

VALUATION UNDER SERVICE TAX

SECTION 67

VALUATION OF TAXABLE SERVICES FOR CHARGING SERVICE TAX

(1) 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 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**.

<u>Explanation</u> — For the purposes of this section, —		
(a)	“Consideration”	Includes any amount that is payable for the taxable services provided or to be provided;
(b)	“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 <u>ASSOCIATED ENTERPRISE</u> .

(2) Where the **gross amount** charged by a service provider, 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**.

SECTION 67A**DATE OF DETERMINATION OF RATE OF TAX, VALUE OF TAXABLE SERVICE AND RATE OF EXCHANGE**

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.**

~~**Explanation.** For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the Explanation to section 14 of the Customs Act, 1962.;~~

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.

(Substituted by Finance Act' 2014 w.e.f. 1st Oct' 2014)

SERVICE TAX RULES' 1994**RULE 11****DETERMINATION OF RATE OF EXCHANGE**

- The Rate of Exchange for determination of value of taxable service
- Shall be the applicable Rate of Exchange as per the Generally Accepted Accounting Principles
- On the date when point of taxation arises in terms of the Point of Taxation Rules, 2011.

RULE 12**POWER TO ISSUE SUPPLEMENTARY INSTRUCTIONS**

The Board or the Chief CCE may issue instructions for any incidental or supplemental matters for the implementation of the provisions of the Act.

(Inserted by Notification No 19/2014 w.e.f. 1st Oct' 2014)

POINT OF TAXATION RULES' 2011**RULE 7****DETERMINATION OF POT IN CASE OF SPECIFIED SERVICES OR PERSONS**

Notwithstanding anything contained in these Rules **3, 4, or 8**, the point of taxation in respect of the following shall be the date on which the payment is ~~received or~~ made:-

(a)	<p>The persons required to pay tax as recipients under the rules made in this regard in respect of services notified under section 68(2) of the Finance Act, 1994;</p> <p>(Provided that where the payment is not made within a period of 6 months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.)</p> <p>(Provided that where the payment is not made within a period of 3 months of the date of invoice, the point of taxation shall be the date immediately following the said period of 3 months)</p>
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	[Amended by Notification No 13/2014 (Applicable w.e.f. 1st Oct 2014)]
<p>Provided also that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the</p> <p>→ Date of debit in the books of account of the person receiving the service or</p> <p>→ Date of making the payment</p> <p><u>Whichever Is Earlier.</u></p>	

Effect of Amended by Notification 13/2014 w.e.f. 1st Oct 2014
<p>1. Rule 7 amended</p> <p>Pre amendment, if the payment is made to the service provider under reverse charge cases within 6 months of the date of invoice, then the point of taxation (POT) is the date of payment; otherwise, the POT is date of invoice. This leads to the payment of huge interest if the payment is not made within 6 months.</p> <p>Post amendment, the payment is to be made within 3 months of the date of invoice. If the payment is not made within this period, then the POT shall be the date immediately following the said period of 3 months: This will not lead to payment of huge interest.</p> <p>2. Transitional Rule 10 inserted</p> <p>New Rule 10 has been inserted to clarify that this amendment to Rule 7 will apply only to invoices issued after 1st October, 2014. For invoice issued prior to 1st October, 2014, old provisions shall prevail.</p>

Example-1 [On services covered under reverse charge i.e. services received from abroad, GTA, etc]

A Ltd. imports Business Support Services from B Ltd. of USA on **13.11.2014**. The relevant invoice for \$ 1,20,000 is raised by B Ltd. **18.12.2014**. A Ltd. makes the aforementioned payment as per following table:

Case I	20.01.2015
Case II	27.05.2015

Point of Taxation in each of above two cases will be as under:

CASE	Point of Taxation	Detailed Reason/Remark
Case I	Date of payment i.e. 20.01.2015	Since the importing company i.e. A Ltd makes the payment within the 3 months from the date of invoice, date on which payment is made will be considered as Point of Taxation.
Case II	Date of completion of 3 months from the date of invoice i.e. 19.03.2015	As A Ltd. does not make the payment within 3 months from the date of invoice, Point of Taxation <i>shall be the date immediately following the period of 3 months</i> from the date of invoice.

RULE 8

DETERMINATION OF POINT OF TAXATION IN CASE OF COPYRIGHTS, ETC.

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents,

- where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and
- subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration,
- the service shall be treated as having been provided
 - ✓ each time when a payment is received by the provider in respect thereof, or
 - ✓ an invoice is issued by the provider,Whichever is earlier

☞ RULE 8A

BEST JUDGMENT DETERMINATION OF POINT OF TAXATION

- Where the point of taxation cannot be determined as per these rules
 - ✓ as the date of invoice or
 - ✓ the date of payment
 - ✓ or both are not available,
- the CEO, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and
- after taking into account such material and the effective rate of tax prevalent at different points of time, shall,
- by an order in writing and after giving an opportunity of being heard,
- Determine the point of taxation to the best of his judgment.

☞ RULE 10

TRANSITIONAL PROVISIONS

Notwithstanding anything contained in the first proviso to Rule 7,

- If the invoice in respect of a service, for which point of taxation is determinable under Rule 7 has been issued before the 1st day of October, 2014
- But payment has not been made as on the said day,
- The point of taxation shall,-
 - (a) If payment is made within a period of 6 months of the date of invoice,
 - Be the date on which payment is made;
 - (b) If payment is not made within a period of 6 months of the date of invoice,
 - Be determined as if rule 7 and this rule do not exist."

[Inserted by Notification No 13/2014 (Applicable w.e.f. 1st Oct 2014)]

CENVAT CREDIT RULES' 2004
CONDITIONS FOR ALLOWING CENVAT CREDIT ON INPUT SERVICES

<u>Rule 4(7)</u>	<p><u>Availment of Credit on receipt of Invoice, etc</u> The Cenvat credit in respect of INPUT SERVICE shall be allowed, ⇒ On or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received.</p> <p><u>Availment of credit on payment made under Reverse Charge cases</u> Provided that in respect of Input Service where whole of the service tax is liable to be paid by the recipient of service, → Credit shall be allowed after the service tax is paid:</p> <p><u>Availment of credit on payment made under Partial Reverse Charge cases</u> Provided further that in respect of an Input Service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, → The Cenvat credit in respect of such input service shall be allowed on or after the day → On which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:</p> <p><u>Non-payment within 3 months – First pay and then Re-take</u> Provided also that → In case the payment of the value of Input Service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, → Is not made within 3 months of the date of the invoice, bill or, as the case may be, challan, → The manufacturer or the service provider who has taken credit on such input service, → Shall pay an amount equal to the Cenvat credit availed on such input service and → In case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the Cenvat credit paid earlier subject to the other provisions of these rules:"</p> <p><u>Non-payment within 3 months – First pay and then Re-take</u> Provided that in case the payment for the value of input service and the service tax as indicated in the invoice, etc, is not made within 3 months of the date of the invoice, etc, → The manufacturer or the service provider who has taken credit on such input service, → Shall pay an amount equal to the cenvat credit availed on such input service and → In case the said payment (i.e. value of input service and the service tax) is made, the manufacturer or output service provider, as the case may be,</p>
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→ **Shall be entitled to re-take the credit** of the amount equivalent to the cenvat credit paid earlier subject to the other provisions of these rules.

Availment of credit on payment made under Reverse Charge cases

Provided further that in case of an input service ~~where the service tax is paid on Reverse Charge~~ by the recipient of the service, the Cenvat credit in respect of such input service shall be allowed

⇒ **On or after the day on which payment is made of the value** of input service **and the service tax** paid or payable as indicated in invoice, etc.

(Amended by Notification No: 21/2014 w.e.f. 11th July' 2014)

Transitional Provisions

Provided also that

→ Cenvat credit in respect of an invoice, etc, issued before 1 April, 2011

→ **Shall be allowed on or after the day on which payment for the value** of input service **and the service tax** as indicated in invoice, etc is made.

Cenvat Credit in case of Credit Note

Provided also that

→ **If any payment or part thereof, made towards an input service is refunded or a credit note is received** by the manufacturer or the service provider who has taken credit on such input service,

→ **He shall pay an amount equal to the cenvat credit availed in respect of the amount so refunded or credited.**

No Cenvat Credit After 6 months

Provided also that the manufacturer or the provider of output service shall not take Cenvat credit after 6 months of the date of issue of any of the documents specified in Rule 9(1).

(Inserted by Notification No: 21/2014 w.e.f. 1st September' 2014)

Explanation I –

The **amount mentioned** in this sub-rule, unless specified otherwise,

→ **Shall be paid** by the manufacturer of goods or the provider of output service

→ **By debiting the Cenvat credit or otherwise**

→ **On or before the 5th day of the following month** except for the month of march when such payment shall be made on or before the 31st march.

Explanation II –

→ **If the manufacturer of goods or the provider of output service fails to pay** the amount payable under this sub-rule,

→ **It shall be recovered in the manner as provided in rule 14** for recovery of Cenvat credit wrongly taken.