Introduction

Service sector is now occupying the center stage in the economy so much so that, in the contemporary world, development of service sector has become synonymous with the advancement of the economy. Service Sector has been growing phenomenally all over the world, though it may vary in degree and magnitude among various countries. The growing importance of this sector can be gauged from the ever-increasing contribution made by the Service Sector to GDP and thereby pushing back the contribution of traditional contributors like agriculture and manufacturing sectors.

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India, being a developing economy, is striving to fulfill the obligations of a Welfare State within its limited resources. It is also well known that services constitute a larger proportion of the consumption of the rich rather than of the poor as the demand for services is income-elastic. Depending on the socio-economic compulsions, each country evolved a taxation system on services adopting either a comprehensive approach or a selective approach. While most of the developed countries tax all the services with very few and limited exemptions, some of the developing countries tax select services only. Hitherto, India has adopted a selective approach to taxation of services.

The concept of Service Tax, first introduced in India in 1994 with only three services, today covers around eighty-one services (including the services proposed by the Finance Bill, 2005) ranging from stock brokering, Insurance, telephone, pager services to advertising services, courier services, and man power recruitment services.

Service Tax had been levied on the recommendations made in early 1990’s by the Tax Reforms Committee headed by Dr. Raja Chelliah. The Committee pointed out that the indirect taxes at the Central level should be broadly neutral in relation to production and consumption of goods and should, in course of time, cover both commodities and services. The Committee recommended charging of tax on services such as advertising, insurance, share brokering and telecom etc. on the same pattern as developed economies do. The committee envisaged that the basic objective of Service Tax Regime in India should be broadening of the tax base, augmentation of revenue and larger participation of citizens in the economic development of the nation.

Scope of Service Tax

As stated above, the Central Government resorted to taxation of services in 1994 and the provisions relating to Service Tax were brought into force with effect from 1st July 1994. The Finance Act, 1996 enlarged the scope of levy of Service Tax covering three more services. Nine more services were added by the Finance Acts of 1997 and 1998. The Union Budget 1998-99 further extended the scope of service Tax by including twelve more services. Fourteen more services were added by the Finance Act 2001. In the Budget 2002-2003, 10 more services were added to the tax net. Seven more services were introduced and three existing services were extended by the Budget 2003-04. In the Budget 2004-05, 10 more services were introduced in the service tax net along with reintroduction of three existing services. Finance Bill, 2005 has introduced nine more services expanding the number of taxable services to eighty-one. A comprehensive list of all taxable services (including the proposed services), is as under:

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1. Telephone
2. Stockbroker
3. General Insurance
4. Advertising agencies
5. Courier agencies
6. Radio pager services
7. Consulting engineers
8. Custom house agents
9. Steamer agents
10. Clearing & forwarding agents
11. Air travel agents
12. Tour operators
13. Rent-a-Cab Operators
14. Manpower recruitment Agency
15. Mandap Keepers
16. Architects
17. Interior Decorators
18. Management Consultants
19. Practicing Chartered Accountants
20. Practicing Company Secretaries
21. Practicing Cost Accountants
22. Real Estates Agents/Consultants
23. Credit Rating Agencies
24. Private Security Agencies
25. Market Research Agencies
26. Underwriters Agencies
27. Scientific and technical consultancy services
28. Photography
29. Convention
30. Telegraph
31. Telex
32. Facsimile (fax)
33. Online information and database access or retrieval
34. Video-tape production
35. Sound recording
36. Broadcasting
37. Insurance auxiliary activity
38. Banking and other financial services
39. Port
40. Authorised Service Stations
41. Leased circuits Services
42. Auxiliary services to life insurance
43. Cargo handling
44. Storage and warehousing services
45. Event Management
46. Cable operators
47. Beauty parlours
48. Health and fitness centres
49. Fashion designer
50. Rail travel agents.
51. Dry cleaning services.
52. Commercial vocational institute, coaching centres and private tutorials
53. Technical testing and analysis (excluding health & diagnostic testing)
54. Technical inspection and certification service.
55. Maintenance & repair services
56. Commission and Installation Services
57. Business auxiliary services, namely business promotion and Support services (excluding on information technology services)
58. Internet café
59. Franchise Services
60. Transport of goods by road (earlier Goods Transport Operators service re-introduced).
61. Outdoor Caterer’s service (re-introduced)
62. Pandal or Shamiana service (re-introduced)
63. Airport Services
64. Transport of Goods by Air Services
65. Business Exhibition Services
66. Construction Services
67. Intellectual Property Services
68. Opinion Poll Services
69. TV or Radio Programme Services
70. Survey and Exploration of Minerals Services
71. Travel Agent’s Services other than Rail and Air travel agents
72. Forward Contract Services
73. Transport of goods through pipeline or other conduit. (Proposed)
74. Site preparation and clearance, excavation, earth moving and demolition services, other than those provided to agriculture, irrigation and watershed development. (Proposed)

75. Dredging services of rivers, ports, harbours, backwater and estuaries. (Proposed)

76. Survey and map-making other than by Government Departments. (Proposed)

77. Cleaning services other than in relation to agriculture, horticulture, animal husbandry or dairying. (Proposed)

78. Membership of Clubs or Associations (religious forum, political organizations will be excluded). (Proposed)

79. Packaging services. (Proposed)

80. Mailing list compilation and mailing; and (Proposed)

81. Construction of residential complexes having more than twelve residential houses or apartments together with common areas and other appurtenances. (Proposed)

ADMINISTRATIVE MECHANISM AND PROCEDURAL ASPECTS

The Central Excise department administers Service Tax. A separate cell called the Service Tax Cell, under each commissionerate, has been created for the purpose. Formerly, the entire Service Tax administration was centralized in these cells. The setup has been decentralized recently. Now various Central Excise Divisional offices, which have specific territorial jurisdiction, are empowered to administer the levy.

Registration

Rule 4 (1) of the Service Tax Rules, 1994, requires every person liable for paying the service tax to make an application to the concerned Superintendent of Central Excise in form ST-1 for registration within a period of thirty days from the date on which the service tax under Section 66 of the Finance Act, 1994 is levied upon him.

However, where a person commences the business of providing a taxable service after such service has been levied, he can make an application for registration within a period of thirty days from the date of such commencement.

In case the taxable services are provided from more than one premises/offices, the assessee can opt for registration for only one premise if there is a system of centralised billing/centralised accounting, by taking permission. However, where an assessee is providing more than one taxable services, he can obtain registration by making a single application mentioning all the taxable services provided by him.

The Superintendent of Central Excise after due verification of the application form, grants a certificate of registration in Form ST-2 within seven days from the date of receipt of the application. If the registration certificate is not granted within the said period, the registration applied for is deemed to have been granted [Rule 4(5)].

Records

Rule 5(1) of the Service Tax Rules, 1994 makes acceptable the records (including computerized data) as maintained by an assessee in accordance with the various laws in force. Further, every assessee is required to furnish to the Superintendent of Central Excise at the time of filing his return for the first time a list of all accounts maintained by the assessee in relation to service tax including memoranda received in branch offices [Rule 5(2)].

Rate of Tax

The rate of service tax as specified under Section 66 of the Finance Act, 1994 is 10% ad valorem. In addition to it, an education cess at the rate of 2% of the service tax is levied on all taxable services. However, the cess paid on input services is available as credit for payment of cess on output services.

Payment of Service Tax

Rule 6(1) of the Service Tax Rules, 1994 as amended by Notification No. 7/2005-Service Tax dated 1st March, 2005, provides that the service tax is to be paid to the credit of the Central Government by the 5th of the month immediately following the calendar month in which the payments are received, towards the value of taxable services. However, where the assessee is an individual or proprietary firm or partnership firm, the service tax shall
be paid to the credit of the Central Government by the 5th of the month immediately following the quarter in which the payments are received, towards the value of taxable services.

Further, notwithstanding the time of receipt of payment towards the value of services, no service tax is payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable. Also that the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, is payable by 31st March of the calendar year.

Rule 6(2) prescribes that the assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs in Form TR - 6 or in any other manner prescribed by the Central Board of Excise and Customs.

Recently, the Central Government Vide Notification No. 6/2005 -Service Tax dated 1st March, 2005, exempted taxable services of aggregate value not exceeding four lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66 of the Finance Act. Aggregate value not exceeding four lakh rupees means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees but does not include payments received towards such gross amount, which are exempt from whole of service tax leviable thereon under section 66 of the Finance Act under any other notification.

However, this is not applicable to taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the Finance Act read with Service Tax Rules,1994.

The exemption provided under the notification of March 2005 have been made subject to the following conditions, namely:

(i) the provider of taxable service has the option not to avail the exemption contained in the notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004, used for providing the said taxable service, for which exemption from payment of service tax is availed of;

(iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of service tax;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption;

(vii) 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 service; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees four lakhs in the preceding financial year.
Returns

Rule 7 (1) requires every assessee to submit a half yearly return in Form 'ST-3' or 'ST-3A', as the case may be, along with a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return by the 25th of the month following the particular half-year [Rule 7(2)]. The half year has been defined to mean the period between 1st April to 30th September or 1st October to 31st March of a financial year.

E-filing of Service Tax Returns

The Government has allowed filing of the service tax return electronically from April 2003. This facility is available on the website http://www.servicetaxefiling.nic.in. Assesses having a 15-digit Service Tax Payers (STP) code can avail of the facility of electronic filing of their return. Assesses who opt for the e-filing of return should make an application to concerned Assistant/Deputy Commissioner in the prescribed form, for a unique username and password. The assessee is provided a computer-generated acknowledgement as an evidence of having filed the return.

Appeals

The Government has not framed separate rules for service tax appeals, however, the appellant provisions of the Central Excise Act, 1944 shall be applicable to Service Tax.

As per section 85 of the Central Excise Act, 1944 an appeal can be filed before the Commissioner of Central Excise (Appeals) by an aggrieved person. The appeal is to be filed in duplicate in Form ST-4 with a copy of order appealed against within three months of the date of receipt of order relating to Service tax, interest or penalty. This period can be extended by the Commissioner (Appeals) for a further period of three months if the Appellate Commissioner is satisfied that the appellant was prevented by sufficient cause from filing the appeal within three months.

ADVANCE RULING

The Finance Act, 2003 has inserted a new Chapter V-A in the Finance Act, 1994 to provide for advance rulings with respect to service tax. 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, who may be any of the following:

— a non resident setting up a joint venture in India in collaboration with a non resident or a resident;
— a resident setting up a joint venture in India in collaboration with a non resident;
— a wholly owned subsidiary Indian company, of which the holding company is a foreign company.

The same has been clarified in Re McDonald’s India Pvt. Ltd. [(2004) 165 ELT 404 (AAR)], where it has been held that advance ruling can not be availed by ongoing business/undertaking, which has already commenced business.

Advance Ruling can be sought in respect of the question arising on:

— classification of any service as a taxable service;
— the valuation of taxable services;
— the principles to be adopted for the purposes of determination of value of the taxable service;
— applicability of notifications;
— admissibility of credit of service tax;

Section 96C prescribes the application in Form AAR (ST) is required to be made to the authority in prescribed form and manner. The application should be made in quadruplicate and accompanied by a fee of rupees two thousand and five hundred only. The application can be withdrawn within a period of 30 days from the date of the application. The authority is required to give its ruling within 90 days of the receipt of valid application.

An application may be rejected by the prescribed authority if the question or subject matter of ruling sought in the application is such which is already pending before any assessing officer, Tribunal and court of law or such question already stands decided by any court or bench of Tribunal.
The advance ruling pronounced on a matter referred to the authority is binding only on the applicant and his jurisdictional assessing officers and only in respect of question referred to by the applicant. However, if there is a change in the law or facts on the basis of which the ruling was pronounced, such advance ruling will not be binding.

ROLE OF PRACTICING COMPANY SECRETARY

The educational background, knowledge, training and exposure that a Company Secretary has, makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organisations, small scale units, farms etc. A Practising Company Secretary can render several services under the Service Tax such as registration with tax authorities, advising on applicability, rate and payment of service tax, filing of returns with the authorities, claiming exemption, advising on various procedural matters relating to service tax.

CONCLUSION

Service tax is rightly referred to as Tax of the future. Well synchronized taxation on manufacturing, trade and service without giving rise to cascading effect of taxation would be an ideal worth pursuing in the immediate future. This would bring in VAT in its truest sense. Continued growth in GDP accompanied by higher rate of growth in service sector promises new and wider avenues of taxation to the Government. If the tax on services reduces the degree of intensity of taxation on manufacturing and trade without forcing the Government to compromise on the revenue needs, then one of the basic objectives of taxing the service sector would be achieved.

Voluntary tax compliance on the part of taxpayers demands prudent accounting practices and transparency in the conduct of their business. Marginal rates of taxation would be conducive in this process. Many new services may be brought under the tax net in future. The inclusion of all value added services in the tax net would yield larger amount of revenue and make the existing tax structure more elastic.

Advanced economies of Western Europe, North America and Far East have share of service sector in their GDP ranging from 60% to 80%. The growth in absolute quantum of GDP and proportion of Service-sector in GDP holds promise for larger revenue generation without increasing the existing level of taxation. However, the progress so far has been slow. Moreover, the law in this regard is not perfect and a separate legislation is keenly awaited.

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