the expiry of one year from the date of declaration.
- (3) The show cause notice issued under sub-section (1) shall be deemed to have been issued under section 73, or as the case may be, under section 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

#### **Section 112. Removal of doubts.**

For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 108.

#### **Section 113. Power to remove difficulties.**

- (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

**Provided** that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

#### **Section 114. Power to make rules.**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - (a) the form and the manner in which a declaration may be made under subsection (1) of section 107;
  - (b) the form and the manner of acknowledging the declaration under sub-section (2) of section 107;
  - (c) the form and the manner of issuing the acknowledgement of discharge of tax dues under sub-section (7) of section 107;
  - (d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.
- (3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.