

SERVICE TAX ACT

Chapter V of the Finance Act, 1994

[As on 1-4-2017]

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 65. Definitions. — ***

[SECTION 65A. Classification of taxable services. —**]**

SECTION [65B.Interpretations.—

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 (4 of 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 (22 of 1934);
- (8) **“Airport”** has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994.);
- (9) [* * * *]
- (10) **“Appellate Tribunal”** means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);
- (11) [* * * *]
- (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 (43 of 1961);
- (14) **“Authorised dealer of foreign exchange”** shall have the meaning assigned to **“Authorised person”** in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 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 (54 of 1963);
- (17) **“Business entity”** means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;
- (18) **“Central Electricity Authority”** means the authority constituted under section 3 of the Electricity (Supply) Act, 1948 (54 of 1948);
- (19) **“Central Transmission Utility”** shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003 (36 of 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 (52 of 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 under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission 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;
- (23A) “**foreman of chit fund**” shall have the same meaning as is assigned to the term “foreman” in clause (j) of section 2 of the Chit Funds Act, 1982 (40 of 1982);
- (24) [* * * *]
- (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;
- (26A) “**Government**” means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder;’
- (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 (80 of 1976);
- (c) the seabed and the subject 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 (82 of 1985) or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917);

(30) “ **interest**” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized;

(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 (41 of 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;

(31A) - “**lottery distributor or selling agent**” means a person appointed or authorized by a State for the purposes of promoting, marketing, selling or facilitating in organizing lottery of any kind, in any manner, organized by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998);

(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 (59 of 1988) and the rules made thereunder [but does not include radio taxi];

(33) “**money**” means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, travelercheque, money order, postal or electronic remittance or any such similar instrument 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 (38 of 1963) or in clause 4 of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(39) “**prescribed**” means prescribed by rules made under this Chapter;

(39a) “**print media**” means,—

- (i) “book” as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

- (ii) “newspaper” as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867)

(40) “[***].;

(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 (2 of 1934);

- (43) “**securities**” has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 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) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) 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 clause, the expression “transaction in money or actionable claim” shall not include —

- (i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —
 - (a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in

organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;. (Finance Act 2016)

(b) by a foreman of chit fund for conducting or organising a chit in any manner.;

Explanation 3. — 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 4. — 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 (28 of 2005);

(46) “**stage carriage**” shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(47) “**State Electricity Board**” means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948);

(48) “**State Transmission Utility**” shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003 (36 of 2003);

(49) [* * * *]

(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 (38 of 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, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 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 a duty of excise.

[SECTION 66. Charge of service tax.— *]**

[SECTION 66A. Charge of service tax on services received from outside India. —

***]

SECTION 66B. Charge of service tax on and after Finance Act, 2012.—

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. 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 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. Determination of place of provision of service.—

(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. Negative list of services.—

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) Any service, 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 or agricultural produce 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) [****].;
 - (g) selling of space for advertisements in print media;
 - (h) service by way of access to a road or a bridge on payment of toll charges;
 - (i) betting, gambling or lottery;
- Explanation.** - For the purposes of this clause, the expression “betting, gambling or lottery” shall not include the activity specified in *Explanation2* to clause (44) of section 65B;
- (j) [* * * *]
 - (k) transmission or distribution of electricity by an electricity transmission or distribution utility;

- (l) [* * * *]
- (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) [* * * *]
 - (ii) railways in a class other than—
 - (A) first class; or
 - (B) an air-conditioned coach;
 - (iii) metro, monorail or tramway ,
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (vi) metered cabs 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) [* * * *]
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

SECTION 66E. Declared services. — 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 authorised 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 (20 of 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 remodelling of any existing civil structure;

- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customization, 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.
- (j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof.

SECTION 66F. Principles of interpretation of specified descriptions of services or bundled services.—

(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.

Illustration

The services by the Reserve Bank of India, being the main service within the meaning of

clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.

(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, where service tax is chargeable on any taxable service with reference to its value, then such 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 as, 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 —

- (i) any amount that is payable for the taxable services provided or to be provided;
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

(b) [* * * *]

(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. Date of determination of rate of tax, value of taxable service and rate of exchange. —

(1) 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.

(2) The time or the point in time with respect to the rate of service tax shall be such as may be prescribed.

Explanation. — For the purposes of this section, “rate of exchange” means the rate of exchange determined in accordance with such rules as may be prescribed.

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 [66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services 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 [66B] 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 thereunder 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 Central Government may, by notification in the Official Gazette, specify such other person or class of persons, who shall make an application for registration within such time and in such manner and in such form 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 twenty 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 Preparer;

- (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 71A .Filing of return by certain customers.-

Notwithstanding anything contained in the provisions of sections 69 and 70, the provisions thereof shall not apply to a person referred to in the proviso to sub-section(1)of section 68 for the filing of return in respect of service tax for the respective period and service specified therein and such person shall furnish return to the Central Excise Officer within six months from the day on which the Finance Bill,2003 receives the assent of the President in the prescribed manner on the basis of the self-assessment of the service tax and the provisions of section 71 shall apply accordingly.]

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 thereunder,

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.Special audit.—

(1) If the Principal Commissioner of Central Excise or 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 (38 of 1949);
- (ii) “cost accountant” shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959(23 of 1959).

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, Central Excise Officer may, within thirty 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 thereunder 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 “thirty 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 thirty months or five years, as the case may be.

(1A) Notwithstanding anything contained in sub-section (1) except the period of thirty months of serving the notice for recovery of service tax), 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.

(1B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self-assessed in the return furnished under sub-section (1) of section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in section 87, without service of notice under sub-section (1).

(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 misstatement; 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 thirty months, as if the notice was issued for the offences for which limitation of thirty 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 “thirty months” 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 thereunder 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 thereunder with intent to evade payment of service tax.

4(A) [* * * *]

(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)—

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A)].

(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 thereunder;

- (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 thereunder 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 sub-section (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 (1 of 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 thereunder 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 (1 of 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 [Principal Commissioner of Central Excise or 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 Principal Chief Commissioner of Central Excise and 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 Principal Commissioner of Central Excise or 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 an 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 person who collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government, on or before the date on which such payment is due, the Central Government may, by notification in the Official Gazette, specify such other rate of interest, as it may deem necessary:

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 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 [75A. * * * *]

SECTION 76. Penalty for failure to pay service tax.— (1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax :

Provided that where service tax and interest is paid within a period of thirty days of —

- (i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded;
- (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

(2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted

from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

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 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 everyday 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 failure to pay service tax for reasons of fraud, etc. — (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 fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the

date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined :

Provided further that where service tax and interest is paid within a period of thirty days of —

the date of service of notice under the proviso to

(i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Explanation. — For the purposes of this sub-section, “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 accounts shall be considered as the specified records.

(2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) of section 73, then, the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified.

(3) Where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

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.

“Explanation—For the removal of doubts, it is hereby clarified that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, and the proceedings with respect to a notice issued under sub-section (1) of section 73 or the proviso to sub-section (1) of section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to section 76 or clause (i) of the second proviso to section 78, as the case may be, the proceedings pending against any person under this section shall also be deemed to have been concluded.”.

SECTION 78B. Transitory provisions. —

(1) Where, in any case,—

(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or

(b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,

then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable.

(2) In cases where show cause notice has been issued under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73 before the date on which the Finance Bill, 2015 receives the assent of the President, the period of thirty days for the purpose of closure of proceedings on the payment of service tax and interest under clause (i) of the proviso to sub-section (1) of section 76 or on the payment of service tax, interest and penalty under clause (i) of the second proviso to sub-section (1) of section 78, shall be counted from the date on which the Finance Bill, 2015 receives the assent of the President.

SECTION 79. [* * * *]

SECTION 80. [* * * *]

SECTION 81. [* * *]

SECTION 82. Power to search premises. —

(1) Where the Joint Commissioner of Central Excise or Additional Commissioner of Central Excise or such other Central Excise officer as may be notified by the Board has reasons to believe that any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Chapter, are secreted in any place, he may authorise in writing any Central Excise officer to search for and seize or may himself search 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 to 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 sections 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 (2A) of section 5A, sub-section(2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

SECTION 83A. Power of adjudication. — Where under this Chapter or the rules made there under 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 Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 [Principal Commissioner of Central Excise or 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 [Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 appeal 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 exercises 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) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A 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.

Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944):

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012 (23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944).”

(1A) (i) The Board may, by order, constitute such Committees as may be necessary for the purposes of this Chapter.

(ii) Every Committee constituted under clause (i) shall consist of two Principal Chief Commissioners of Central Excise and Chief Commissioners of Central Excise or two Principal Commissioners of Central Excise or Commissioners of Central Excise] as the case may be.

(2) The Committee of Principal Chief Commissioners of Central Excise or Chief Commissioners of Central Excise] may, if it objects to any order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A [***], direct the [Principal Commissioner of Central Excise or Commissioner of Central Excise] to appeal to the Appellate Tribunal against the order :

Provided that where the Committee of Principal Chief Commissioners of Central Excise and Chief Commissioners of Central Excise differs in its opinion against the order of the Principal Commissioner of Central Excise or 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 it is of the opinion that the order passed by the Principal Commissioner of Central Excise or Commissioner of Central Excise is not legal or proper, direct the Principal Commissioner of Central Excise or Commissioner of Central Excise] to appeal to the Appellate Tribunal against the order.

(2A) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on its 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 [Principal Chief Commissioners of Central Excise or Chief Commissioner] who shall, after considering the facts of the order, if it 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 Principal Chief Commissioners or Chief Commissioner” means the Principal Chief Commissioners or 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 Principal Chief Commissioners or Chief Commissioners or, as the case may be, the Committee of Commissioners.

(4) The Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 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 Principal Commissioner of Central Excise or 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 appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises 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 there under 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 Principal Commissioner of Central Excise or 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;

Provided that where the person (hereinafter referred to as predecessor) from whom the service tax or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining the written approval of the Principal Commissioner of Central Excise or Commissioner of Central Excise, for the purposes of recovering such service tax or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.

- (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 there under 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 (1 of 1956) and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 (51 of 1993) and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 (54 of

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 clauses (a), (b) or (c) where the amount exceeds two hundred 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 two hundred 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 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 Principal Chief Commissioner of Central Excise and 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) [* * * *]

SECTION 91. Power to arrest. —

(1) If the Principal Commissioner of Central Excise or Commissioner of Central Excise has reason to believe that any person has committed an offence specified in 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) [* * * *]

(4) All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrests.

SECTION 92. [* * * *]

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 or specified by notification in the Official Gazette

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 rebate 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. Rules made under section 94 to be applicable to services other than taxable services. — 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 (32 of 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) determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, 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;
 - (ee) [* * * *]
 - (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 (1 of 1944) as made applicable to service tax vide section 83;
 - (k) imposition, on persons liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified;
 - (l) make provisions for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of CENVAT credit) on provider of taxable service or exporter, for dealing with evasion of tax or misuse of CENVAT credit;
 - (m) authorisation of the Central Board of Excise and Customs or [Principal Chief Commissioners of Central Excise or Chief Commissioners of Central Excise] to issue instructions, for any incidental or supplemental matters for the implementation of the provisions of this Act;
 - (n) 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 difficulty 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 provisions of 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 (21 of 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.

(1I). 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 (32 of 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 93 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 (32 of 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 received the assent of the President.

(1K) If any difficulty arises in giving effect to section 114 of the Finance (No. 2) Act, 2014, in so far as it relates to amendments made by the said Act, in this Chapter, 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 (No. 2) Bill, 2014 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 V 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 as defined in clause(e) of section 28E of the Customs Act, 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, 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 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.] **proposed to be omitted by Finance Bill 2017.;**

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 **ten thousand 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 Principal Commissioner of Central Excise or 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 [Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 [Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 [Principal Commissioner of Central Excise or 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 Principal Commissioner of Central Excise or 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 96HA.

On and from the date on which the Finance Bill, 2017 receives the assent of the President, every application and proceeding pending before the erstwhile Authority for Advance Rulings (Central Excise, Customs and Service Tax) shall stand transferred to the Authority from the stage at which such application or proceeding stood on the date of such assent.

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 advance 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 96J. 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. Special provision for exemption in certain cases relating to management, etc., of roads.—

- (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. Special provision for exemption in certain cases relating to management, etc., of non-commercial Government buildings. —

(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.—

(1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012 or in section 66B, 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 October, 2012.

(2) No refund shall be made or service tax paid in respect of taxable services provided by the Indian Railways during the said period prior to the 1st day of October, 2012.

SECTION 100. Special provision for taxable services provided by Employees' State Insurance Corporation.— 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 Employees' State Insurance Corporation set up under the Employees' State Insurance Act, 1948 (34 of 1948), during the period prior to the 1st day of July, 2012.

SECTION 101. Special provision for exemption in certain cases relating to construction of canal, dam, etc.

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of July, 2012 and ending with the 29th day of January, 2014 (both days inclusive) in respect of taxable services provided to an authority or a board or any other body—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by the Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works.

(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, 2016 receives the assent of the President.

SECTION 102.Special provision for exemption in certain cases relating to construction of Government buildings.

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a 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 structure meant predominantly for use as—

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(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, 2016 receives the assent of the President.

SECTION 103.Special provision for exemption in certain cases relating to construction of Airport or port.

(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the

29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

(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, 2016 receives the assent of the President.

SECTION 104 .(1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax, leviable on one time upfront amount (premium, salami, cost, price, development charge or by whatever name called) in respect of taxable services provided or agreed to be provided by a State Government industrial development corporation or undertaking to industrial units by way of grant of long term lease of thirty years or more for industrial plots, shall be levied and collected during the period commencing from the 1st day of June, 2007 and ending with 21st day of September, 2016 (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 times.

(3) Notwithstanding anything contained in this Chapter, an application for claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2017 receives the assent of the President.

Section 105.(1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax shall be levied or collected in respect of taxable services provided or agreed to be provided by the Army, Naval and Airforce Group Insurance Funds by way of life insurance to the members of the Army, Navy and Airforce, respectively, under the Group Insurance Schemes of the Central Government, during the period commencing from the 10th day of September, 2004 and ending with the 1st day of February, 2016 (both 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 times.

(3) Notwithstanding anything contained in this Chapter, an application for claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2017 receives the assent of the President.

