

Counting Rs. 10 lakhs – Not so easy.

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Service tax is normally payable by the service provider, except in the following circumstances.

S.No.	Service / Circumstances	Who is liable to pay Service Tax
1	Services provided by Goods Transport Agency.	Consignor / Consignee who pays the freight, if either of them fall under any of the categories mentioned in Rule 2 (1) (d) (v) of the Service Tax Rules, 1994.
2	Insurance auxiliary service provided an insurance agent.	The person carrying on insurance service (service recipient).
3	Business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent.	The mutual fund or asset management company, receiving such service.
4	Sponsorship Service.	The body corporate or firm receiving the service.
5	Services provided from Outside India and received in India.	Service recipient in India.

We are also aware that Notification 6/2005 provides for value based exemption from payment of service tax, to small service providers. The exemption is available to those service providers, whose turn over (value of taxable services) is less than Rs. 10 lakhs during the preceding financial year. The exemption is available upto a turnover of Rs.10 lakhs per annum.

Various practical situations which may emerge in claiming the benefit of this exemption are discussed hereunder.

Question (1) : When a person is liable to pay service tax under Rule 2 (1) (d) (v) in respect of the GTA services received by him, can he claim exemption upto Rs. 10 lakhs under this Notification?

Answer : No. Proviso (ii) of the notification specifically provides that nothing contained in this notification shall be applicable in cases where service tax is payable by a person in terms of Section 68 (2) of the Finance Act, read with Service Tax Rules, 1994. [Section 68 (2) enables the Government to specify any person other than the service provider as being liable for payment of service tax]

Question (2) : A goods transport agency is liable to pay service tax, in cases where the consignor / consignee are not falling under any of the categories mentioned in Rule 2 (1) (d) (v) *ibid*. For that portion of services, whether the GTA can claim the benefit of this exemption. In such cases, how the Rs. 10 lakhs limit has to be calculated.

Answer : Yes. The value of services rendered by him, for which the GTA is not liable to pay service tax, shall not be taken into account for calculating Rs. 10 lakhs as per para 3 of the notification, which reads as under.

For the purposes of determining aggregate value not exceeding four lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment

received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Example : The total turnover of a GTA, during 2009-2010 is Rs. 20 lakhs, out of which, the consignor / consignee are liable to pay service tax for a value of Rs.12 lakhs. Whether the GTA is entitled for availing the exemption during 2010-2011?

Yes. Since after exclusion of Rs.12 lakhs (for which the GTA is not liable to pay service tax) from the turn over of Rs. 20 lakhs, the remaining amount of Rs.8 lakhs is less than Rs.10 lakhs. Further, while claiming the exemption during 2010-11, the limit of Rs.10 lakhs has to be calculated only with reference to that turnover, for which the GTA is liable to pay service tax and the turnover for which the GTA is not liable to pay service tax, shall not be taken into account.

Question (3) : A person is receiving services from abroad and is liable to pay service tax. Can he claim the benefit of this exemption?

Answer : No. The service recipient is made liable to pay service tax in such cases, by virtue of Rule 2 (1) (d) (iv) of the Service Tax Rules, read with section 66 A and 68 (2) of the Finance Act, 1994 and as per proviso (ii) of the notification, nothing contained in the notification shall apply to such cases.

Question (4) : A person is providing services as specified in S.Nos 2 or 3 or 4 of the table above, where the liability to pay service tax is not on him. He is also providing certain other taxable services, where he is liable to pay service tax. In such circumstances, how the limit of Rs. 10 lakhs has to be calculated.

Answer : The manner of computation of Rs.10 lakhs, be it to determine the previous year turnover to determine the eligibility or the computation for the current year, to claim the exemption upto Rs.10 lakhs is the same. Let us see the following example.

S.No.	Details	Previous year	Current year
1	Value of taxable service, for which the service provider is not liable to pay service tax under (2) or (3) or (4) of the above table.	Rs.12,00,000	Rs.15,00,000
2	Value of other taxable services rendered, for which the service provider is liable to pay service tax.	Rs.8,00,000	Rs.9,00,000

The notification is silent as to how the computation has to be made in such cases. Explanation B of the notification reads as under.

"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 said 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 said Finance Act under any other notification.

The above explanation provides for exclusion of only that value, which is exempted from payment of service tax under any other notification. The turnover received in respect of those cases, where the service provider is not liable to pay service tax has not been specifically excluded for the purpose of computation of Rs. 10 lakhs. But, if the value in respect of which the service provider is not liable to pay service tax is also taken into account to compute Rs. 10 lakhs limit, it will amount to double jeopardy, as explained below. On the one hand, the recipient of the service will be paying service tax on such value of taxable service, as the benefit of this exemption is not available to him and on the other hand, such value of taxable service would also be included in the computation of Rs. 10 lakhs in the hands of the service provider.

Further, the proviso in the notification to the effect that nothing contained in this notification shall apply to such value of taxable service for which the person liable to payment of service tax is specified under Section 68 (2) read with Service Tax Rules, 1994, can also be interpreted to mean that such value of taxable service shall not be taken into account for determining aggregate value not exceeding Rs, 10 lakhs also. (If that be the case, specific exclusion provided for GTA is rather redundant).

So it can be reasonably concluded that in the given example, the service provider is entitled to claim exemption for Rs. 9 lakhs in 2010-11, since the value of taxable service, **in respect of which he is liable to pay service tax** is less than Rs. 10 lakhs, during the preceding year. In other words, the value of taxable service in respect of which the service provider is not liable to pay service tax need not at all be taken into consideration while calculating the previous year turnover of Rs.10 lakhs, or while calculating the exemption limit of Rs.10 lakhs.

It is better, if the Notification is amended to provide for the above specifically, in the ensuing budget, to avoid any probable disputes.