

**Review of service tax circulars / instructions / clarifications  
T.R.Rustagi Committee recommendations**

I. Circulars / instructions / clarifications to be withdrawn:

Sl.No.	Circular No.	Date	Issue
1	F. No. 149/8/95-CX4 (7/1/96-ST)	29.2.1996	Pager services shall not fall within 'telephone service'. However, cellular telephone services would be taxable.
2	F. No. 148/5/95 – CX 4 (16/10/96-ST)	15.10.1996	Decision on certain procedural issues relating to payment of service tax on telephone service.  (a) ST may be paid on the amount of bills for which payment is actually received and not on the amount of bill raised. (b) Date of payment is the date on which the book transfer is made in the cash section of the secondary switching area (SSA).
3	F. No. 149/1/97 – CX4(22/2/97)	3.9.1997	In the case of plastic roaming facility, the home operator (home network) i.e. where the subscriber belongs to, and who arranges roaming facility in other metro cities through arrangements with the service operator (visiting network) should collect and pay the service tax.
4	F. No. 149/1/96 – CX4(23/3/97)	13.10.1997	(a) Cellular operators pay service tax on charges including rent and across charges collected from the all subscriber. As such no service tax is chargeable on rent and across charges paid to DOT by the cellular phone operators because it would amount to double taxation.  (b) The amount received by the cellular telephone company from subscriber towards SIM cards will form part of the taxable value for levy of service tax.  (c) Cellular companies cannot adjust the excess service tax, if any, paid. They have to file a refund claim.

			<p>(d) In certain cases, cellular telephone operators provide service to a category of persons called “friendly users”, and only recover “land line charges”. No service tax is payable on the calls made as no amounts recovered by the telegraph authority.</p> <p>(e) Companies give discount on their airtime charges. It is clarified that in such cases the tax is payable only on the reduced amount.</p>
5	28/2/99 (F. No. 149/6/97-CX4)	4.7.1999	The clarification issued for plastic roaming facility <i>vide</i> Circular No. 22/2/97 dated 3.9.1997 would apply <i>mutatis mutandis</i> to automatic roaming facility including International Automatic/plastic roaming facility provided by cellular phone operators.
6	33/1/2001 (F. No. 149/1/99 – CX4)	29.01.2001	Earlier, in Circular No. 5/5/94 dated 10.11.1994 it was classified that DOT can pay service tax by Book adjustment. Now that it has been corporatised into BSNL, with effect from 1.11.2000, service tax has to be paid in cash.
7	46/9/2002-ST (F. No. 149/2/2002-CX4)	8.8.2002	<p>References have been received from the Cellular Operators Association of India, New Delhi, and the Department of Telecom (DOT). The services relating to which doubts have been raised are the following :</p> <p>(i) <b>‘Inter-connection link charges’:</b> These are charges relating to interconnectivity provided between the basic/cellular telephone providers and the BSNL/MTNL exchanges. This enables the private basic telephone operators or the mobile service providers to access BSNL telephone lines and <i>vice-versa</i>. This interconnection can be through a cable owned by the BSNL; in which case a monthly/annual rent is charged. If the cable has been laid/ provided by the private basic/cellular telephone service provider no rental is charged by BSNL.</p> <p>(ii) <b>‘Rentals for junction links’:</b> These relate to charges for using junction links of the BSNL/MTNL from one exchange to another.</p> <p>(iii) <b>‘Port charges’:</b> These are something like entry charges for allowing access into the BSNL network.</p>

			<p>(iv) <b>‘Infrastructure charges’</b>: Sometimes the basic as well as cellular telephone service providers need space to keep their own equipments to facilitate the interconnectivity. This space, when provided by the DOT, a rental is covered from them by the DOT.</p> <p>It is clarified that in respect of services listed at (ii), (iii) and (iv) above no service tax is presently leviable. However, So far as <b>‘inter-connectivity linked charges’</b> are concerned these are nothing but charges for providing <b>‘leased circuits’</b>. This service (leased circuits) has been brought under the coverage of service tax w.e.f. 16-7-2001. While issuing Board’s clarification dt. 14-3-2001 it was <i>inter alia</i> intimated that this service was not taxable. However, since ‘leased circuits’ have become taxable. However, since ‘leased circuits’ have become taxable w.e.f. 16-7-2001 only, Board’s clarification dated 14-3-2001 stands modified accordingly.</p>
8	F. No. 150/1/94 – CX4 (3/3/94-ST)	28.07.1994	It is clarified that Kerala State Insurance Department (KSID) and all such other agencies are required to pay service tax as they provide taxable service in relation to general insurance.
9	F. No. 150/1/94 – CX4 (6/1/95-ST)	02.05.1995	Asking for information from the commissioners on the practice of adjustment of excess tax by United General Insurance Co. and similar other insurance companies.
10	F. No. 137/11/96 – CX4 21/1/97-ST	27.01.1997	Instruction on revised procedure for registration/collection of service tax from courier agencies.
11	64/13/2003-ST (F. No. 168/1/2003-CX4)	28.10.2003	It is clarified that if the canvassing is limited to space selling then such services would not be liable to any service tax. However, if canvassing is involving receiving the text of advertisement, estimating the space that such advertisement would occupy in the newspaper/periodical/magazine, negotiating the price, forming the general layout of the advertisement that would finally appear in the newspaper then such activity would be liable to service tax under the category of Advertising Agency Services.
12	F. No. 241/1/2004 – CX4 (78/8/2004-ST)	23.03.2004	It is clarified that selling the free commercial time (FCT) to a producer does not fall within the purview of ‘advertisement service’.
13	F. No. 354/128/97 – TRU	18.12.1997	Service rendered by architects would not fall within the scope of engineering consultancy service. Architects and engineers are governed by separate technical and statutory authorities. However if an engineer provides service as an engineering service as also an architectural service and he charges a lump sum amount, the lump sum amount shall be

			the value, unless separate break up is given in the bill.
14	34/2/2001-CX	30.4.2001	Consulting engineer will not include those qualified engineers who act as insurance surveyors and loss assessors within its scope hence not liable to service tax. The services provided by any qualified engineer in the area of insurance survey or loss assessment are not in the nature of services in an engineering discipline. Even as per the WTO classification of services, insurance survey and loss assessment is categorized as insurance auxiliary services and not as “consulting engineering services”
15	F. No. 177/5/2004 – CX	26.02.2002	Third party inspections and certifications carried out by certifying agencies in respect of marine as well non-marine equipment do not fall within the scope engineering consultancy. Such work is not in the category of advice, consultancy or technical assistance. If, however, a shipping company gets the ship surveyed or inspected by another agency before taking it for certification or by an authorize agency, only then can it be said that the first agency is providing some technical service.
16	F. No. 137/38/2003– CX4	13.05.2004	Charges for erection, installation and commissioning are not covered under the category of Consulting Engineering Service. In circular No. 137/13/2001–CX4 dated 18.12.2002 it was clarified that erection and commissioning charges are taxable because this service is in the nature of “technical assistance” to buyer of plant / machinery. This position does not hold good in any case after service tax was levied separately on erection and commissioning with effect from 1.7.2003.
17	B43/1/97 – TRU	06.06.1997	Payments made by CHA on behalf of the client such as statutory levies (cess, custom duties, port dues, etc.) and various others reimbursable expenses incurred are not to be included in the value for service tax.
18	B43/1/97 – TRU	06.06.1997	Where CHA undertakes “turnkey” imports and exports and where as lump sum amount is charged from the client for undertaking various service the lump sum amounts covers not only the “agency commission” fee but also other expenses and no separate breakup is available. In such cases the value of taxable service is to be taken as 15% of the lump sum amount charged from the client.
19	B43/1/97-TRU	6.6.1997	Sub-contracting of CHA will not be required to pay service tax on the bills raised by him on the main CHA.
20	B43/1/97 – TRU	06.06.1997	No service tax is leviable on payment received by CHA from shipping lines for canvassing of import/export cargo.
21	B43/1/97 – TRU	06.06.1997	It is clarified that in relation to steamer agent, the service charges will constitute the

			husbandry fee as well as agency commission on import/export cargo. Steamer agents incur various others expenses on behalf of the shipping line such as pilotage and berth hire charges, Indian Coast light dues paid to the port authorities, cargo expenses paid to port authorities and transporters such as CONCOR/railways, brokerage paid on export cargo, ship handling expenses paid to stevedoring agents. It is clarified that all such “other expenses” incurred by the Steamer Agent on behalf of the shipping line shall not form part of taxable value.
22	F. No. B.43/7/1997-TRU	11.07.1997	Person engaging/appointing a clearing and forwarding agent is liable to pay tax.
23	F. No. B43/7/97 – TRU	11.07.1997	Value shall be the gross amount of remuneration or commission (by whatever name called) paid to such agent by the client engaging such agent (Notification No. 27/97-ST refers)
24	F. No. B43/7/97 – TRU	11.07.1997	Commission or remuneration paid to C&F agent constitutes minimum commission on a flat or turnover basis and variable commission based on performance.
25	F. No. 137/2/202 – CX4	20.02.2002	It is clarified that ICD/CFS cannot be considered as C & F agents. There is no agreement or contract between service provider (ICD/CFS) and service receives (importer/exporter). Also ICD/CFS functions under the authority of Government of India and not for any principal or owner (importer/exporter).
26	2/1/2002-ST (F. No. 137/4/2002 – CX4)	24.04.2002	The service of storage facility and charging rent for storage of liquid cargo in tanks cannot be considered as service relating to C & F agent. It would fall under “storage and warehousing service” introduced in 2002.
27	F, No. 159/5/2002 – CX4		Foodgrain Commission Agents ( <i>Adhat Vyaparies or Adhatiyas</i> ) do not fall within C & F Agent service if the commission is paid by the buyer and not by the farmer.
28	F. No. 73/3/2004-ST (159/3/2003 – CX4)	05.01.2004	Foodgrain commission agents are covered as “Commission agents” under Business Auxiliary service.
29	F. No. 176/3/2001-CX4	29.04.2002	Renting out of premises (like <i>Jehangir</i> Art Gallery) by art galleries for exhibition of art and artifacts does not attract service tax as mandap keeper. It is not a “social function”.
30	37/5/2001-ST (F.No.354/183/2001 TRU)	27.12.2001	The collection center collects exposed film from photography studio who does not have processing facility/photographers, and gets such rolls processed from a colour lab and

			<p>hands over the prints to the photography studio/photographer.</p> <p>For rendering this service they normally receive commission/handling charges from the processing labs and in some cases they may recover handling charges from the customers also. They act merely as a courier/commission agent. Therefore, the services provided by the collection center is not taxable in the category of photography service</p>
31	232/2/2003-CX4	3.3.2006	<p>It is clarified that in case, the goods are consumed during the provisions of service and are not available for sale, the provisions of the notification (No. 12/2003) would not be applicable. Therefore, in super- session of clarification to the contrary (issued by field officers), it is clarified that goods consumed during the provisions of service, that are not available for sale, by the service provider would not be entitled to benefit under Notification No. 12/2003-S.T., dated 20.06.2003.</p>
32	F. No. 241/1/2004 – CX4	23.03.2004	<p>In the case of FCT (Free Commercial Time) selling the time allotted to a producer does not fall within the preview of “advertisement service” since this activity is not connected to making, preparation, display or exhibition of advertisement. This is akin to providing space in a newspaper and magazine for publishing and advertisement and has nothing to do with actual presentation of the advertisement.</p>
33	699/15/2003-CX (F. No. 248/1/2002 – CX4)	05.03.2003	<p>Service of motor vehicles of any other make is not liable to service tax.</p>
34	F. No. 341/43/2001-TRU	18.10.2001	<p>Doubts have been raised as to whether the "value of taxable service" in respect of broadcasting services will include the commission paid by the broadcasting agency to the advertising agency or not.</p> <p>The Value of taxable service is the amount received by the broadcaster for providing the broadcasting service. Therefore, Service Tax is leviable only on the amount received by the broadcaster for the services rendered. Since the amount received by the broadcaster is net of the commission or discount paid to the advertising agency, service tax will be payable on this amount. However, such abatement towards commission/discount shall be allowed only when the same is clearly indicated in the invoice/bill raised by the broadcasting agency on the advertising agency.</p>
35	F. No. 165/2/2003-CX4	27.3.2003	<p>Prasar Bharati is not liable to pay service tax.</p>

36	F. No. 228/1/2003-CX4	28.11.2003	Persons undertaking activities of organizing “Trade Fairs” and Exhibition are not liable to pay service tax. There has to be a sponsor whose behest an event is organized and an event manager who organizes such service.
37	F. No. 356/9/2003-Cx4	17.12.2003	Maintenance of software is not chargeable to service tax.
38	74/4/2004-ST (F. No. 256/10/2003-CX4)	23.1.2004	Maintenance and repair of ATMs does not fall under exemption notification No. 20/2003-ST dated 21.8.2003.
39	79/9/2004-ST (F. No. 137/38/2003-CX4)	13.5.2004	Charges for erection, installation & commissioning are not covered under the category of Consulting Engineer Services. Commissioning or Installation service will be separately taxable under relevant entry and are not chargeable under Consulting Engineer Services. Accordingly, the clarification issued <i>vide</i> the Circular No. 49/11/2002-S.T. dated 18-12-2002 stands modified to this extent.
40	F. No. 159/3/2003-CX4	5.1.2001	<i>Adhatis</i> are not covered under Clearing and Forwarding agent’s services whether they are in Rajasthan or by any other states. Gram agents are Commission agents and thus exempt by Notification No. 13/2003-ST dated 20.6.2003.
41	70/19/2003-ST (F.No.256/9/2003-CX4)	17.12.2003	It is to clarify that maintenance of Software is not chargeable to Service Tax.
42	10/4/96 - F. No. 148/1/94 – CX4(Pt)	17.4.1996	Buying/selling of securities by a member of one stock exchange through a member of another stock exchange on behalf of an investor.
43	14/8/96 - F.No. 148/1/194 – CX4 (Pt)	30.9.1996	Changing of commission/brokerage. Service tax is to be collected on the commission/brokerage at the time of raising the bill. In case of an incomplete brokerage no brokerage or commission’s charged by the stockbroker and, therefore, the value of taxable service in such cases would be nil.
44	15.9.96- F. No. 148/3/96-CX4	4.10.1996	Stock brokers should prominently show the service tax on the bill relating to sale or purchase of service tax/
45	18.12.96 – F. No.	4.11.1996	Registration of members/dealers of over the counter exchange of India.

	148/5/96-CX4		
46	19/13/93 F. No. 137/8/94-CX4	21.11.1996	Visits of Central Excise Offices to premises of assesses for conducting Audit.
47	20/14/96 (F. No. 148/1/94-CX4(Pt))	31.12.1996	<p>When the transaction is on principal to principal basis between brokers, no investor is involved and as such no taxable service is provided and therefore, no service tax is chargeable.</p> <p>Where a broker enters into a transaction on his own account with an investor who is a non-member of the stock exchange the service provided will be taxable service and subject to service tax.</p> <p>In case of arbitrage transaction i.e. the transaction between two brokers of different stock exchanges, the service is provided by a broker i.e. the member of a stock exchange to a non-member of that stock exchange even though the investor may be a member of another stock exchange. Their being an investor involved in the transaction, the service so provided to the investor will be a taxable service subject to service tax.</p>
48	148/3/97 – CX4	9.9.1997	When a member enters into a transaction with another member, it is jobbing and thus not liable to service tax.
49	51/13/2002-ST	7.1.2003	Guidelines on classification of services
50	57/6/2003-ST (F.No.254/1/2003- CX4)	20.5.2003	Clarification on export of services, including on secondary services consumed in export services.
51	57/6/2003-ST (F.No.254/1/2003- CX4)	20.5.2003	If the bill is raised after the rate increase comes into force and even if the service was provided earlier, the increased rate would apply.
52	No. 77/07/2004 (F. No. 137/04/2004-CX-4)	10.3.2004	It is to clarify that where an assessee does not maintain separate accounts, input service tax credit can be utilized only to the extent of 35% of the total service tax payable on all the taxable output services.
53	36/4/2001 (F. No.	8.10.2001	Chapter V of the Finance Act which governs the levy of Service Tax has not extended to



	137/2/2000-CX4)		the levy to designated areas in the Continental Shelf and the Exclusive Economic Zone of India (as has been done in case of Central Excise vide Notification No. 166/87-C.E., dated 11-6-87 and in case of Customs by Notification Nos. 11/87-Cus., Dated 14-1-87 & 64/97-Cus., dated 1-12-97). It is, therefore, clarified that the services provided beyond the territorial waters of India are not liable to Service Tax as provisions of Service tax have not been extended to such areas so far.
54	57/6/2003-ST	20.5.2003	It has come to the notice of the Board that service providers have started collecting service tax @ 8% immediately after the budget i.e. 1-3-2003. However, this rate will come into effect from 14th May, 2003 on which the Finance Bill, 2003 received the assent of the President. In this connection it is stated that if any amount has been collected as service tax but the same is not deposited with the Government in terms of provisions of Section 83 of Finance Act, 1994, read with Section 11D of Central Excise Act, 1944 same becomes recoverable.
55			Service Tax is destination based consumption tax and it is not applicable on export of services. Export of services would continue to remain tax free even after withdrawal of Notification No. 6/99, dated 9-4-99. Further it is clarified that service consumed/provided in India in the manufacture of goods which are ultimately exported, no credit of service tax paid can be availed or reimbursed at present as inter-sectoral tax credit between services and goods are not allowed.
56	53/2/2003-ST (137/11/2003-CX4)	27.3.2003	The amount of service tax, interest, penalty, fine or any other sum payable and the amount of refund or any other sum due, under the provisions shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.
57	137/1/94 – CX 4	26.09.1994	Registration Of DG P & T and Chairman-cum Managing Director of MTNL