

CHAPTER V

SERVICETAX

10 of 2000. **150.** During the period commencing on and from the 16th day of July, 1997 and ending with the 16th day of October, 1998, the provisions of Chapter V of the Finance Act, 1994, as modified by section 116 of the Finance Act, 2000, shall have and shall be deemed to have had effect subject to the following further modifications, namely:—

Modification
of Act
32 of 1994.

(a) in section 68, in sub-section (1), the following proviso shall be inserted at the end and shall be deemed to have been inserted on and from the 16th day of July, 1997, namely:—

"Provided that—

45 (i) in relation to services provided by a clearing and forwarding agent, every person who engages a clearing and forwarding agent and by whom remuneration or commission (by whatever name called) is paid for such services to the said agent for the period commencing on and from the 16th day of July, 1997 and ending with the 16th day of October, 1998; or

50 (ii) in relation to services provided by goods transport operator, every person who pays or is liable to pay the freight either himself or through his agent for the transportation of goods by road in a goods carriage for the period commencing on and from the 16th day of November, 1997 and ending with the 2nd day of June, 1998,

shall be deemed to be a person liable to pay service tax, for such services provided to him, to the credit of the Central Government.";

(b) after section 71, the following section shall be inserted and shall be deemed to have been inserted on and from the 16th day of July, 1997, namely:—

Filing of return
by certain
customers.

"71A. Notwithstanding anything contained in the provisions of sections 69 and 70, the provisions thereof shall not apply to a person referred to in the proviso to sub-section (1) of section 68 for the filing of return in respect of service tax for the respective period and service specified therein and such person shall furnish return to the Central Excise Officer within six months from the day on which the Finance Bill, 2003 receives the assent of the President in the prescribed manner on the basis of the self assessment of the service tax and the provisions of section 71 shall apply accordingly.";

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(c) in section 94, in sub-section (2), after clause (c), the following clause shall be inserted and shall be deemed to have been inserted on and from the 16th day of July, 1997, namely:—

"(cc) the manner of furnishing return under section 71A;"

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Amendment
of Act 32 of
1994.

151. In the Finance Act, 1994,—

(a) for section 65, the following sections shall be substituted, namely:—

Definitions.

'65. In this Chapter, unless the context otherwise requires,—

(1) "actuary" has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938; 4 of 1938.

(2) "advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas; 15

(3) "advertising agency" means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

(4) "air travel agent" means any person engaged in providing any service connected with the booking of passage for travel by air; 20

(5) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962; 52 of 1962.

(6) "architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture; 25 20 of 1972.

(7) "assessee" means a person liable to pay the service tax and includes his agent;

(8) "authorised dealer of foreign exchange" has the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999; 30 42 of 1999.

(9) "authorised service station" means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service or repair of any motor car, maxicab or two wheeled motor vehicle manufactured by such manufacturer;

(10) "banking" has the meaning assigned to it in clause (b) of section 5 of the Banking Regulation Act, 1949; 35 10 of 1949.

(11) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934; 2 of 1934.

(12) "banking and other financial service" means—

(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:— 40

(i) financial leasing services including equipment leasing and hire-purchase by a body corporate;

(ii) credit card services;

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking; 45

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; and 50

(vii) provision and transfer of information and data processing;

(b) foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);

54 of 1963.

(13) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

1 of 1956.

5 (14) "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956;

25 of 1990.

10 (15) "broadcasting" has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;

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20 (16) "broadcasting agency or organisation" means any agency or organisation engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges on behalf of the said agency or organisation;

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(17) "beauty treatment" means face and beauty treatment, cosmetic treatment, manicure, pedicure or counselling services on beauty, face care or make-up;

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(18) "beauty parlour" means any establishment providing beauty treatment services;

(19) "business auxiliary service" means any service in relation to,—

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

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(iii) any customer care service provided on behalf of the client; or

(iv) any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services,

35 and includes services as a commission agent, but does not include any information technology service.

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerized data processing or system networking, or any other service primarily in relation to operation of computer systems;

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(20) "cab" means a motorcab or maxicab;

7 of 1995.

(21) "cable operator" has the meaning assigned to it in clause (aa) of section 2 of the Cable Television Networks (Regulation) Act, 1995;

7 of 1995.

(22) "cable service" has the meaning assigned to it in clause (b) of section 2 of the Cable Television Networks (Regulation) Act, 1995;

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(23) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling service incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods;

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(24) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion;

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(25) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;

- (26) "commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre;
- (27) "commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force; 5
- (28) "commissioning or installation" means any service provided by a commissioning and installation agency in relation to commissioning or installation of plant, machinery or equipment; 10
- (29) "commissioning and installation agency" means any agency providing service in relation to commissioning or installation;
- (30) "computer network" has the meaning assigned to it in clause (j) of sub-section (1) of section 2 of the Information Technology Act, 2000; 21 of 2000.
- (31) "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering; 15
- (32) "convention" means a formal meeting or assembly which is not open to the general public, but does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation; 20
- (33) "courier agency" means a commercial concern engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
- (34) "credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal; 25
- (35) "custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962; 30 52 of 1962.
- (36) "data" has the meaning assigned to it in clause (o) of sub-section (1) of section 2 of the Information Technology Act, 2000; 21 of 2000.
- (37) "dry cleaning" includes dry cleaning of apparels, garments or other textile, fur or leather articles;
- (38) "dry cleaner" means any commercial concern providing service in relation to dry cleaning; 35
- (39) "electronic form" has the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000; 21 of 2000.
- (40) "event management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports or any other event and includes any consultation provided in this regard; 40
- (41) "event manager" means any person who is engaged in providing any service in relation to event management in any manner;
- (42) "facsimile (FAX)" means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system; 45
- (43) "fashion designing" includes any activity relating to conceptualising, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings and any other service incidental thereto;
- (44) "fashion designer" means any person engaged in providing service in relation to fashion designing; 50
- (45) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934; 2 of 1934.
- (46) "foreign exchange broker" includes any authorised dealer of foreign exchange;
- (47) "franchise" means an agreement by which— 55

(i) franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;

5 (ii) the franchisor provides concepts of business operation to franchisee, including know how, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all know how to franchisee;

(iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and

(iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person;

10 (48) "franchisor" means any person who enters into franchise with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term "franchisee" shall be construed accordingly;

57 of 1972. (49) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972;

3 of 1930. 15 (50) "goods" has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930;

(51) "health and fitness service" means service for physical well being such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service;

20 (52) "health club and fitness centre" means any establishment, including a hotel or a resort, providing health and fitness service;

21 of 2000. (53) "information" has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000;

4 of 1938. 25 (54) "insurance agent" has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938;

(55) "insurance auxiliary service" means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment;

41 of 1999. 30 (56) "intermediary or insurance intermediary" has the meaning assigned to it in clause (f) of sub-section (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999;

(57) "internet café" means a commercial establishment providing facility for accessing internet;

(58) "insurer" means any person carrying on the general insurance business or life insurance business in India;

35 (59) "interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer;

40 (60) "leased circuit" means a dedicated link provided between two fixed locations for exclusive use of the subscriber and includes a speech circuit, a data circuit or a telegraph circuit;

4 of 1938. (61) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938;

(62) "magnetic storage device" includes wax blanks, discs or blanks, strips or films for the purpose of original sound recording;

45 (63) "maintenance or repair" means any service provided by—

(i) any person under a maintenance contract or agreement; or

(ii) a manufacturer or any person authorised by him,

in relation to maintenance or repair or servicing of any goods or equipment, excluding motor vehicle;

50 (64) "management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organisation;

- (65) "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function; 4 of 1882.
- (66) "mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function; 5
- (67) "manpower recruitment agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client;
- (68) "market research agency" means any commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services; 10
- (69) "maxicab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.
- (70) "motorcab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.
- (71) "motor car" has the meaning assigned to it in clause (26) of section 2 of the Motor Vehicles Act, 1988; 15 59 of 1988.
- (72) "motor vehicle" has the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.
- (73) "non-banking financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934; 20 2 of 1934.
- (74) "on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network;
- (75) "other port" has the meaning assigned to "port" in clause (4) of section 3 of the Indian Ports Act, 1908, but does not include the port defined in clause (80); 25 15 of 1908.
- (76) "pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;
- (77) "photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography; 30
- (78) "photography studio or agency" means any professional photographer or a commercial concern engaged in the business of rendering service relating to photography;
- (79) "policy holder" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938; 4 of 1938.
- (80) "port" has the meaning assigned to it in clause (g) of section 2 of the Major Port Trusts Act, 1963; 35 38 of 1963.
- (81) "port service" means any service rendered by a port or other port or any person authorised by such port or other port, in any manner, in relation to a vessel or goods;
- (82) "practising chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy; 40 38 of 1949.
- (83) "practising cost accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy; 45 23 of 1959.
- (84) "practising company secretary" means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretaryship; 50 56 of 1980.
- (85) "prescribed" means prescribed by rules made under this Chapter;
- (86) "rail travel agent" means any person engaged in providing any service connected with booking of passage for travel by rail;
- (87) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant; 55

(88) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;

5 (89) "recognised stock exchange" has the meaning assigned to it in clause (f) of section 2
42 of 1956. of the Securities Contracts (Regulation) Act, 1956;

(90) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;

10 (91) "scientific or technical consultancy" means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organisation, to a client, in one or more disciplines of science or technology;

42 of 1956. (92) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

15 (93) "security agency" means any commercial concern engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;

20 (94) "service tax" means tax leviable under the provisions of this Chapter;

(95) "ship" means a sea-going vessel and includes a sailing vessel;

(96) "shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping;

25 (97) "sound recording" means recording of sound on a magnetic storage device and includes editing thereof, in any manner;

(98) "sound recording studio or agency" means any commercial concern engaged in the business of rendering any service relating to sound recording;

(99) "steamer agent" means any person who undertakes, either directly or indirectly,—

30 (i) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or

(ii) to book, advertise or canvass for cargo for or on behalf of a shipping line; or

(iii) to provide container feeder services for or on behalf of a shipping line;

15 of 1992. 35 (100) "stock-broker" means a stock-broker who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;

(101) "storage and warehousing " includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage;

15 of 1992. 40 (102) "sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992;

(103) "subscriber" means a person to whom any service of a telephone connection or a facsimile (FAX) or a leased circuit or a pager or a telegraph or a telex has been provided by the telegraph authority;

45 (104) "taxable service" means any service provided,—

(a) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

(b) to a subscriber, by the telegraph authority in relation to a telephone connection;

(c) to a subscriber, by the telegraph authority in relation to a pager;

50 (d) to a policy holder, by an insurer carrying on general insurance business in relation to general insurance business;

(e) to a client, by an advertising agency in relation to advertisement, in any manner;

(f) to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;

- (g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;
- (h) to a client, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;
- (i) to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services; 5
- (j) to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner;
- (k) to a client, by a manpower recruitment agency in relation to the recruitment of manpower, in any manner; 10
- (l) to a customer, by an air travel agent in relation to the booking of passage for travel by air;
- (m) to a client, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer; 15
- (n) to any person, by a tour operator in relation to a tour;
- (o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;
- (p) to a client, by an architect in his professional capacity, in any manner;
- (q) to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner; 20
- (r) to a client, by a management consultant in connection with the management of any organisation, in any manner;
- (s) to a client, by a practising chartered accountant in his professional capacity, in any manner; 25
- (t) to a client, by a practising cost accountant in his professional capacity, in any manner;
- (u) to a client, by a practising company secretary in his professional capacity, in any manner;
- (v) to a client, by a real estate agent in relation to real estate;
- (w) to a client, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity; 30
- (x) to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;
- (y) to a client, by a market research agency in relation to market research of any product, service or utility, in any manner; 35
- (z) to a client, by an underwriter in relation to underwriting, in any manner;
- (za) to a client, by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy;
- (zb) to a customer, by a photography studio or agency in relation to photography, in any manner; 40
- (zc) to a client, by any commercial concern in relation to holding of a convention, in any manner;
- (zd) to a subscriber, by the telegraph authority in relation to a leased circuit;
- (ze) to a subscriber, by the telegraph authority in relation to a communication through telegraph; 45
- (zf) to a subscriber, by the telegraph authority in relation to a communication through telex;
- (zg) to a subscriber, by the telegraph authority in relation to a facsimile (FAX) communication;
- (zh) to a customer, by a commercial concern, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner; 50

(zi) to a client, by a video production agency in relation to video-tape production, in any manner;

(zj) to a client, by a sound recording studio or agency in relation to any kind of sound recording;

5 (zk) to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for
10 broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges on behalf of the said agency or organisation.

Explanation.—For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to
15 broadcasting, even if the encryption of signals or beaming thereof through the satellite might have taken place outside India;

(zl) to a policy holder or insurer, by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning general insurance business;

20 (zm) to a customer, by a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services;

(zn) to any person, by a port or any person authorised by the port, in relation to port services, in any manner;

25 (zo) to a customer, by an authorised service station, in relation to any service or repair of motor cars or two wheeled motor vehicles, in any manner;

(zp) to a customer, by a body corporate other than the body corporate referred to in sub-clause (zm), in relation to banking and other financial services;

(zq) to a customer, by a beauty parlour in relation to beauty treatment;

(zr) to any person, by a cargo handling agency in relation to cargo handling services;

30 (zs) to a customer, by a cable operator in relation to cable services;

(zt) to a customer, by a dry cleaner in relation to dry cleaning;

(zu) to a client, by an event manager in relation to event management;

(zv) to any person, by a fashion designer in relation to fashion designing;

35 (zw) to any person, by a health club and fitness centre in relation to health and fitness services;

(zx) to a policy holder, by an insurer carrying on life insurance business in relation to life insurance business;

40 (zy) to a policy holder or insurer by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;

(zz) to a customer, by a rail travel agent in relation to booking of passage for travel by rail;

(zza) to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods;

45 (zzb) to a client, by a commercial concern in relation to business auxiliary service;

(zzc) to any person, by a commercial training or coaching centre in relation to commercial training or coaching;

(zzd) to a customer, by a commissioning and installation agency in relation to commissioning or installation;

50 (zze) to a franchisee, by the franchisor in relation to franchise;

(zzf) to any person, by an internet café in relation to access of internet;

(zzg) to a customer, by any person in relation to maintenance or repair;

(*zzh*) to any person, by a technical testing and analysis agency, in relation to technical testing and analysis;

(*zzi*) to any person, by a technical inspection and certification agency, in relation to technical inspection and certification;

(*zzj*) to a customer, by an authorised service station, in relation to any service or repair of any maxicab; 5

(*zzk*) to a customer, by a foreign exchange broker other than those brokers in relation to banking and other financial services referred to in sub-clauses (*zm*) and (*zp*);

(*zzl*) to any person, by other port or any person authorised by that port in relation to port services, in any manner, 10

and the term "service provider" shall be construed accordingly;

(105) "technical testing and analysis" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals; 15

(106) "technical testing and analysis agency" means any agency or person engaged in providing service in relation to technical testing and analysis;

(107) "technical inspection and certification" means inspection or examination of goods or process or material or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels; 20

(108) "technical inspection and certification agency" means any agency or person engaged in providing service in relation to technical inspection and certification;

(109) "telegraph" has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885; 25 13 of 1885.

(110) "telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act; 13 of 1885.

(111) "telex" means a typed communication by using teleprinters through telex exchanges; 30

(112) "tour" means a journey from one place to another irrespective of the distance between such places;

(113) "tourist vehicle" has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988; 59 of 1988.

(114) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 or the rules made thereunder; 35 59 of 1988.

(115) "underwriter" has the meaning assigned to it in clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;

(116) "underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993; 40

(117) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963; 38 of 1963.

(118) "video production agency" means any professional videographer or any commercial concern engaged in the business of rendering services relating to video-tape production; 45

(119) "video-tape production" means the process of any recording of any programme, event or function on a magnetic tape and includes editing thereof, in any manner;

(120) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise. 50 1 of 1944.

Classification of taxable services.

65A. (1) For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub-clauses of clause (104) of section 65;

(2) When for any reason, a taxable service is, *prima facie*, classifiable under two or more sub-clauses of clause (104) of section 65, classification shall be effected as follows:—

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

5 (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration.;

(b) for section 66, the following section shall be substituted, namely:—

10 "66. (1) There shall be levied a tax (hereinafter referred to as the service tax) at the rate of eight per cent. of the value of the taxable services referred to in sub-clauses (a), (b), (c), (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) and (zza) of clause (104) of section 65 and collected in such manner as may be prescribed. Charge of service tax.

15 (2) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied a service tax at the rate of eight per cent. of the value of the taxable services referred to in sub-clauses (zzb), (zzc), (zsd), (zse), (zsf), (zsg), (zsh), (zzi), (zzj), (zzk) and (zzl) of clause (104) of section 65 and collected in such manner as may be prescribed.;"

(c) in section 67, in the *Explanation*,—

20 (i) in clause (f), for the words "motor car", the words "motor car, maxicab" shall be substituted;

(ii) for the portion beginning with the words "but does not include" and ending with the words "rail travel agent in respect of service provided by him", the following shall be substituted, namely:—

"but does not include—

25 (i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

30 (iii) the cost of parts or accessories, or consumable such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, maxicab or two wheeled motor vehicles;

(iv) the airfare collected by air travel agent in respect of service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service; and

35 (vii) the cost of parts or other material, if any, sold to the customer during the course of providing commissioning or installation service.;"

(d) in section 73,—

(i) in sub-section (1), in the *Explanation*, for the words "six months", the words "one year" shall be substituted;

40 (ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

45 '(2A) Where any service tax has escaped assessment or has been under-assessed or service tax has not been paid or has been short paid or erroneously refunded, the person chargeable with the service tax, may pay the amount of tax on the basis of his own ascertainment of such tax or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of service tax, and inform the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of service tax so paid:

50 Provided that the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may determine the amount of short payment of service tax, if any, which in his opinion has not been paid by such person and, then, the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall proceed to recover such amount in the manner specified in this section, and the period of "one year" referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

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Explanation 1.—Nothing contained in this sub-section shall apply to cases falling under clause (a) of sub-section (1).

Explanation 2.—For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax, if any, as may be determined by the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise, but for this sub-section.

(2B) The provisions of sub-section (2A) shall not apply to any case where the service tax had become payable or ought to have been paid before the day on which the Finance Bill, 2003 receives the assent of the President.;

(e) in section 78, for the proviso, the following shall be substituted, namely:—

"Provided that where such service tax as determined under sub-section (2) of section 73, and the interest payable thereon under section 75, is paid within thirty days from the date of communication of order of the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise determining such service tax, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the service tax so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the service tax determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of communication of the order by which such increase in service tax takes effect.

Explanation.—For the removal of doubts, it is hereby declared that—

(1) the provisions of this section shall also apply to cases in which the order determining the service tax under sub-section (2) of section 73 relates to notices issued prior to the day on which the Finance Bill, 2003 receives the assent of the President;

(2) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.;"

(f) in section 83, for the figures and letter "11D,", the figures and letters "11C, 11D, 12," shall be substituted;

(g) in section 85, in sub-section (1), for the words "penalty under this Chapter", the words "penalty or denying any refund of service tax under this Chapter" shall be substituted;

(h) in section 94, in sub-section (2), after clause (ee), the following clause shall be inserted, namely:—

"(eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service.;"

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

"(1A) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2003, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2003 incorporating such taxable services in this Chapter come into force.;"

(j) after Chapter V, the following Chapter shall be inserted, namely:—

'CHAPTER VA

ADVANCE RULINGS

96A. In this Chapter, unless the context otherwise requires,—

Definitions.

5 (a) "advance ruling" means the determination, by the Authority of a question of law or fact specified in the application regarding the liability to pay service tax in relation to a service proposed to be provided, by the applicant;

(b) "applicant" means—

10 (i) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or

(ii) a resident setting up a joint venture in India in collaboration with a non-resident; or

(iii) a wholly owned subsidiary Indian company, of which the holding company is a foreign company,

who proposes to undertake any business activity in India and makes application for advance ruling;

15 (c) "application" means an application made to the Authority under sub-section (1) of section 96C;

52 of 1962. (d) "Authority" means the Authority for Advance Rulings constituted under section 28F of the Customs Act, 1962;

43 of 1961. 20 (e) "non-resident", "Indian company" and "foreign company" have the meanings respectively assigned to them in clauses (30), (26) and (23A) of section 2 of the Income-tax Act, 1961;

1 of 1944. (f) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder shall apply, so far as may be, in relation to service tax as they apply in relation to duty of excise.

25 96B. No proceeding before, or pronouncement of advance ruling by, the Authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

Vacancies, etc., not to invalidate proceedings.

30 96C. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

Application for advance ruling.

(2) The question on which the advance ruling is sought shall be in respect of,—

(a) classification of any service as a taxable service under Chapter V;

(b) the valuation of taxable services for charging service tax;

35 (c) the principles to be adopted for the purposes of determination of value of the taxable service under the provisions of Chapter V;

(d) applicability of notifications issued under Chapter V;

(e) admissibility of credit of service tax.

(3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

40 (4) An applicant may withdraw an application within thirty days from the date of the application.

96D. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Central Excise and, if necessary, call upon him to furnish the relevant records:

Procedure on receipt of application.

45 Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Central Excise.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

Provided that the Authority shall not allow the application where the question raised in the application is,—

50 (a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Central Excise. 5

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative. 10

Explanation.—For the purposes of this sub-section, "authorised representative" has the meaning assigned to it in sub-section (2) of section 35Q of the Central Excise Act, 1944. 1 of 1944.

(6) The Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application. 15

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Central Excise, as soon as may be, after such pronouncement.

Applicability of advance ruling.

96E. (1) The advance ruling pronounced by the Authority under section 96D shall be binding only— 20

(a) on the applicant who had sought it;

(b) in respect of any matter referred to in sub-section (2) of section 96C;

(c) on the Commissioner of Central Excise, and the Central Excise authorities subordinate to him, in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced. 25

Advance ruling to be void in certain circumstances.

96F. (1) Where the Authority finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub-section (4) of section 96D has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Chapter shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made. 30

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Central Excise.

Powers of Authority.

96G. (1) The Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. 35 5 of 1908.

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. 40 2 of 1974. 45 of 1860.

Procedure of Authority.

96H. The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

Power of Central Government to make rules.

96-I. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter. 45

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner for making application under sub-section (1) of section 96C;

(b) the manner of certifying a copy of advanced ruling pronounced by the Authority under sub-section (7) of section 96D; 50

(c) any other matter which, by this Chapter, is to be or may be prescribed.

(3) Every rule made under this Chapter shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses 55

agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.'

- 5 **152.** (1) Notwithstanding the rescission of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue) No.G.S.R. 639(E), dated the 5th November, 1997, issued under section 93 of the Finance Act, 1994, by the Central Government, that notification shall stand amended and shall be deemed to have been amended in the manner specified in the Twelfth Schedule, on and from the 16th day of November, 1997 to the 1st day of June, 1998 (both days inclusive)
- 10 retrospectively and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notification, shall be deemed to be, and always to have been, for all purposes, as validly and effectively, taken or done as if the notification as amended by this sub-section had been in force at all material times.
- 15 (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if the amendment referred to in sub-section (1) had been in force at all material times.
- 32 of 1994. (3) Notwithstanding anything contained in section 83 of the Finance Act, 1994, an application for claim of refund of the service tax under sub-section (2) shall be made within one year from the day on which the Finance Bill, 2003 receives the assent of the President.
- 20 (4) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to amend the notification referred to in the said sub-section with retrospective effect as if the Central Government had the power to amend the said notification under section 93 of the Finance Act, 1994 retrospectively at all material times.
- 32 of 1994.

Amendment of notification issued under section 93 of Act 32 of 1994.