

CHAPTER V

SERVICE TAX

125. In the Finance Act, 1994,—

(A) in section 65, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,—

(1) in clause (12),—

(a) in sub-clause (a),—

(i) for the words “or any other person”, the words “or commercial concern” shall be substituted;

(ii) in item (i), the following *Explanation* shall be inserted at the end, namely:—

‘*Explanation.*—For the purposes of this item, “financial leasing” means a lease transaction where—

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;’;

(iii) in item (v), for the words “custodial, depository and trust services, but does not include cash management”, the words “custodial, depository and trust services” shall be substituted;

(2) for clause (20), the following clause shall be substituted, namely:—‘

‘(20) “cab” means—

(i) a motorcab, or

(ii) a maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward:

Provided that the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab;’;

(3) after clause (36a), the following clauses shall be inserted, namely:—

‘(36b) “design services” includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models;

(36c) “development and supply of content” includes development and supply of mobile value added services, music, movie clips, ring tones, wall paper, mobile games, data, whether or not aggregated, information, news and animation films;’;

(4) in clause (40), for the words “sports or any other event”, the words “sports, marriage or any other event” shall be substituted;

(5) clause (60) shall be omitted;

(6) in clause (64), the following *Explanation* shall be inserted at the end, namely:—

‘*Explanation.*—For the removal of doubts, it is hereby declared that for the purposes of this clause, “goods” includes computer software;’;

(7) for clause (65), the following clause shall be substituted, namely:—

‘(65) “management or business consultant” means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management;’;

(8) after clause (66), the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the purposes of this clause, social function includes marriage;’;

(9) after clause (67), the following *Explanation* shall be inserted, namely:—

‘*Explanation.*—For the purposes of this clause, “social function” includes marriage;’;

(10) after clause (77a), the following *Explanation* shall be inserted, namely:—

Explanation.—For the purposes of this clause, “social function” includes marriage;’;

(11) after clause (90), the following clause shall be inserted, namely:—

‘(90a) “renting of immovable property” includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

Explanation.—For the purposes of this clause, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;’;

(12) clause (104) shall be omitted;

(13) in clause (105),—

(a) sub-clauses (b) and (c) shall be omitted;

(b) in sub-clause (g), for the words “but not in the discipline of computer hardware engineering or computer software engineering”, the words “including the discipline of computer hardware engineering but excluding the discipline of computer software engineering” shall be substituted;

(c) in sub-clause (k), the following *Explanation* shall be inserted at the end, namely:—

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate;’;

(d) for sub-clause (r), the following sub-clause shall be substituted, namely:—

“(r) to a client, by a management or business consultant in connection with the management of any organisation or business, in any manner;”;

(e) sub-clauses (zd), (ze), (zf) and (zg) shall be omitted;

(f) in sub-clause (zm), for the words “or any other person”, the words “or commercial concern” shall be substituted;

(g) in sub-clause (zzzm), for *Explanation 2*, the following *Explanation* shall be substituted, namely:—

Explanation 2.—For the purposes of this sub-clause, “print media” means,—

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

25 of 1867.

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

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25 of 1867.

(h) after sub-clause (zzzw), the following sub-clauses shall be inserted, namely:—

‘(zzzx) to any person, by the telegraph authority in relation to telecommunication service;

(zzzy) to any person, by any other person in relation to mining of mineral, oil or gas;

(zzzz) to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1.—For the purposes of this sub-clause, “immovable property” includes—

(i) building and part of a building, and the land appurtenant thereto;

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

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(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

5 (c) land used for educational, sports, circus, entertainment and parking purposes; and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

10 *Explanation 2.*—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

15 (zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, “works contract” means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

20 (ii) such contract is for the purposes of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

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(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

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(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

35 (zzzzb) to any person, by any other person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services;

40 (zzzzc) to any person, by any other person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (zm), in relation to asset management including portfolio management and all forms of fund management;

(zzzzd) to any person, by any other person in relation to design services,

but does not include service provided by-

(i) an interior decorator referred to in sub-clause (q); and

(ii) a fashion designer in relation to fashion designing referred to in sub-clause (zv);;

45 (14) after clause (109), the following clause shall be inserted, namely:—

(109a) “telecommunication service” means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes—

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(i) voice mail, data services, audio tex services, video tex services, radio paging;

(ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and

outbound telephone service to and from national and international destinations;

(iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

(iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

(v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;

(vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;

(vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by-

(a) any person in relation to on-line information and database access or retrieval or both referred to in sub-clause (zh) of clause (105);

(b) a broadcasting agency or organisation in relation to broadcasting referred to in sub-clause (zk) of clause (105); and

(c) any person in relation to internet telephony referred to in sub-clause (zzzu) of clause (105);;

(B) for section 66, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the following section shall be substituted, namely:—

“66. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. of the value of taxable services referred to in sub-clauses (a), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zp), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc), (zdd), (zde), (zdf), (zdg), (zdj), (zdk), (zdl), (zdm), (zdn), (zdo), (zdp), (zdz), (zdt), (zdu), (zdv), (zdw), (zdx), (zdy), (zdz), (zzz), (zzza), (zzzb), (zzzc), (zzzd), (zzze), (zzzf), (zzzg), (zzzh), (zzzi), (zzzj), (zzzk), (zzzl), (zzzm), (zzzn), (zzzo), (zzzp), (zzzq), (zzzr), (zzzs), (zzzt), (zzzu), (zzzv), (zzzw), (zzzx), (zzzy), (zzzz), (zzzza), (zzzzb), (zzzzc) and (zzzzd) of clause (105) of section 65 and collected in such manner as may be prescribed.”;

(C) in section 70, in sub-section (1), for the words “ as may be prescribed”, the words “ and with such late fee not exceeding two thousand rupees, for delayed furnishing of return, as may be prescribed” shall be substituted;

(D) in section 83,—

(i) after the figures “14,”, the figures and letters “14AA,” shall be inserted;

(ii) after the figures and letter “37D”, the figures and letter “,38A” shall be inserted;

(E) in section 86,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A)(i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.

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

(b) in sub-section (2), for the word “Board”, the words “Committee of Chief Commissioners of Central Excise” shall be substituted;

(c) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(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.”;

(d) in sub-section (3), for the words “Board or by the Commissioner of Central Excise”, the words “Committee of Chief Commissioners or the Committee of Commissioners” shall be substituted;

(F) in section 94, in sub-section (2), for clause (c), the following clause shall be substituted, namely:-

“(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;”.

5 (G) in section 95, after sub-section (1C), the following sub-section shall be inserted, namely:—

“(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 :

10 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.”;

(H) in section 96A, in clause (b), the following *Explanation* shall be inserted at the end, namely:—

15 ‘*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;’.