Service Tax (Determination of Value) Second Amendment Rules, 2012.

In Exercise of the powers conferred by clause (aa) sub-section (2) of Section 94 of the Finance Act, 1994 (32 of 1994) and in super session of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) number 11,2012-Service Tax, dated the 17th March 2012, published in the Gazette of India, Extraordinary, Vide Number G.S.R. 209 (E), dated the 17th march, 2012 the Central Government, hereby makes the following rules further to amend the service tax (Determination of Value) Rules, 2006, namely:-

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

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

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

"2A Determination of value of service portion in the Execution of a work contracts, referred to in Clause (h) of section 66E of the Act, shall be determined in the following manner, Namely:-

(i) Value of service portion in the execution of a works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation : For the purpose of this clause, -

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

(b) value of works contract service shall include;

(i) Labour charges for Execution of the works.

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and Architect's fees

(iv) charges for obtaining on hire or otherwise, machinery & tools used for the Execution of the Works contract.

(v) cost of consumable such as water, electricity, fuel used in the execution of the works contract.

(vi) cost of establishment of the contractor relatable to supply of labour and services.

(vii) other similar expenses relatable to supply of Labour and services and;

(viii) profit earned by the service provider relatable to supply of labour and service.

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in the goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;

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

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

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

(C) in case of other contracts, not covered under sub-clauses (A) and (B), Including maintenance, repair, completion and Finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty percent. of the total amount charged for the works contract;

Explanation for the purpose of this rule;

(a) "Original Works" means-

(i) all new constructions;

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

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

(D) "total Amount" means the sum total of the gross amount charged for the works contract and the Fair market value of all goods and services supplied in or in relation to the execution of the

works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods and services, if any; and

(ii) the value added Tax or sales tax, if any, levied thereon;
provided that the Fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

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

3. In the Said Rules, in rule 2B, the words, brackets, letters and figures “referred to in sub-clause (105) of section 65 of the Act,” shall be omitted.

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

2C. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a Restaurant or as outdoor catering.- subject to the provision of Section 67, the Value of services portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not Intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the Total amount charged for such supply, in terms of the following table; namely-

TABLE

Sr.No.	Description	Percentage of the Total Amount
(1)	(2)	(3)
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not Intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service Portion in outdoor catering wherein goods, being food or any other article of human consumption or any Drink (whether or not Intoxicating) is supplied in any manner as a part of such outdoor catering.	60

Explanation 1. – For the Purpose of this rule, "Total Amount" means the sum total of Gross amount charged and the Fair market value of all goods and services supplied in or in relation to the supply of food or any other article of Human consumption or any drink (whether or not Intoxicating), whether or not supplied under the same contract or any other contract, after deducting.

(i) the Amount charged for such goods or services; if any; and
(ii) the Value added tax or sales tax, if any, levied thereon;

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

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

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

6. In the Said rules, in rule 5, in sub-rule(1), in the Explanation, for the words " brackets, letters and figures" service specified in sub-clause (zzzx) of clause (105) of section 65 of the Finance act,1994, the value of taxable service shall be the gross amount paid by the person to whom telecom service is provided by the Telegraph authority", the words 'the value of the Telecommunication' service shall be the Gross amount paid by the person to whom Telecommunication service is actually provided' to be substituted.

7. In the Said rules, in rule 6,
(a) in sub rule (1)

(I) in clause (viii) for the words "in any manner; and" the words "in any manner" shall be substituted.

(II) in clause (ix), for the words "Insurance agent", the word "Insurance agent" and shall be substituted.

(III) after clause (ix), the following clause shall be inserted, namely-
"x the amount realized as demurrage or by any other name whatever called for the provision of a service beyond the period

originally contracted or in any other manner relatable to the provision of services.”.

(b) in sub rule (2):

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

(iv) interest on delayed payment of any consideration for the provision of service or sale of property, whether movable or immovable.

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

(vi) accidental damage due to unforeseen actions not relatable to the provision of services, and

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

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF DIRECT TAXES)

CBDT notifies payments exempted under section 194J of the Income Tax Act, 1961.

In exercise of the powers conferred by sub-registrar (IF) of section 197A of the Income tax Act, 1961 (43 of 1961), the central Government hereby notifies that no deduction of tax shall be made on the following specified payment under section 194J of the act, namely:-

Payment by a person (hereafter referred to as the transferee) for acquisition of software from another person, being a resident, (hereafter referred as the transferor), where-

(i) the software is acquired in a subsequent transfer and the transferor has transferred the software without any modification,

(ii) tax has been deducted-

(a) under section 194J on payment for any previous transfer of such software; or

(b) under section 195 on payment for any previous transfer of such software from a non-resident, and

(iii) the transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the permanent Account number of the transferor.

2. This notification shall come into force from the 1st day of July, 2012.

* When benefit of Notification available:-

The CBDT has issued a Notification No. SO 1323 (E), dated 13-06-2012, that no deduction of tax at source shall be made from payment made for acquisition of software, if following conditions are satisfied:

(1) Payment is made by a person ("transferee") for acquisition of software;
(2) payment is made to another person ("transferor");
(3) The transferor is a resident person
(4) The software is acquired in subsequent transfer. In other words, the transferor should not be the original developer of the software and it must have acquired the same either from the original developer (from within India or outside India) or through a chain of dealers (from within India or outside India)
(5) The transferor has transferred the software without any modification i.e. branded software, etc (if transferor is customizing the software as per customers' requirement i.e. unbranded software etc., the benefit of such notification would not be available);
(6) Tax has been deducted by transferor from payment of such software during any previous transfer under section 194J (payment to a resident) or section 195 (payment to a non-resident). In order words, the transferor should have deducted tax from payment made to the original developer or previous dealer, from whom such software was acquired; and
(7) The transferee obtains a declaration from the transferor that it has deducted tax from payment made to original developer or previous dealer (as discussed in point 6)

II. Fallacies in availing benefit of above said exemption –
(1) The benefit of above notification would not be available if payment is made for software which is specialized one and exclusively custom-made to cater to the needs of an Individual Client. These are typically referred to as "unbranded software";

(2) The exemption from tax deduction would be available only if software is standardized and marketed such as Windows etc., These are referred to as "branded software" or "off- the shelf software" or "shrink wrapped software"

(3) If transferor has taken benefit of favorable judgments for non-deduction of tax at source from payment made to original developers or dealers, the transferees would be under obligation to deduct tax at source from payment made to the transferor.

(4) If Indian customer buys software from a non-resident dealer for his user, he would be under obligation to deduct the tax, as benefit of such

notification would be available only if payment is made to a resident transferor.

III. **Illustration:**

A ‘branded software’ is developed by ABC, Inc. USA. Such software is transferred to Cayman Island subsidiary ‘XYZ, Ltd’ which in turn transfers the same to Indian subsidiary namely ‘ABC Pvt. Ltd. sells the software in Indian market through maze of various regional dealers. The impact of the notification can be understood through following illustration.

Diesel cars may become expensive- Finance ministry mulls additional Taxes

The hike in petrol prices by almost Rs 7.50 per litre was bound to have a direct impact of sales of petrol cars. Not that the petrol cars were doing well for the last few months, but the uncertainty and constant threat of price hikes has forced many buyers to shift to diesel cars, in spite of disproportionate premium.

Of course, this also means that there is unhealthy rise in demand for diesel cars – and the government is not very happy about it, as this is a subsidised fuel. The finance ministry hence now plans to impose additional excise duty on diesel vehicles, in order to limit usage of diesel by discouraging buyers and also to get additional tax revenue.

The chairman of Central Board of Excise and Customs confirmed that a proposal is being studied by finance minister, Pranab Mukherjee, and decision will be taken soon. A similar proposal was with the government during 2012-13 Union Budget, but a 2 per cent excise hike was then implemented across-the-board; also due to strong opposition from auto industry.

After the recent hike and a nominal roll-back in petrol prices, we were certain that government might reconsider additional taxes on diesel cars. If implemented, this will certainly have derogatory effect on the industry; as the auto industry is already reeling under pressure from inflation, high interest rates and high petrol prices. It may also impact investment in the auto sector and industry is also expected to oppose the proposal once again.

Another factor that needs to be considered by the government is that nominal hike in diesel car taxes is not going to affect their sales much. As running cost will still be lot less as diesel still costs lot less and such vehicles are lot more efficient.

.The government itself appeared to be rive on the issue with the secretary in the heavy industry department saying he would write to the finance ministry advising against the imposition of the levy.

“We will again press for not levying the taxes. We will submit a report to the finance ministry opposing the additional levy on diesel vehicles,” Ambuj Sharma, joint secretary in the department of heavy industry, told reporters in the capital.

At the same time, Crisil Research — an independent economic think-tank — came out with a study that questioned the economic rationale behind such a levy since it would fail to put a lid on rising petroleum subsidies.

The Crisil study estimates the number of diesel cars and utility vehicles (UVs) on Indian roads at 3.6 million, or about 23 per cent of the total population of cars and UVs in the country.

The study says since the one-time tax will be levied on only new vehicles sold, the government cannot hope to garner more than Rs 6,000 crore annually.

Crisil estimates this will only cover 12-15 per cent of the total diesel subsidy bill. It goes on to argue that the government will need to raise diesel prices by 10-15 per cent if it wants to cap under-recoveries on diesel at last year’s level of Rs 9 per litre.

At current prices, the under-recovery on diesel is estimated at Rs 14 a litre.

The Centre has been mulling an additional tax on diesel cars as it feels that this will curb the growing consumption of the fuel and, thereby, bring down the subsidy bill.

While diesel vehicles account for around 40 per cent of the new cars sold in the country, auto firms aver that diesel cars only account for less than 7 per cent of the fuel consumed in the country.

“Diesel cars and UVs account for just over a tenth of the diesel consumption. To bring about a sustainable reduction in the subsidy burden, the government will have to hike diesel prices, and ensure that in future also, diesel prices move in accordance with crude oil prices,” the Crisil study said.

Crisil Research said collections from a one-time tax (estimated at between Rs 90,000 and Rs 140,000 per car depending on fuel and vehicle use) on all new diesel cars and UVs sold would almost equal the subsidy borne by the government over the life of the vehicle. This tax would form 16 to 20 per cent of a typical diesel car's price.

On the other hand, an annual use-based tax on all diesel cars and UVs will amount to an additional 2 per cent of the vehicle price annually for personal-use cars and 5 per cent for commercial-use cars. However, there could be practical difficulties in collecting an annual tax.

The government will then have to rely on RTOs (regional transport offices), which are fragmented and not so well-equipped. Thus, it will be difficult to collect taxes regularly and monitor non-payments, which renders this option unviable.