
Exemptions under Service Tax

CA NARENDRA SONI

Seminar

on

Service Tax update

Organised by

WIRC OF ICAI

On

Saturday, the 29th June 2013

INDEX

1. SECTION 93 OF THE FINANCE ACT, 1994	3
2. MEGA EXEMPTION NOTIFICATION (NOTIFICATION NO. 25/2012-ST DATED 20 JUNE 2012)	3
2.1 UNITED NATIONS OR SPECIFIED INTERNATIONAL ORGANIZATION.....	3
2.2 HEALTH CARE SERVICES.....	4
2.3 CHARITABLE ACTIVITIES.....	5
2.4 RENTING SERVICES.....	6
2.5 LEGAL SERVICES.....	6
2.6 TECHNICAL TESTING.....	7
2.7 TRAINING OR COACHING.....	8
2.8 EDUCATIONAL SERVICES.....	8
2.9 SPORTS RELATED SERVICES.....	8
2.10 CONSTRUCTION RELATED SERVICES.....	9
2.11 COPYRIGHT SERVICES.....	11
2.12 SERVICES PROVIDED BY ARTIST.....	12
2.13 HOTELS/ RESTAURANT SERVICES.....	12
2.14 SERVICES OF TRANSPORTATION OF GOODS.....	13
2.15 HIRING OF VEHICLES.....	14
2.16 TRANSPORTATION OF PASSENGERS.....	15
2.17 PARKING SERVICES.....	16
2.18 SERVICES PROVIDED TO GOVERNMENT.....	16
2.19 INSURANCE RELATED SERVICES.....	16
2.20 SERVICES BY INCUBATEE.....	17
2.21 SERVICES BY ASSOCIATION TO ITS MEMBERS.....	17
2.22 SERVICES BY SPECIFIED INTERMEDIARIES.....	18
2.23 JOB WORK RELATED SERVICES.....	18
2.24 TELECOM SERVICES.....	18
2.25 IMPORT OF SERVICES.....	18
2.26 OTHER EXEMPTIONS UNDER MEGA EXEMPTION NOTIFICATION.....	19
3. OTHER EXEMPTION NOTIFICATIONS	19
3.1 THRESHOLD EXEMPTION FOR SMALL SERVICE PROVIDER.....	19
3.2 SERVICES BY INDIAN RAILWAY.....	20
3.3 SERVICES TO FOREIGN DIPLOMATIC MISSION.....	21
3.4 PROPERTY TAX.....	21
3.5 TRANSPORTATION OF GOODS TO EXPORTER OF GOODS.....	21
3.6 COMMISSION PAID TO AGENT LOCATED OUTSIDE INDIA TO EXPORTER OF GOODS.....	22
3.7 SERVICES PROVIDED BY INCUBATOR.....	23
3.8 SERVICES RENDERED TO SEZ DEVELOPER/UNIT.....	23
3.9 CESS PAID UNDER R&D CESS ACT, 1986.....	25

1. SECTION 93 OF THE FINANCE ACT, 1994

☞ Section 93 of the Finance Act, 1994 (hereinafter referred to as “the Act”) empowers Central Government to grant conditional or unconditional exemption, from levy of Service Tax, wholly or any partly.

(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.

☞ Unlike in Excise laws, the service provider may opt not to avail unconditional exemption, in case the same is beneficial to him. However, the onus on eligibility of exemption notification is on the person availing said exemption.

2. MEGA EXEMPTION NOTIFICATION (notification no. 25/2012-ST dated 20 June 2012)

☞ Central Government vide **Notification no. 25/2012-ST dated 20th June, 2012**, as amended from time to time, granted exemption from levy of whole of **Service Tax U/s.66B** of the Act to the following 39 specified nature of services.

2.1 UNITED NATIONS OR SPECIFIED INTERNATIONAL ORGANIZATION

☞ Service provided to the United Nations is an International Organization whose stated aims are facilitating cooperation in International Law, International Security, Economic Development, Social Progress, Human Rights, and achievement of world peace. **(Clause 1)**

☞ The term “specified international organization” is defined to mean an international organization declared by the Central Government in pursuance of Section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply. **[Defined in 2(zf)]**

☞ The following organizations have been declared as to be International Organizations. Thus, services provided to any of these international organizations would not be liable to service tax:

- a) International Civil Aviation Organizations
- b) World Health Organizations
- c) International Labour Organizations

- d) Food and Agriculture Organization of the United Nations
- e) UN Educational, Scientific and Cultural Organization
- f) International Monetary Fund
- g) International Bank for Reconstruction and Development
- h) Universal Postal Union
- i) International Telecommunication Union
- j) World Meteorological Organization
- k) Permanent Central Opium Board
- l) International Hydrographic Bureau
- m) Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
- n) Asian African Legal Consultative Committee
- o) Commonwealth Asia Pacific Youth Development Centre, Chandigarh
- p) Delegation of Commission of European Community
- q) Customs Co operation Council
- r) Asia Pacific Tele-community
- s) International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)
- t) International Centre for Genetic Engineering and Biotechnology
- u) Asian Development Bank
- v) South Asian Association for Regional Cooperation
- w) International Jute Organization, Dhaka, Bangladesh

2.2 HEALTH CARE SERVICES

- ☞ Health care services by a clinical establishment, an authorised medical practitioner or para – medics. **(Clause 2)**
- ☞ Health care Services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy **in any recognized system of medicine in India** and includes services by way of transportation of patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma. **[Defined in 2(t)]**

☞ According to Clinical Establishments Act, 2010, only following are considered as recognized systems of medicine:

Allopathy, Yoga, Naturopathy, Ayurveda, Homeopathy, Siddha, Unani and any other system of medicine that may be recognized by the Central Government. Thus treatment provided by other systems of medicines like acupressure, acupuncture, reiki etc. would not be exempted

☞ The term "clinical establishment" is defined to mean a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. **[Defined in 2(j)]**

☞ The term "authorised medical practitioner" is defined to mean a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force. **[Defined in 2(d)]**

☞ Paramedics is not defined in the Notification, but it generally means trained health care professionals who assist the doctors, for example nursing staff, physiotherapists, technicians, lab assistants etc.

☞ Services by a veterinary clinic in relation to healthcare of animals or birds. **(Clause 3)**

☞ Veterinary clinic would generally mean an establishment that has necessary facilities for the examination and treatment of animals or birds.

2.3 CHARITABLE ACTIVITIES

☞ Services by an entity registered U/s.12AA of the Income Tax Act, 1961 by way of charitable activities. **(Clause 4)**

☞ To avail the exemption, the entity must be registered u/s 12AA of the Income Tax Act, 1961 and the services rendered must fall within the definition of charitable activities.

☞ The term "Charitable Activities" is defined to mean activities relating to:

(i) public health by way of –

(a) care or counseling of –

(i) terminally ill persons or persons with severe physical or mental disability,

(ii) persons afflicted with HIV or AIDS, or

(iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

- (b) public awareness of preventive health, family planning or prevention of HIV infection;
 - (i) advancement of religion or spirituality;
 - (ii) advancement of educational programmes or skill development relating to, -
 - (a) abandoned, orphaned or homeless children;
 - (b) physically or mentally abused and traumatized persons;
 - (c) prisoners; or
 - (d) persons over the age of 65 years residing in a rural area;
 - (iii) preservation of environment including watershed, forests and wildlife; or
 - (iv) advancement of any other object of general public utility up to a value of, -

[(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year.]¹

[Defined in 2(k)]

2.4 RENTING SERVICES

☞ Services by a person by way of –

- (a) renting of precincts of a religious place meant for general public; or
- (b) conduct of any religious ceremony (**Clause 5**)

☞ Section 65B(41) of the Act defines “Renting” to mean 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 or other similar arrangements in respect of immovable property

☞ The term “general public” for the purpose of the exemption notification is defined to mean body of people at large sufficiently defined by some common quality of public or impersonal nature.

[Defined in (zb)]

☞ The term “religious place” to mean a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.

2.5 LEGAL SERVICES

☞ Services provided by -

- i) an arbitral tribunal to –

¹ Omitted vide Notification no. 3/2013-ST dated 1st March, 2013 w.e.f. 1st April, 2013

- a. any person other than a business entity; or
 - b. a business entity with a turnover upto Rs.10 Lacs in the preceding financial year
- ii) Services provided by an individual as an advocate or a partnership firm of advocates by way of legal services to,-
- (i) An advocate or partnership firm of advocates providing legal services;
 - (ii) Any person other than a business entity; or
 - (iii) A business entity with a turnover upto Rs.10 Lacs in the preceding financial year
- iii) Services provided by a person represented on an arbitral tribunal to an arbitral tribunal

(Clause 6)

- ☞ Section 65B(17) of the Act defines “Business Entity” to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.
- ☞ Exemption is available only if the turnover of business entity during preceding Financial Year is upto Rs. 10 Lacs. However the term “Turnover” is not defined.
- ☞ The terms advocate, arbitral tribunal, legal services are defined for the purposes of the exemption notification.

“Advocate” has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961; **[Defined in 2(a)]**

Section 2(1) (a) of the Advocates Act, 1961 defines an "advocate" as an advocate entered in any roll under the provisions of the Act

“arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996; **[Defined in 2(c)]**

Section 2 (d) of the Arbitration and conciliation Act, 1996 defines “arbitral tribunal” as a sole arbitral or a panel of arbitrators.

“legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority; **[Defined in 2(w)]**

2.6 TECHNICAL TESTING

- ☞ Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India.**(Clause 7)**

2.7 TRAINING OR COACHING

☞ Services by way of training or coaching in recreational activities relating to arts, culture or sports.
(Clause 8)

☞ The training or coaching is normally provided in a particular subject to improve any skill or knowledge on that subject. Thus, there is exemption from service tax to training or coaching in recreational activities relating to dance, music, painting, sculpture making, theatre, sports etc.

2.8 EDUCATIONAL SERVICES

☞ Services (provided to or by)² an educational institution in respect of education exempted from service tax, by way of Auxiliary educational services; or Renting of immovable property **(Clause 9)**

☞ Following educational services are provided in the negative list of services

- i) Pre school education and education up to higher secondary school or equivalent
- ii) Education as a part of 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

☞ “Auxiliary educational services” is defined to mean any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institutions, conduct of examination, catering for the students under any mid-day meal scheme sponsored by Government, or transportation of students, faculty or staff of such institutions.” (defined in (f))

2.9 SPORTS RELATED SERVICES

☞ Services provided to a recognized sports body by-

- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
- (b) another recognized sports body **(Clause 10)**

☞ The term recognized Sports body is defined for the above purpose. However services provided by individual such as selector, commentator, curator, technical experts etc. are not exempted.

☞ Services by way of sponsorship of sporting events organized,-

² Substituted for “provided to or by” vide Notification no. 3/2013-ST w.e.f. 1st April, 2013

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme; **(Clause 11)**

☞ The term Sponsorship is not defined. However, prior to 1st July, 2012 the same was defined in Section 65 (99a) of the Act as follows:

“Sponsorship” includes naming an event after the sponsor, displaying the sponsors company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition, but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors

2.10 CONSTRUCTION RELATED SERVICES

☞ Services provided **to the Government or local authority or a governmental authority** by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of -

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958;
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65B of the said Act **(Clause 12)**

- Following persons are specified in *Explanation 1* to clause 44 of section 65B of the Act:
- (A) 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) Any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
 - (C) 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.
- “Residential Complex” means any complex comprising of a building or buildings, having more than one single residential unit
- Construction of hospitals & educational institutions for Government or local authority are only exempted. In case the same are constructed for others, there is no exemption.*
- Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of-
- (a) A road, bridge, tunnel, or terminal for road transportation for use by general public;
 - (b) A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;
 - (c) A building owned by an entity registered under Section 12AA of the Income tax Act, 1961 and meant predominantly for religious use by general public;
 - (d) A pollution control or effluent treatment plant, except located as a part of a factory or a structure meant for funeral, burial or cremation of deceased; **(Clause 13)**
- It seems construction of road which are not for general public use for e.g. construction of roads in a factory, residential complex etc. may not be exempted.*
- Services by way of construction, erection, commissioning or installation **of original works** pertaining to,-
- (a) An airport, port or railways, including monorail or metro;
 - (b) single residential unit otherwise as a part of a residential complex;
 - (c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the “Scheme of Affordable Housing in

Partnership” framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages; **(Clause 14)**

Single residential unit is defined to mean a self-contained residential unit which is designed for use, wholly or principally for residential purposes for one family. **[Defined in 2(ze)]**

The term “**Original Works**” is defined in Rule 2A(ii)(a) of the Service Tax (Determination of Value) Rules, 2006 as follows:

i) all new constructions

ii) all types of additions & alterations to abandoned or damaged structures on land that are required to make them workable

iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise Residential complex means any complex comprising of a building or buildings having more than one single residential unit

2.11 COPYRIGHT SERVICES

As applicable till 31st March, 2013

Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of Section 13 of the Indian Copyright Act, 1957, relating to original literary, dramatic, musical, artistic works or cinematograph films; **(Clause 15)**

W.e.f. 1st April, 2013

Temporary transfer or permitting the use or enjoyment of a copyright,-

(a) Covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957, relating to original literary, dramatic, musical or artistic works; or

(b) Of cinematograph films for exhibition in a cinema hall or cinema theatre. **(Clause 15)**

Section 13 (1) of the Copyright Act, 1957 describes the works in which copyright subsists.

Sec 13 (1) of the said Act states that–“ Subject to the provisions of this section and the other provisions of this Act , copyright shall consist throughout India in the following classes of works, that is to say-

- a) Original literary, dramatic, musical and artistic works,
- b) Cinematographic films, and
- c) Sound recordings

☞ Thus, if a composer of a song having copyright of his song allows the recording of the song for further distribution on payment of some royalty by a music company, the composer is not required to pay service tax on the royalty received since the same falls under Section 13 (1) (a) of the Copyright Act, 1957

☞ However, the activity of distributing music by a music company having the copyright for any sound recording will be liable to service tax since the same falls under Section 13(1)(c) of the Copyright Act, 1957

2.12 SERVICES PROVIDED BY ARTIST

☞ Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, **excluding services provided by such artist as a brand ambassador; (Clause 16)**

☞ “Brand Ambassador” is defined to mean a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person. [**Defined in 2(h)**]

Activities of actor or artist participating in magic show, mimicry, western music, films, television serials are not exempted.

2.13 HOTELS/ RESTAURANT SERVICES

☞ **Item No 18** – Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below Rs.1,000/- per day or equivalent;

☞ **Declared tariff is defined to** include charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit [**defined in (2(n))**]

☞ **Item No 19** – Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, **other than those** having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year and a license to serve alcoholic beverages

☞ Vide notification no. 3/2013 – ST dated 1st March, 2013, effective from 1st April 2013, clause 19 is substituted to omit the condition of having license to serve alcoholic beverages

2.14 SERVICES OF TRANSPORTATION OF GOODS

⌚ Services in relation to transportation of certain commodities in rail/vessel

Services by way of transportation **by rail or a vessel from one place in India to another of the following goods –**

- (a) ³petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985;
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;
- (d) ³postal mail or mail bags;
- (e) ³household effects;
- (f) newspaper or magazines registered with Registrar of Newspapers;
- (g) railway equipments or materials;
- (h) agricultural produce;
- (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- (j) chemical fertilizer and oilcakes. **(Clause 20)**

⌚ Services in relation of transportation of goods by road

Services provided by **a goods transport agency by way of transportation of –**

- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- (b) goods where gross amount charged for transportation of goods on a consignment transported in a single goods carriage does not exceed Rs.1,500/-; or
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed Rs.750/-;

w.e.f 1st April, 2013

- (d) [21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-

- (a) agricultural produce;

³ Omitted vide Notification no. 3/2013-ST w.e.f. 1st April, 2013

- (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
- (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
- (e) chemical fertilizer and oilcakes;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments;]

- ⌚ Goods Transport Agency is defined in Section 65B(26) of the Act as any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called
- ⌚ Section 65B(25) of the Act –“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.
- ⌚ “goods carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods; **[Defined in (2(r) read with section 2(14) of the Motor Vehicles Act, 1988]**

2.15 HIRING OF VEHICLES

- ⌚ **Item No 22** – Services by way of giving on hire –
 - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
 - (b) to a goods transport agency, a means of transportation of goods;

As per Section 2(42) of the Motor Vehicles Act, 1988 –

“State transport undertaking” means any undertaking providing road transport service, where such undertaking is carried on by,--

 - (i) the Central Government or a State Government;
 - (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 ;

- (iv) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments. Explanation.-- For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

As per Section 2 (28) of the Motor Vehicles Act, 1988 –

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of 1 Subs. and ins. by Act.

2.16 TRANSPORTATION OF PASSENGERS

☞ **Item No 23** – Transport of passengers, with or without accompanied belongings, by –

- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Baghdogra located in West Bengal; or
- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;
- (c) ropeway, cable car or aerial tramway.

☞ The term "Contract Carriage" has the meaning as assigned to in Section 2(7) of the Motor Vehicles Act, 1988. The essential ingredient of a contract carriage is that it plies under a contract for a fixed set of passengers, and does not allow any other passenger to board or alight from the carriage at will. **[Defined as Section 2(7)]**

Section 2(7) of motor vehicles Act, 1988 defines –

"contract carriage" means a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum--

- (a) on a time basis, whether or not with reference to any route or distance; or
- (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--
 - (i) a maxicab; and
 - (ii) a motor cab notwithstanding that separate fares are charged for its passengers;

2.17 PARKING SERVICES

- ☞ Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility; Vacant land given to a car dealer for parking their vehicle shall be liable to service tax. **(Clause 24)**
- ☞ Vide notification no. 3/2013-ST dated 1st March, 2013, the said exemption is withdrawn w.e.f 1st April, 2013.

2.18 SERVICES PROVIDED TO GOVERNMENT

- ☞ Services provided to the Government or a local authority or a governmental authority by way of –
 - (a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
 - (b) repair or maintenance of (a vessel)⁴; **(Clause 25)**

2.19 INSURANCE RELATED SERVICES

- ☞ Services of general insurance business provided under following schemes –
 - (a) Hut Insurance Scheme;
 - (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
 - (c) Scheme for Insurance of Tribals;
 - (d) Janata Personal Accident Policy and Gramin Accident Policy;
 - (e) Group Personal Accident Policy for Self-Employed Women;
 - (f) Agricultural Pumpset and Failed Well Insurance;
 - (g) Premia collected on export credit insurance;
 - (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
 - (i) Jan Arogya Bima Policy;
 - (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
 - (k) Pilot Scheme on Seed Crop Insurance;

⁴ Substituted for a word “a vessel or an aircraft” vide notification no. 3/2013-ST dated 1st March, 2013, w.e.f. 1st April, 2013.

- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme; **(Clause 26)**

☞ Services of life insurance business provided under following schemes -

- (a) Janashree Bima Yojana (JBY); or
- (b) Aam Aadmi Bima Yojana (AABY) (Clause 26A)

☞ Services by Employee of State Insurance Corporations to persons governed under the Employees Insurance Act, 1948. **(Clause 36)**

2.20 SERVICES BY INCUBATEE

☞ Services provided by an incubatee up to a total business turnover of Rs.50 Lacs in a financial year subject to the following conditions, namely:-

- (a) the total business turnover had not exceeded Rs. 50 Lacs during the preceding financial year; and
- (b) a period of 3 years has not lapsed from the date of entering into an agreement as an incubatee; **(Clause 27)**

☞ “Incubatee” is defined to mean an entrepreneur located within the premises of Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or STEP to enable himself to develop and produce hi-tech and innovative products. **[Defined in 2(u)]**

2.21 SERVICES BY ASSOCIATION TO ITS MEMBERS

☞ Service by an unincorporated body or a non-profit entity registered under any law for the time being in force to its own members by way of reimbursement of charges or share of contribution -

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
- (c) up to an amount of Rs.5,000/- per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex; **(Clause 28)**

2.22 SERVICES BY SPECIFIED INTERMEDIARIES

- Services by the following persons in respective capacities –
- (a) a sub-broker or an authorised person to a stock broker;
 - (b) an authorised person to a member of a commodity exchange;
 - (c) a mutual fund agent to a mutual fund or asset management company;
 - (d) distributor to a mutual fund or asset management company;
 - (e) a selling or marketing agent of lottery tickets to a distributor or a selling agent;
 - (f) a selling agent or a distributor of SIM cards or recharge coupon vouchers; or
 - (g) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area;
 - (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt; **(Clause 29)**

2.23 JOB WORK RELATED SERVICES

- Carrying out an intermediate production process as job work in relation to –
- (a) agriculture, printing or textile processing;
 - (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985;
 - (c) any goods on which appropriate duty is payable by the principal manufacturer; or
 - (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of Rs. 150 Lacs in a financial year subject to the condition that such aggregate value had not exceeded Rs.150 Lacs during the preceding financial year; **(Clause 30)**

2.24 TELECOM SERVICES

- Services by way of making telephone calls from –
- (a) departmentally run public telephones;
 - (b) guaranteed public telephones operating only for local calls; or
 - (c) free telephone at airport and hospitals where no bills are being issued; **(Clause 32)**

2.25 IMPORT OF SERVICES

- Services received from a provider of service located in a non-taxable territory by -

- (a) the Government, a local authority, governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities; or
- (c) A person located in a non-taxable territory. **(Clause 34)**

2.26 OTHER EXEMPTIONS UNDER MEGA EXEMPTION NOTIFICATION

- ☞ Services by way of collecting or providing news by an independent journalist, press trust of India or united news of India **(clause 17)**.
- ☞ Services by an organizer to any person in respect of a business exhibition held outside India **(clause 31)**
- ☞ Services by way of slaughtering of (bovine)⁵ animals **(clause 33)**
- ☞ Services of public libraries by way of lending of books, publications or any other knowledge enhancing content or material **(clause 35)**
- ☞ Services by way of transfer of going concern, as a whole or independent part thereof **(clause 37)**
- ☞ Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinals or toilets **(clause 38)**
- ☞ Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the constitution **(clause 39)**.

3. OTHER EXEMPTION NOTIFICATIONS

3.1. THRESHOLD EXEMPTION FOR SMALL SERVICE PROVIDER

- ☞ Notification No 33/2012- St dated 20th June, 2012 –The law provides for an exemption to small service providers who provide taxable services of a value not exceeding the specified limit. The specified limit is now Rs 10 lakhs. In other words where the value of taxable services provided do not exceed Rs 10 lakhs in the previous financial year, the concerned service provider would not be required to pay service tax upto receipts of Rs 10 lakhs in the current financial year. (w.e.f 1st April, 2012, service provider is not required to pay service tax upto 1st consecutive invoices raised of Rs 10 lakhs as against the earlier provision of 1st consecutive receipt of Rs 10 lakhs)
- ☞ The above exemption is not available to:

⁵ Omitted vide notification no. 44/2012-ST dated 7th August, 2013

- 1) taxable services provided by a person under a brand name or trade name of another person; or
- 2) such value of taxable service for which service tax is payable by person specified in section 68(2) (i.e., other than service provider).

¶ The above exemption is available subject to following conditions:

- 1) exemption is optional, which once exercised in a financial year, cannot be withdrawn during remaining part of such financial year;
- 2) service provider not to avail CENVAT credit (under Rule 3 or Rule 13 of CENVAT Credit Rules, 2004) of service tax on any input service used for providing such taxable service for which exemption is opted for;
- 3) service provider not to avail CENVAT credit (under Rule 3 of CENVAT Credit Rules, 2004) of duty on capital goods received in his premises during period of avilment of this exemption;
- 4) service provider to avail CENVAT credit on inputs or input services (used for providing taxable service) received on or after the day he starts paying tax;
- 5) service provider to pay an amount of CENVAT credit taken by him for inputs lying in stock or in process on the day on which he starts availing exemption;
- 6) balance unutilized CENVAT credit on account of inputs and input services (used in providing service for which exemption is availed) to lapse on the date on which he starts availing exemption;
- 7) for arriving at aggregate value of taxable service, services provided under all the categories from one or more premises to be included;
- 8) aggregate value of taxable service rendered by service provider from one or more premises not to exceed rupees ten lakh in preceding financial year.

¶ For determining aggregate value not exceeding rupees ten lakh in relation to taxable service provided by GTA, the payment received towards such services, on which service tax is payable by person other than GTA, shall not be taken into account.

3.2. SERVICES BY INDIAN RAILWAY

¶ **Vide Notification No.43/2012-ST dated 2nd July, 2012** exemption has been granted to following services provided by the Indian Railways from the whole of service tax from 2nd July, 2012 to 30th September, 2012.

- Service of transportation of passengers, with or without accompanied belongings, by railways in first class; or an air conditioned coach

- Services by way of transportation of goods by railways

3.3. SERVICES TO FOREIGN DIPLOMATIC MISSION

☞ **Vide Notification No.27/2012 – ST dated 20th June, 2012** exemption has been granted to all taxable services provided by any person, for the official use of a foreign diplomatic mission or consular post in India or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein from whole of service tax subject to fulfillment of various conditions specified therein.

3.4. PROPERTY TAX

☞ **Vide Notification No.29/2012-ST dated 20th June, 2012** exemption has been granted to taxable services of “renting of immovable property” as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies. Any amount such as interest, penalty paid by service provider on account of delayed payment of property tax or any other reasons not to be treated as property tax for the purpose of deduction.

☞ It is further clarified that wherever the period, for which property tax paid, is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

3.5. TRANSPORTATION OF GOODS TO EXPORTER OF GOODS

☞ **Vide Notification No.31/2012-ST dated 20th June,2012** exemption has been granted to taxable services of

- i) transport of goods by road in a goods carriage from any CFS/ICD to the port or airport, from where the goods are exported; or
- ii) transport of goods by road directly from the place of removal to ICD/CFS/Port/Airport from where the goods are exported received by an exporter and used for export of goods from the whole of the service tax subject to condition that the exporter to produce the consignment note, by whatever name called, issued in his name.

The above exemption is subject to following conditions:

- i) the exemption is available to exporter who-
 - a) informs the AC/DC having jurisdiction over the factory/regional office/head office in Form EXP1 before availing the said exemption

- b) is registered with EPC sponsored by Ministry of Commerce or Ministry of Textiles
- c) is holder of IEC No.
- d) is registered U/s.69 of the Finance Act, 1994
- e) is liable to pay service tax U/s.68(2) of the Finance Act read with item (B) of sub clause (i) of Rule 2(1)(d) of the Service Tax Rules, 1994.
- ii) The invoice/bill/challan/any other document issued by the service provider to the exporter, on which exporter intends to avail exemption, shall be issued in the name of the exporter
- iii) The exporter to file half yearly return in Form EXP4 within 15 days from the respective half year along with original bill/invoice/challan & certified copies of consignment note.
- iv) The documents enclosed with return to contain certification from the exporter to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill no. on the said documents.
- v) If the amount of commission charged in respect of the specified service exceeds 10% of the FOB value of export, then the service tax on such excess amount shall be paid within the period specified under Rule 6 of the service tax rules

3.6. COMMISSION PAID TO AGENT LOCATED OUTSIDE INDIA TO EXPORTER OF GOODS

¶ **Vide Notification No.42/2012-ST dated 29th June,2012** exemption has been granted to taxable services provided by a commission agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him to the extent of 10% of the FOB value of export of goods

- i) the exemption is available to exporter who-
 - a) informs the AC/DC having jurisdiction over the factory/regional office/head office in Form EXP3 before availing the said exemption
 - b) is registered with EPC sponsored by Ministry of Commerce or Ministry of Textiles
 - c) is holder of IEC No.
 - d) is registered U/s.69 of the Finance Act, 1994
 - e) is liable to pay service tax U/s.68(2) of the Finance Act read with item (B) of sub clause (i) of Rule 2(1)(d) of the Service Tax Rules, 1994.
- ii) The invoice/bill/challan/any other document issued by the service provider to the exporter, on which exporter intends to avail exemption, shall be issued in the name of the exporter

- iii) The exporter to file half yearly return in Form EXP4 within 15 days from the respective half year along with original bill/invoice/challan & certified copies of consignment note.
- iv) The documents enclosed with return to contain certification from the exporter to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill no. on the said documents.

If the amount of commission charged in respect of the specified service exceeds 10% of the FOB value of export, then the service tax on such excess amount shall be paid within the period specified under Rule 6 of the Service Tax Rules.

3.7. SERVICES PROVIDED BY INCUBATOR

☞ **Vide Notification No.32/2012-ST dated 20th June, 2012** exemption has been granted to all services provided by Technology Business Incubator (TBI) and Science & Technology Entrepreneurship Park (STEP) recognized by National Science & Technology Entrepreneurship Development Board (NSTEDB) from whole of service tax subject to condition that information as required in Format-I and Format-II is furnished to concerned AC/DC by 30th June of each financial year.

3.8. SERVICES RENDERED TO SEZ DEVELOPER/UNIT

☞ **Vide Notification No.40/2012-ST dated 20th June,2012** exemption has been granted from whole of service tax to the services provided in relation to the authorised operations in a SEZ and received by developer/unit of SEZ subject to following conditions.

- The exemption is by way of refund of ST paid on “specified services” received for the authorised operation in a SEZ.
- Where the specified services are wholly consumed in SEZ, the person liable to pay service tax has an option not to pay service tax *ab initio* instead of developer/unit of SEZ claiming the refund.
- For the purpose of this notification, services are treated as “wholly consumed in SEZ” if

Services listed in Place of Provision of Service Rules, 2012	Condition
Rule 4	Services are actually performed within SEZ
Rule 5	Immovable property is located or intended to be located within SEZ

For other services	Provided to a developer/unit of SEZ who does not own or carry on any business other than the operations in SEZ.
--------------------	---

- The refund of service tax paid on specified services which are not wholly consumed within SEZ shall be restricted to the extent of ratio of export turnover of SEZ unit to the total turnover for the period to which the claim relates.
- The developer/unit of SEZ is required to get the list of services that are liable to service tax as are required in relation to the authorised operations in the SEZ, approved from the Approval Committee of the concerned SEZ.
- The developer/unit of SEZ who does not own or carry out any business other than SEZ operations, is required to furnish a declaration in prescribed form (Form A-1) verified by specified officer of the SEZ.
- Developer/unit of SEZ is required to furnish declaration that the specified services for which exemption/ refund is claimed are actually used for the authorised operations.
- The developer/unit of SEZ claiming the exemption has actually paid the service tax on the specified services.
- No CENVAT credit of service tax paid on the specified services used in relation to the authorised operations in the SEZ has been taken under the CENVAT Credit Rules, 2004
- No refund is available on services wholly consumed for operations in Domestic Tariff Area (DTA) worked out in the same manner as clauses (i) & (ii) of the explanation to condition (a).
- Exemption or refund of service tax paid on the specified services (other than services wholly consumed) in relation to the authorised operations in the SEZ shall not be claimed except under this notification.
- Developer/unit of SEZ to maintain proper account of receipt & use of the specified services on which exemption is claimed.

Procedure & Conditions for claiming the exemption

- The developer/unit of SEZ to file claim for refund in Form A-2 with jurisdictional AC/DC of Central Excise.
- The developer/unit of SEZ, who is not registered under Central Excise or Service Tax, to file Form A-3 with jurisdictional AC/DC of Central Excise prior to filing claim for refund.
- AC/DC to allot service tax code number within 7 days from the date of receipt of Form A-3.

- The claim for refund to be filed within 1 year from the end of month in which actual payment of service tax was made. AC/DC may permit extended period for filing claim of refund.
- The claim for refund to be accompanied by following documents:
 - i) A copy of the list of specified services approved by approval committee along with declaration in Form A-1, wherever applicable.
 - ii) Invoice/bill/challan in the name of developer/unit of SEZ along with proof of payment of specified services used for the authorised operation and service tax paid, in original.
 - iii) A declaration by developer/unit of SEZ containing points stated in notification
- AC/DC to grant refund after verification of documents.
- Service provider exercising the option of exemption to obtain from developer/unit of SEZ
 - i) list of services approved by approval committee
 - ii) Declaration in Form A-1, wherever applicable.
- Particulars specified in Table C of Form A-2 are to be certified by statutory auditor (auditor under Companies Act,1956 or Income Tax Act,1956)

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

3.9. CESS PAID UNDER R&D CESS ACT, 1986

¶ **Vide Notification No.14/2012-ST dated 17th March,2012** exemption has been granted to taxable service involving import of technology from levy of Service Tax U/s.66B of the Finance Act, 1994 equal to the amount of Cess payable on the said import of technology under the provisions of Section 3 of the Research & Development Cess Act, 1986 subject to conditions that:

- The said amount of R & D Cess is paid within 6 months from the date of invoice or in the case of associated enterprises, the date of credit in the books of accounts.
- R & D Cess is paid at the time or before the payment for the service.
- The records of R & D Cess are maintained for establishing the linkage between the invoice or the credit entry, as the case may be, and the R & D Cess payment challan.