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Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, the 17th March 2012

Notification No. 11/2012 - Service Tax

G.S.R. (E).- In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely :-

1. (1) These rules may be called the Service Tax (Determination of Value) Amendment Rules, 2012.

(2) They shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect.

2. In the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the said rules), for rule 2A, the following rule shall be substituted, namely:-

“2A. Determination of value of taxable services involved in the execution of a works contract.- Subject to the provisions of section 67, the value of taxable service involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in clause (8) of section 66E of the Act, shall be determined by the service provider in the following manner, namely:-

(i) Value of works contract service shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

Explanation.- For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- (vi) cost of establishment of the contractor relating to supply of labour and services;
- (vii) other similar expenses relating to supply of labour and services; and
- (viii) profit earned by the service provider relating to supply of labour and services;

(c) Where value added tax has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the taxable service involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract:

Provided that where the gross amount charged includes the value of the land, in respect of the service provided by way of clause (8) of section 66E of the Act, service tax shall be payable on twenty five per cent. of the total amount including such gross amount;

(B) in case of other works contracts including completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings not

covered under sub-clause (A), service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1.- For the purposes of this rule,-

(I) “original works” means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(II) “total amount” means the sum total of gross amount and the value of all goods, excluding the value added tax, if any, levied on goods and services supplied free of cost for use in or in relation to the execution of works contract, under the same contract or any other contract:

Provided that where the value of goods or services supplied free of cost is not ascertainable, the same shall be determined on the basis of the fair market value of the goods or services that have closely available resemblance;

*Explanation 2.--*For the removal of doubts, it is clarified that duty of excise paid on any goods, property which is transferred (whether as goods or in some other form) in the execution of works contract, shall not be availed as CENVAT credit.”.

3. In rule 2B of the said rules, after rule 2B, the following rule shall be inserted, namely:-

“2C. Determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering.- Subject to the provisions of section 67, the value of taxable service involved in the supply of food or drinks for consumption either in a restaurant or as outdoor catering service, either by itself or along with other services, shall be the percentage of total amount, specified in column 3 against the respective description of services mentioned in the following Table:-

Table

Sl. No.	Description	Percentage of total amount
1	2	3
1.	Service involved in the supply of food or any other article of human consumption or any drink at a restaurant	40
2.	Service involved in the supply of food or any other article of human consumption or any drink as outdoor catering service	60

Explanation 1.- For the purposes of this rule, “total amount” means the sum total of the gross amount and the value of all goods, excluding the value added tax, if any, levied on goods or services supplied free of cost for use in or in relation to the supply of food or any other article of human consumption or any drink, under the same contract or any other contract:

Provided that where the value of goods or services supplied free of cost is not ascertainable, the same shall be determined on the basis of the fair market value of the goods or services that have closely available resemblance.

Explanation 2.- For the removal of doubts, it is clarified that any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) meant for human consumption shall not be considered as “inputs” for the service portion in an activity wherein goods, being food or any other article of human consumption or drink is supplied in any manner as part of the activity.”.

4. In the said rules, in rule 3, for the words “where the consideration received is not wholly or partly consisting of money”, the words “where such value is not ascertainable” shall be substituted.

5. In the said rules, in rule 5, in sub-rule(1), in the *Explanation*, for the words, brackets, letters and figures “services specified in sub-clause (zzzx) of clause (105) of section 65 of the Finance Act, 1994”, the words “telecommunication service” shall be substituted.

6. In the said rules, in rule 6,-

(a) in sub-rule (1),-

(i) in clause (viii), for the words “in any manner; and” the words “in any manner;” shall be substituted;

(ii) in clause (ix), for the words “insurance agent”, the words “insurance agent; and” shall be substituted;

(iii) after clause (ix), the following clause shall be inserted, namely:-

“(x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.”;

(b) in sub-rule (2),-

(i) for clause (iv), the following clause shall be substituted, namely:-

“(iv) interest on,-

(a) deposits; and

(b) delayed payment of any consideration for the provision of services or sale of goods;

(ii) in clause(v), for the words “to the passengers.”, the words “to the passengers; and” shall be substituted;

(iii) after clause (v), the following clause shall be inserted, namely:-

“(vi) accidental damages due to unforeseen actions not relatable to the provision of service.”.

7. In the said rules, rule 7, shall be omitted.

[F. No.334/1 /2012-TRU]

(Samar Nanda)

Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no.12/2006-Service Tax, dated the 19th April, 2006, published in the Gazette of India, Extraordinary vide number G.S.R.228(E), dated the 19th April, 2006 and last amended vide notification No.2/2011-Service Tax, dated the 1st March, 2011, vide number G.S.R. 159 (E), dated the 1st March, 2011.