

Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, the 6th June, 2012

Notification No. 24/2012 - 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) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 11/2012 – Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, vide number G.S.R. 209 (E), dated the 17th March, 2012, 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) Second Amendment Rules, 2012.

(2) They shall come into force from the 1st day of July, 2012.

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 service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred 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 or payable, 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 or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion 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;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, 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,-

(a) "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;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

*Explanation 2.-*For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."

3. In the said rules, in rule 2B, the words, brackets, letters and figures "referred to in sub-clause (zm) and (zzk) of clause (105) of section 65 of the Act," shall be omitted.

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

"2C. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering.- Subject to the provisions of section 67, the value of 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 at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following Table, namely:-

Table

Sl. No.	Description	Percentage of the total amount
(1)	(2)	(3)
1.	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, at a restaurant	40
2.	Service portion in outdoor catering 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 such outdoor catering	60

Explanation 1.- For the purposes of this rule, "total amount" means the sum total of the gross amount charged and the fair market value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink(whether or not intoxicating), whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.- For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986).”.

5. 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.

6. 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 value of taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority”, the words “the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.” shall be substituted.

7. 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 delayed payment of any consideration for the provision of services or sale of property, whether moveable or immovable;”

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

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

(vii) subsidies and grants disbursed by the Government, not directly affecting the value of service.”.

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

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