



TAXATION OF THE SERVICES BASED ON NEGATIVE LIST APPROACH.



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DEFINATION OF SERVICE

- Sec 65B gives interpretation for different terms for the purpose of Chapter V i.e. Service tax
- Clause (44) defines service as any **activity** carried out by a person for another for consideration, and includes a **declared service**. Thus there are four necessary elements
 - The person who provides the service
 - The person who receives the service.
 - The actual rendering of service.
 - The consideration for service.

Hence, unless all the four characteristics are present, the **activity** cannot be called as service.



DEFINATION OF SERVICE

- This implies that
- A mere transaction in money, where no service is involved, is just a payment or receipt and not liable for service tax.
- An activity performed has to fall within meaning of service. Even a promise made for a consideration to refrain from doing something shall also be covered within meaning of activity. Consideration can be monetary or non monetary.
- Consideration itself supposes certain level of reciprocity. Hence amount paid for alimony for divorce would not be treated as consideration for the purpose of service tax.
- Amount received in settlement of dispute would be taxable only if the dispute itself pertains to consideration relating to services.



DEFINATION OF SERVICE

- Amount forfeited for cancellation of an agreement to provide a service shall be taxable as service becomes taxable on agreement.
- If Security deposit forfeited related to accidental damage due to unforeseen actions not relatable to provision of service, then such amount will not be consideration for the purpose of service tax.
- Demurrages paid for use of service beyond the period initially agreed upon

It is very clear that activities between two persons shall be covered under service tax, hence if a person doing something for himself, it will not be covered under service tax. The exceptions are

- i) an establishment of a person located in a taxable territory and another located in a non taxable territory.
- ii) an unincorporated association or body of persons and members thereof are also treated as distinct person.



DEFINATION OF SERVICE

- Definition of person include Government, local authority, however most of the services provided by the government are either in negative list or exempt by mega exemption notification.
- Services provided by government or local authorities which are similar or substitutable to services provided by private entities are made taxable



CONCEPT OF SERVICE

- However, where the activity which merely constitutes
 - (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;
 - (iii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of Article 366 of the constitution

is not covered in the definition of services.

Education guide para 2.8.11 and 2.8.12 have opined that “a voucher that entitles a person to enjoy service” eg. DTH coupon, mobile recharge voucher is not an actionable claim. Hence, Mega exemption notification 29(e) and (f) exempts selling agent of lottery ticket and SIM card and recharge coupon vouchers for mobile specifically



CONCEPT OF SERVICE

- Service provided by employee to the employer in the course of employment are outside purview of Service tax.
- Department is issuing show cause notices to Companies demanding service tax on directors remuneration under RCM. Whole time director/Managing Directors receive remuneration of companies which has been taxed in their hands under “Income from Salary”. Companies have been deducting TDS on such payment under 194A on payment. Thus other payment received by MD/WTD or director for services rendered to company is liable for service tax.



WHAT IS NEGATIVE LIST OF SERVICES?

1. Negative list of Services implies two things:
 - Firstly, it is a list of services which will not be subject to service tax.
 - Secondly, other than services mentioned in the negative list, all other services will be taxable which fall in the definition of the service.



PURPOSE OF BRINGING NEGATIVE LIST

In the parliament, while presenting the union budget 2011, the then Finance Minister proposed that:

“Many experts have argued that, it is desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an approach will be very conducive for a nationwide GST. I Propose to initiate an informed public debate on the subject to help us finalize the approach to GST”.



POSITIVE LIST SYSTEM (EARLIER SYSTEM)

- Before adopting the negative list approach, we adopted the system of positive list.
- In that system, we taxed only that specific number of notified services mentioned in the list.
- There were 116 services which were specifically defined in section 65A.
- All other services were not taxable.



CONCEPT OF NEGATIVE LIST

- After the incorporation of negative list concept, it will be clear that:
- The services that are included in the negative list will not be taxable.
- They are outside the purview of levy of service tax itself.
- All the other services that are not mentioned in the negative list are leviable to the service tax.



NEGATIVE LIST OF SERVICES-

- ❖ There are 17 services which are mentioned in the negative list, viz.,
 1. **Services provided by Government or Local authority excluding the following services to the extent they are not covered elsewhere**
 - Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services carried out on payment of commission on non government business;
 - Service in relation to aircraft or vessel inside or outside the precincts of a port or an Airport.
 - Transport of goods or passengers.
 - Support services, other than above, provided to business entities



NEGATIVE LIST OF SERVICES-

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



NEGATIVE LIST OF SERVICES-

- 3. Services by a Foreign Diplomatic Mission Located in India**
 - Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organization.



NEGATIVE LIST OF SERVICES-

4. Services relating to agriculture

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

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



NEGATIVE LIST OF SERVICES-

- d) Renting of agro machinery or vacant land with or without a structure incidental to its use;
- e) loading, unloading, packing, storage and warehousing of **agricultural produce**;
- f) **agricultural extension** services;
- g) services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;
- h) Testing activities in relation to agriculture and agricultural produce

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



NEGATIVE LIST OF SERVICES-

5. **Trading of Goods**

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



NEGATIVE LIST OF SERVICES-

6. **Processes amounting to Manufacture or Production of Goods**
 - The phrase processes amounting to manufacture or production of goods has been defined in section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act.
 - This entry, therefore, covers manufacturing activity carried out on contract or job work basis provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

NEGATIVE LIST OF SERVICES-

7. Selling of Space for Advertisements in Print media.

Sale of space for advertisement in print media is exempt, bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet, Aerial advertising are not covered in negative list anymore.

Sale of space or time for advertisement to for broadcast on radio or television and sale of time slot by a broadcasting organization are the taxable services.



NEGATIVE LIST OF SERVICES-

8. **Access to a Road or a Bridge on Payment of Toll Charges**
 - The negative list entry covers access to a road or a bridge on payment of toll charges. The access to National highways or state highways, which are also roads, is hence covered in this entry.



NEGATIVE LIST OF SERVICES-

9. **Betting, Gambling or Lottery**

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



NEGATIVE LIST OF SERVICES-

10. Entry to Entertainment Events and access to Amusement Facilities

- Entertainment event has been defined in section 65B of the Act as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, **sporting events**, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or program.
- 'Amusement facility' has been defined in the Act as a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided.



NEGATIVE LIST OF SERVICES-

11. Transmission or Distribution of Electricity

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

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



NEGATIVE LIST OF SERVICES-

12. Specified services relating to Education

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

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



NEGATIVE LIST OF SERVICES-

- Approved vocational education courses have been specified in section 65B of the Act. These are
 - a) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961)
 - b) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India;
 - c) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.
 - d) Vocational courses offered by institutes affiliated to the State Council of Vocational Training;



NEGATIVE LIST OF SERVICES-

13. Services by way of Renting of residential dwelling for use as residence

‘Renting’ has been defined in section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property”.



NEGATIVE LIST OF SERVICES-

14. Financial Sector

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

The Invoice discounting is covered only to the extent consideration it is represented by way of discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration

Sale purchase amongst bank or authorized dealers of foreign exchange is exempt. Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to **general public** are not covered in Negative List.

NEGATIVE LIST OF SERVICES-

15. Service relating to Transportation of Passengers

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

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



NEGATIVE LIST OF SERVICES-

16. Service relating to Transportation of Goods

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



NEGATIVE LIST OF SERVICES-

17. Funeral, Burial, Crematorium or Mortuary services including transportation of the deceased

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



- THANK YOU.
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