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Introduction

Service tax is tax of 21st Century. In India share of GDP in 2006-07 was - Agriculture - 18.5%, Industry - 26.4%, Services - 55.1% (Source - Economic Survey 2006-07). Service tax was imposed on three services w.e.f. 1-7-1994 and its scope is being widened every year. Highlights of the service tax are as follows –

Service tax is imposed under Finance Act, 1994 as amended from time to time. There is no Service Tax Act.

Service tax is payable @ 12% plus education cess of 2%, plus SAH education cess of 1% (total 12.36%) w.e.f. 11th May 2007 [Section 66]. Service tax was 12.24% from 18-4-2006 to 10-5-2007. Earlier, the rate was 10.2% from 10-9-2004 to 17-4-2006.

Service tax is payable on taxable services as defined in various clauses of section 65(105) of Finance Act, 1994. Presently, about 99 services are taxable.

Service tax is payable on gross amount charged for taxable service provided or to be provided [Section 67]. If consideration is partly not in money, valuation is required to be done as per Valuation Rules. Tax is payable when advance is received.

Small service providers upto eight lakhs are exempt. Export of service is exempt from service tax under Notification No. 6/2005-ST dated 1-3-2005. Services provided in J&K are not taxable [section 64(1)]

Cenvat credit is available of inputs, input services and capital goods used for providing taxable output services.

In some cases, receiver of service is liable to pay service tax. This is termed as 'reverse charge' [Section 68(2)].

Every provider of taxable service should apply for registration in form ST-1 within 30 days from date of levy (in case of new services) and date of commencement of business of providing taxable service In case of existing services [Rule 4(1)]. Registration will be deemed to have been granted if not received within seven days [Rule 4(5)].

Assessee providing service from various premises can have centralised registration [Rule 4(2)]

Service provider is required to prepare invoice within 14 days, even in respect of advance received [Rule 4A].

Tax should be paid by 5th of following month (6th in case of e-payment). If assessee is individual

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or proprietary or partnership firm, tax is payable on quarterly basis. This facility is not available to HUF. In March, tax is payable by 31st March [Rule 6].

If payment of tax is delayed, interest is payable @ 13% [Section 75]

Assessee has to submit half yearly return in form ST-3 in triplicate within 25 days of close of half year [Rule 7]

Penalty is payable for non-registration, late payment of tax, non-submission of returns etc.

Mandatory penalty is payable for suppression of facts, willful misstatement, fraud or collusion [sections 76 to 80]

The tax is administered by excise department. Adjudication order is issued by excise officer.

First appeal lies with Commissioner (Appeals) [section 85] and second appeal with Appellate Tribunal (Customs, Excise and Service Tax Appellate Tribunal) [Section 86]. Further appeal lies with High Court and Supreme Court.

Nature of levy of Service Tax - Service tax is levied under Entry No. 97 of List I of Seventh Schedule to Constitution of India. The entry reads as follows – ‘Any other matter not included in List II, List III and any tax not mentioned in list II or list III’. (These are called ‘Residual Powers’.)

As per section 65(95) of Finance Act, 1994, ‘service tax’ means tax leviable under the provisions of this Chapter (i.e. Chapter V of Finance Act, 1994). Section 66 (charging section) provides that there shall be levied a tax (service tax) @ 12% of the value of taxable service referred to in various clauses of section 65(105). It will be collected in a manner as may be prescribed.

Taxable Service - As per section 66 of Finance Act, 1994, service tax is payable on ‘taxable service’. Various clauses of section 65(105) of Finance Act, 1994 define each type of ‘taxable service’. The definition is different for each class of services, e.g. as per section 65(105)(a), any service provided by stock broker to any person in connection with sale or purchase of securities listed on a recognised stock exchange will be ‘taxable service’.

Service tax is destination-based consumption tax - Service tax is a destination based consumption tax, as per CBE&C Circular No. 56/5/2003 dated 25-4-2003.

Service implies existence of two parties - Service tax is attracted when there are two parties. One cannot give service to himself.

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Cenvat Credit – Assessee is entitled to avail Cenvat credit of excise duty and service tax paid on his inputs, input services and capital goods. This aspect has been discussed in another chapter.

Rate of Service Tax

This tax was first time introduced with effect from 1-7-1994 on three services. The rate was 5%. It was subsequently increased to 8% w.e.f. 14-5-2003. It was 10% plus education cess of 2% w.e.f. 10-9-2004 (total 10.2%) during 10-9-2004 to 17-4-2006. Service tax rate was 12% plus education cess of 2% (total 12.24%) during 18-4-2006 till 10-5-2007.

Presently (w.e.f. 11-5-2007), service tax is payable @ 12% of value of taxable services referred in section 65(105) of Finance Act, 1994. In addition, education cess of 2% and SAH education cess of 1% is payable. Thus, total service tax is 12.36%.

Service tax, education cess and SAH education cess to be shown separately in invoice - You have to show service tax, education cess and SAH education cess separately in invoice. You cannot just charge 12.36% as 'service tax'.

Taxable Event in Service Tax

Section 66 (which is a charging section), reads, 'There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten percent of value of taxable services referred to in sub-clauses (a), (b), - - - (zzzzc) and (zzzzd) of clause (105) of section 65 and collected in such manner as may be prescribed.

Opening sentence of section 65(105) as amended w.e.f. 16-6-2005 reads as follows, 'taxable service' means any service provided or 'to be provided'. Thus, following are taxable events -

(a) Entering into contract for service - Entering into contract for providing service. Once you enter into a contract, it is certainly 'service to be provided'. (Service tax is actually payable after payment is received, but receipt of advance is not a taxable event. It only defers the liability).

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(b) Provision of service - This will happen in cases where contract for providing service was entered into before the service became taxable, but service was provided after the service became a 'taxable service'.

Person liable to pay Service tax

In most of the cases, service provider, i.e. person who is providing taxable service is liable to pay service tax. However, in few cases, exceptions have been made and service receiver is made liable to pay service tax. The provision that service receiver is liable to pay service tax is termed as 'Reverse Charge'. The exceptions are as follows -

Services provided to non-resident - In relation to taxable service provided or to be provided by any person from a country other than India and received by any person under section 66A of Finance Act, service tax is payable by recipient of service [Rule 2(1)(d)(iv)]

Services of insurance agents - In case of insurance auxiliary service by an insurance agent, the tax will be payable by insurance company (general insurance or life insurance as the case may be). The insurance agent is not liable to register and pay tax. [However, the insurance agent is not entitled to avail exemption available to a small service provider].

Consignor/consignee paying freight, in case of GTA services - In case of services of Goods Transport Agency (GTA), service tax is payable by consignor/consignee who is paying freight [rule 2(1)(d)(v)] [However, the consignor/consignee is not entitled to avail exemption available to a small service provider].

Services of Agents of mutual fund - In case of distributors/agents of mutual funds, the liability will be on the recipient of service, namely, mutual funds [Rule 2(1)(vi)] [However, the mutual fund agent is not entitled to avail exemption available to a small service provider].

Body corporate or firm located in India receiving sponsorship service - In case of sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship service will be liable to pay service tax [rule 2(1)(d)(vii) inserted w.e.f. 1-5-2006 and amended w.e.f. 1-4-2007]. If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient.

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Cenvat credit of tax paid - The Body corporate or firm paying such service tax will be eligible to avail Cenvat credit of the service tax paid, on the basis of TR-6/GAR-7 challan by which the tax is paid [Rule 9(1)(e) of Cenvat Credit Rules, as amended w.e.f. 1-5-2006]. It may be noted that when person receiving service is liable to pay service tax, he is not entitled to exemption which is available to a small service provider.

Large Taxpayer Unit (LTU) - A concept of LTU has been introduced for large taxpayers of direct taxes and indirect taxes. In case of service tax, Large Taxpayer has meaning assigned to it in Central Excise Rules [rule 2(cccc) of Service Tax Rules]. LTU has started functioning in Bangalore w.e.f. 1-10-2006.

16.1-4 Service on sub-contract basis

CBE&C vide circular No. 999.03/23.8.07 has clarified that a sub-contractor is also a taxable service provider. His services are taxable even if these are used by main provider for completion of his work. The sub-contractor is liable even if the service is input service of the main contractor and main contractor is paying service tax on entire value of contract.

Value of Taxable Service

Section 67 of Finance Act, 1994 contains provisions for valuation of taxable services for charging service tax. The highlights of provisions of section 67 as effective from 18-4-2006 are as follows -

- u Service tax is payable on gross amount charged by service provider for service provided or 'to be provided'. Thus, tax is payable as soon as advance is received.
- u 'Value of taxable service' plus service tax payable is equal to 'gross amount charged' [section 67(2)].
- u Where the consideration for providing services is entirely in money, gross amount charged by service provider of taxable service provided or to be provided by him will be relevant for 'valuation' [section 67(1)(i)].
- u Where the consideration for providing services is not wholly or partly in terms of money, service tax is payable on amount of money, which with addition of tax service tax charged, is equivalent to the consideration [section 67(1)(ii)].
- u Where consideration is not ascertainable, valuation will be on basis of Valuation Rules [section 67(1)(iii)]
- u If gross amount charged by service provider is inclusive of service tax (i.e. service tax not charged separately in invoice), value of taxable service will be calculated by back calculations such that with addition of service tax payable, the total is equal to the gross amount charged [section 67(2)].

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- u Gross amount charged for taxable services can be before, during or after provision of service [section 67(3)].

Highlights of service tax valuation rules - In exercise of powers under section 67, Service tax (Determination of Value) Rules, 2006 have been issued w.e.f. 19-4-2006. The Service Tax Valuation Rules provide as follows -

- u If consideration is not wholly or partly consisting of money, value will be determined by service provider in terms of rule 3.
- u As per rule 3(a) of Service Tax Valuation Rules, valuation shall be on basis of gross amount charged by service provider for similar services.
- u If value cannot be determined on basis of rule 3(a), valuation shall be on basis of equivalent money value of such consideration, which shall not be less than cost of provision of such services [rule 3(b) of Service Tax Valuation Rules]
- u Central Excise Officer can reject 'value' determined by service provider and determine 'value' for purpose of service tax payment [rule 4].
- u Rules 5 and 6 make provisions for certain specific inclusions and exclusions for valuation
- u Payments made by service provider as 'pure agent' of service receiver and recovered from service receiver are excluded for purpose of valuation [rule 5(2)]
- u In case of services provided from outside India, actual consideration received will be relevant for valuation [rule 7(1)].

Amount need not be 'charged' by service provider - money paid to third party may also be includible - It is not necessary that the money should be paid to service provider himself. Amount paid even to third party is includible in 'value' of service if it is for provision of service and at the instance of service provider.

Service tax payable on net amount excluding Vat/sales tax - Rule 2A(1)(i)(a) of Service Tax Valuation Rules and rule 3(1) of Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007 make it clear that Vat/sales tax is not to be included in value for purpose of service tax. Thus, service tax is payable only on net amount excluding Vat/sales tax payable on the transaction.

Tax payable only on amount actually received - Rule 6(1) of Service Tax Rules makes it clear that service tax is payable on value of taxable services received. Thus, if service provider does not receive any payment from his customer, there is no liability of service tax. Service tax is payable only on 'value of taxable service' actually 'received', and not on amount 'billed'.

Calculation of service tax by back calculations

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The gross amount charged can be taken as inclusive of service tax and the 'value' and 'service' tax is to be calculated by back calculations.

For example, if Bill amount is Rs. 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by a simple mathematical formula is as follows -

Assessable Value = (Cum tax price)/(1 + rate of tax)

Assume that Assessable Value (AV) is equal to 'Z'.

AV	=	1.000 Z
Duty @ 12.36%	=	0.1236 × Z
Sub-Total	=	1.1236 × Z
Now :		
1.1236 × Z	=	1,000
Hence, 'Z'	=	1,000/1.1236
i.e. Z	=	890.00

Thus, 'Z', i.e. Assessable Value is Rs 890 and service tax @ 12% will be Rs 106.79. Education cess @ 2% of service tax will be Rs 2.14. SAH education cess is Rs 1.07. Thus, total tax will be Rs 110.00.

16.2-2 Reimbursement of expenses or 'Out of pocket' expenses

The service provider often claims reimbursement of certain expenses incurred by him (like travelling, boarding and lodging, etc.) while providing a taxable service. These are often termed as 'out of pocket' expenses. These are really charges for taxable services and are includible.

Reimbursement of expenses incurred on behalf of service receiver not includible - Often, a service provider incurs some expenditure on behalf of service receiver and then recovers the amount from him. Such expenditure is not part of service provided by him to service receiver, but is incurred by him as per business practice or convenience. Following illustrations may clarify the provisions -

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- u Octroi/entry tax amount paid by Clearing & Forwarding Agent, CHA or Transporter on behalf of owner of goods/Principal.
- u Customs duty, dock dues, demurrage, transport charges etc. paid by Customs House Agent on behalf of client.
- u Advertisement charges paid by Advertising Agency to newspaper on behalf of clients.
- u Ticket charges paid by Travel Agent and recovered from his customer.
- u Reimbursement of godown, salary and loading/unloading expenses by Principal to C&F Agent.

These are not part of service provided and hence are not includible. Rule 5(2) provides that the expenditure or costs that a service provider incurs, as a pure agent of the client, shall be excluded from the value if such service provider fulfils prescribed conditions.

The principle is also discernible from various exclusions as contained in rule 6(2).

Valuation in case of indivisible contracts

In case of indivisible contracts involving sale of goods plus provision of service, it is difficult to identify service portion.

Exclusion of value of material - Notification No. 12/2003-ST dated 20-6-2003 provides that if the amount charged includes value of goods and materials sold, service tax will not be payable on value of goods and materials sold. There should be documentary evidence showing value of goods and materials sold. This exemption is available only if Cenvat credit of such material is not taken. If such credit was taken, assessee should pay amount equal to the credit. Such payment should be before sale of such goods and materials.

Many exemption notifications provide that exclusion under notification 12/2003-ST is allowable only when the service tax is paid at full rate and any abatement under any other exemption notification is not claimed. Hence, in such cases, notification No. 12/2003-ST is of no use.

In Bharat Sanchar Nigam Ltd. v. UOI (2006) 3 SCC 1 = 152 Taxman 135 = 282 ITR 273 = 3 VST 95 = 145 STC 91 = 3 STT 245 = AIR 2006 SC 1383 = 2 STR 161 (SC 3 member bench), it has been clearly held that price of goods cannot be included in value of services. Conclusion (E) of the judgment (para 92 of SCC and para 81 of STT and Taxman) reads as follows, 'The aspect theory would not apply to enable the value of service to be included in the sale of goods or the price of goods in the value of service'.

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All expenditure and costs relating to provision of service incurred by service provider are includible - Rule 5(1) provides that where certain expenditure or costs are incurred by the service provider in the course of providing any taxable service, all such expenditure or costs shall be treated as consideration for the taxable services provided or to be provided and shall be included in the 'value' for purpose of charging of service tax on the said service.

This is a general rule which makes it clear that, even when such expenditure or costs are recovered separately by service provider from service receiver, such expenditure or costs must be included in the value of taxable service.

However, expenditure incurred by service provider as 'pure agent' of service receiver is not includible, as per rule 5(2).

Exemptions from service tax

Central Government can grant partial or total exemption, by issuing an 'exemption notification' u/s 93 of Finance Act, 1994. Such exemption may be partial or total. Exemption may be conditional or unconditional. The only limitation is that exemption cannot be granted by Central Government with retrospective effect. There are following general exemptions -

Small service providers - Small units whose turnover less than Rs. eight lakhs per annum are exempt from service tax. Provisions are discussed a little later (The exemption limit was Rs four lakhs upto 31-3-2007).

Export of Services - There is no service tax on export of services, if service is exported as per 'Export of Service Rules'.

Services to UN Agencies - Services provided to UN and International Agencies are exempt [Notification No. 16/2002-ST dated 2-8-2002].

Services provided within SEZ - Services provided to SEZ unit or SEZ developer for consumption within SEZ are exempt [Notification No. 4/2004-ST dated 31-3-2004 in respect of SEZ]. The wording of notification is such that services consumed within the zone are alone exempt. Thus services provided outside SEZ (e.g. customs clearance, transport etc.) are not exempt.

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Taxable services provided to a developer or a unit in SEZ are exempt from service tax [section 26(1)(e) of SEZ Act]. [rule 31 to SEZ Rules]

Services provided to foreign diplomatic missions, family members of diplomatic missions etc. -

Any taxable service provided to foreign diplomatic mission or consular post in India is exempt

vide Notification No. 33/2007-ST dated 23-5-2007. Similarly, any taxable service provided for

private use of family members of diplomatic agents or career consular offices posted in a foreign

diplomatic mission or consular post in India is exempt vide Notification No. 34/2007-ST dated 23-

5-2007.

Services provided by RBI exempt - Exemption from service tax has been provided to all taxable services provided by Reserve Bank of India. Services where RBI is liable to pay service tax are also exempt (Notification No. 22/2006-ST dated 31-5-2006 – earlier Notification No. 7/2006-ST dated 1.3.2006).

General Exemption to small service providers

The small service providers whose turnover of taxable services from one or more premises did not exceed Rs. eight lakhs in 2006-07 will be exempt from service tax in next financial year i.e. in 2007-08 upto the turnover of Rs. eight lakhs. The provisions are prescribed in Notification No. 6/2005-ST dated 1-3-2005 (The exemption limit was Rs four lakhs upto 31-3-2007). However, if value of taxable turnover exceeds Rs 8 lakhs in 2007-08, there will be not exemption at all in 2008-09.

For the purpose of determining eligibility in current year, what is relevant is that 'aggregate value of taxable services rendered' in previous financial year should not exceed Rs. eight lakhs, while for purpose of exemption upto first-Rs. eight lakhs in current year, service tax is exempt to the extent of 'aggregate value not exceeding eight lakhs', i.e. the sum total of first consecutive payments received during the current financial year.

The exemption to small service providers is available subject to following conditions -

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- v The provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services.
- v Where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services.
- v The taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; will not be eligible for exemption available to small service providers.
- v Person providing taxable service in excess of Rs. seven lakhs per annum (but less than Rs. eight lakhs) will have to register with Superintendent of Central Excise under Service Tax provisions [Notification No. 26/2005-ST dated 7-6-2005], though they will be eligible for exemption if turnover is less than Rs. eight lakhs per annum.

Specific Exemptions

In case of some services e.g. catering services, mandap keeper services and construction services, service tax is payable at lower rates, i.e. partial abatement is available from gross value, vide 1/2006-ST dated 1-3-2006. The lower rate is applicable if the service provider does not avail Cenvat credit of duty/tax on inputs, input services and capital goods. Till 28-2-2006, he was entitled to avail Cenvat credit on input services. W.e.f. 1-3-2006, he cannot avail any Cenvat credit, if he avails the partial abatement.

Some important exemptions are as follows –

Taxable Service	Partial abatement available
Accommodation booking service by tour operator	10% of gross amount charged
Air Travel Agent	Option to pay service tax at flat rate on 'basic fare' @ 0.6% in case of domestic booking and 1.2% in case of international booking [rule 6(7) of Cenvat Credit Rules]
Business Auxiliary Service in relation to processing of parts and	Tax on 70% of gross amount if gross amount is inclusive of cost of inputs

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accessories used in manufacture of cycle, cycle rickshaws and hand operated sewing machines	and input services, whether or not supplied by the client (Is it exemption or punishment?)
Erection, Commissioning and installation contract for supply of plant, machinery, equipment or structures plus erection, commissioning and installation services	Tax on 33% of gross amount if gross amount includes value of material
Construction Service	Tax on 33% of gross amount if gross amount includes value of material
Goods Transport Agency (GTA)	Tax only on 25% amount in his invoice [Payment will be made by consignor/consignee who is actually paying freight]
Mandap keeper, hotels and convention services, providing full catering services	Tax on 60% gross amount charged
Outdoor caterer	Tax on 50% amount if he provides full and substantial meal
Pandal and shamiana Service	70% of gross amount charged if full catering service provided
Rent-a-cab operator	Tax payable on 40% of gross amount charged
Tour operator - Package tours ("package tour" means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person	Tax is payable only on 25% of gross amount charged w.e.f. 23-8-2007 (till 22-8-2007, tax was payable on 40% of gross amount

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undertaking the tour).	
Tour operator - providing services solely of arranging or booking accommodation for any person in relation to a tour (If Bill includes cost of accommodation)	Tax is payable only on 10% of gross amount charged
Tour operator – Other than package tours and other than service of booking accommodation where Bill includes cost of accommodation	Tax is payable only on 10% of gross amount charged
Transport of goods in container by rail	Tax payable on 30% of gross amount charged

Services provided to EOU - Services provided to EOU/EHTP/STP/BTP are **not** exempt from service tax. Para 6.11(c)(v) of Foreign Trade Policy (as amended on 7-4-2006) states that EOU/EHTP/STP/BTP units can avail Cenvat credit of service tax paid. The EOU units can claim rebate of service tax paid on their input services vide rule 5 of Cenvat Credit Rules (as amended on 14-3-2006). Procedure for claiming refund of service tax paid on input services and excise duty on inputs has been specified in notification No. 5/2006-CE(NT) dated 14-3-2006.

No service tax on service provided in J&K - Service tax provisions are not applicable in Jammu and Kashmir. Service tax will not be payable only if service is provided in J&K. If a person from J&K provides service outside J&K in any other part of India, that service will be taxable, as location where service is provided is relevant. Merely because office is situated in J&K does not mean that service is provided in J&K.

Classification of service

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There are various types of services on which service tax is payable. These are specified in various sub-clauses of section 65(105) of Finance Act, 1994. It is possible that a service may appear to be classifiable under more than one headings. It is necessary to specify the heading under which the service being provided is falling. This is termed as 'classification'. As per rule 4A(1) of Service Tax Rules, the invoice should indicate description and classification of service.

Principles of classification - The classification of services will be determined according to terms specified in various sub-clauses of section 65(105). [section 65A(1)]. If prima facie, a taxable service is classifiable under two or more sub-clauses of section 65(105), classification shall be effected as per following rules -

- u The sub-clause which provides most specific description should be preferred over sub-clauses providing a more general description [section 65A(2)(a)]
- u Classification should be as per essential character in case of composite services. Composite services are those consisting of combination of different services. In case of such services, if the service cannot be classified on the basis of specific description as per section 65A(2)(a) above, it shall be classified as if they consisted of a service which gives them their essential character [section 65A(2)(b)].
- u Service which appears earlier in list, if service cannot be classified on above basis. If a service cannot be classified on basis of above provisions, the service should be classified under sub-clause which occurs first among the sub-clauses which equally merit consideration [section 65A(2)(c)].

Service which has been specifically excluded in definition of one service cannot be covered under another head - In Dr. Lal Path Lab (P) Ltd. v. CCE (2006) 5 STT 171 (CESTAT), it was held when there is a specific entry for an item in the tax code, same cannot be taxed under any other entry. If a service has been specifically excluded from definition of one service, it cannot be covered under another taxable service.

Introduction of new heading means earlier it was not taxable - In Glaxo Smithkline Pharmaceuticals v. CCE (2005) 1 STT 37 (CESTAT), it has been held that when an existing tariff definition remains same, introduction of new tariff entry would imply that the coverage under new Tariff was not covered by the earlier entry. When new category is introduced, it means that the service was not taxable under old category.

Service should be mainly or principally a taxable service - A composite contract cannot be vivisected and service portion cannot be subjected to tax – Widia GMBH v. CCE (2006) 5 STT 414 (CESTAT) * Blue Star v. CCE (2007) 7

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STT 68 (CESTAT). In Daelim Industrial Co. v. CCE 2003 STT 438 = 7 STT 184 (CEGAT), it was held that a works contract cannot be vivisected and part of it subjected to tax.

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