

**Never rent a cab
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As there is so much of confusion on the issue of service tax liability on renting of cabs, applicability of reverse charge, credit entitlement, etc. which are further complicated by the recent amendments, let us try to demystify the same.

It may be noted that first the service tax liability has to be determined with reference to the abatement available and then the applicability of reverse charge has to be seen.

Existing provisions.

As per Notification 26/2012 ST Dt. 20.06.2012, service tax is payable on 40 % of the value, after 60 % abatement. The relevant entry is reproduced below.

Sl.No	Description of taxable service	Percent- age	Conditions
(1)	(2)	(3)	(4)
9	Renting of any motor vehicle designed to carry passengers	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

As per Notification 30/2012 ST Dt. 20.06.2012 the following service is notified for reverse charge.

Taxable services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory.

It may be noted from the above, the services provided by way of renting of motor vehicle to ultimate consumers alone is notified for the purpose of reverse charge, subject to the status of service provider and service receiver. If a vehicle owner (say Ram) hires the vehicle to another person (say Lakshman), who is also engaged in similar renting of vehicles, then reverse charge is not applicable and the vehicle owner (Ram) himself shall pay the service tax in respect of the amount charged by Ram on Lakshman. Between Lakshman and the consumer (say Sita Pvt. Ltd) reverse charge would apply.

The proportion of service tax payable by the service provider and service recipient under reverse charge, if the service is provided to ultimate consumer (say Sita Pvt. Ltd.) is prescribed as below in Notification 30/2012 ibid.

Sl. No	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
7.	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged	Nil	100%

	in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
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As per the above, under clause (a) above, the service recipient (Sita Pvt. Ltd.) shall pay the entire service tax liability (i.e. ST @ 12.36 % on 40 % of the value of service). If the value of service is Rs.2000, ST payable by Sita Pvt. Ltd. is Rs.99). In this situation, the service provider (Lakshman) would not have availed any cenvat credit and not paid any service tax.

If the service provider (Lakshman) has chosen to avail cenvat credit, then he is not entitled to claim any abatement and in such case, the total service tax liability would be 12.36 % on Rs.2,000, i.e. Rs.247. Out of which the service provider (Lakshman) shall pay 60 %, i.e.Rs.148 and the service recipient (Sita Pvt. Ltd.) shall pay 40 %, i.e. Rs.99, as per clause (b) of S.No. 7 under Notification 30/2012.

It may be noted irrespective of the fact whether the service provider has chosen to pay service tax on unabated value, by availing cenvat credit or has chosen not to pay any service tax and not claim any cenvat credit, the service recipient's liability under reverse charge remains the same. i.e. Rs.99 in our example.

Now let us see the effect of the present amendments.

The following amendments would be effective from 01.10.2014, in Notification 26/2012, vide Notification 8/2014 ST Dt. 11.07.2014.

Sl.No	Description of taxable service	Percent- age	Conditions
(1)	(2)	(3)	(4)
9	Renting of motor cab.	40	"(i) CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004; (ii) CENVAT credit on input service of renting of motorcab has been taken under the provisions of the CENVAT Credit Rules, 2004, in the following manner: (a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent

			of the value; or (b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value; (iii) CENVAT credit on input services other than those specified in (ii) above, has not been taken under the provisions of the CENVAT Credit Rules, 2004."
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The term "motor cab", has been defined in erstwhile Section 65 (71) of the Finance Act, 1994 as "motor cab has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988". The said definition under the MV Act is, "motorcab means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward". In the absence of definition of the term "motor cab" in the Finance Act, 1994 after 01.07.2012, we can safely conclude that the pre 01.07.2012 definition itself can be referred to.

It may be noted from the above amendment, that after 01.10.2014, a person providing service of renting of motor cab (Ram or Lakshman) is made entitled to avail cenvat credit to a limited extent, i.e. if he hires the vehicle from another person. In our example, Lakshman can avail cenvat credit of service tax paid by Ram. It may be noted that in the hands of Lakshman, no reverse charge is applicable, as Ram is providing service to Lakshman, and Lakshman is also engaged in same line of business.

If Ram pays service tax on 40 % of the value, by claiming the above abatement, then Lakshman can take cenvat credit of such service tax. If Ram avails various cenvat credit and pays full service tax, then Lakshman can take cenvat credit of 40 % of such service tax paid by Ram.

It may be noted that all the above will apply only for "motor cab" a vehicle capable of transporting not more than 6 passengers. For all other vehicles, we have to refer to entry 9 A, which is reproduced below.

"9A	Transport of passengers, with or without accompanied belongings, by a contract carriage other than motorcab.	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";
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If a person is renting of a bigger vehicle (say bus, 8 seater Innova, etc.) then he is not entitled for any cenvat credit, if he claims 60 % abatement and pays service tax on 40 % of the value. Even if he hires such bus or innova from any other person, who pays service tax, he cannot take credit of the same.

At this stage, it may also be noted that radio tax is excluded from the ambit of negative list and the same shall be liable to service tax, after the passage of the Finance Bill, from a date to be notified. From such date, the above entry 9 A would be amended as,

"9A	Transport of passengers, with or without accompanied belongings, by- a. a contract carriage other than motorcab. b. a radio taxi.";	40	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.";
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Why this discrimination for bigger vehicles and radio taxis?

Now coming to the reverse charge, it may once again be noted that reverse charge is applicable only when service is provided to ultimate consumer, subject to satisfaction of other conditions. If the vehicle is hired to another similar service provider, no reverse charge is applicable and the service provider should pay the service tax, as application under (9) or (9A) above.

Notification 30/2012 is being amended vide Notification 10/2014 ST Dt. 11.07.2014, with effect from 01.10.2014.

Sl. No	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
7.	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (b) in respect of services	Nil 50%	100% 50%

	provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business		
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The effect of the above amendment is, if reverse charge is applicable, the service tax to be paid by the service provider (Lakshman) and service recipient (Sita Pvt. Ltd.) would be as below.

If the service provider (Lakshman) has not availed any cenvat credit and has not paid any service tax, then the service receiver (Sita Pvt. Ltd.) shall pay the entire liability i.e. if the value of taxable service is Rs.2000, the service recipient (Sita Pvt. Ltd) shall pay service tax @ 12.36 % on 40 % of Rs.2000, i.e. Rs.99. {7(a) above}

If the service provider (Lakshman) has availed limited cenvat credit as allowed under S.No. 9 or not at all availed any credit under 9 A of Notification 26/2012, then service tax is payable on 40 % of the value and the total liability would be Rs.99, which shall be paid entirely by the service recipient (Sita Pvt. Ltd).{7 (a) above}

If the service provider (Lakshman) has availed all cenvat credit and hence not opted for S.No. 9 or 9 A of Notification 26/2012, then the total service tax liability would be, Rs.247 @ 12.36 % on Rs.2,000, out which the service recipient (Sita Pvt. Ltd.) and service provider (Lakshman) shall pay Rs.123.50 each. {7 (b) above}

Let us tabulate the various situations, post 01.10.2014, for better understanding.

Situation I. Ram is hiring a Motor Cab to Lakshman (who is also in the business of renting vehicles) and charging Rs.1500.

Options available for Ram.

- (i) Ram can take cenvat credit of duties paid eligible inputs, capital goods and input services and pay service tax @ 12.36 % on Rs.1500, i.e. Rs.185.(Not opting for any abatement)
- (ii) If at all Ram has also hired the vehicle in turn from say Ravan, whatever service tax is charged by Ravan can be availed as credit by Ram. Ram can pay service tax on 40 % of Rs.1500 @ 12.36%, i.e. Rs.74.

Options available for Lakshman. He provides service to Sita Pvt. Ltd and charges Rs.2000 and reverse charge is applicable.

- (i) If Ram has followed (i) above, Lakshman can take credit of 40 % of Rs.185, i.e.Rs.74. Lakshman has not taken any other cenvat credit. In such case, his total service tax liability on 40 % Rs.2000 @ 12.36 % would be Rs.99, which has to be paid in full by Sita Pvt. Ltd {7 (a) above}.Lakshman can claim refund of cenvat credit under Rule 5 B and Notification 12/2014 Dt. 03.03.2014.
- (ii) If Ram has followed (ii) above, Lakshman can take credit of Rs.74. Lakshman has not taken any other cenvat credit. In such case, his total service tax liability on 40 % of Rs.2000 @ 12.36 % would be Rs.99. which has to be paid in full by Sita Pvt. Ltd. {7 (a) above}. Lakshman can claim refund of cenvat credit under Rule 5 B and Notification 12/2014 Dt. 03.03.2014.
- (iii) Lakshman is not at all taking any cenvat credit. Lakshman is not liable to pay any service tax. Sita Pvt. Ltd. Shall pay service tax @ 12.36 % on 40 % of Rs.2000, i.e. 99 {7 (a) above}.
- (iv)Lakshman has taken cenvat credit on eligible inputs, capital goods and input services. He is not entitled for any abatement. His total service tax liability would be 12.36 % on Rs.2,000 i.e 247. Lakshman shall pay Rs.123.50 and Sita Pvt. Ltd. Shall pay Rs.123.50. {7 (b) above}

Situation II. Ram is hiring a vehicle other than Motor Cab to Lakshman (who is also in the business of renting vehicles) and charging Rs.1500.

Options available for Ram.

- (i) Ram can take cenvat credit of duties paid eligible inputs, capital goods and input services and pay service tax @ 12.36 % on Rs.1500, i.e. Rs.185.(Not opting for any abatement).
- (ii) Ram need not take any cenvat credit and pay service tax on 40 % of Rs.1500 @ 12.36 %, i.e Rs.74. Even if Ram has also hired the vehicle in turn from say Ravan, whatever service tax is charged by Ravan cannot be availed as credit by Ram.

Options available for Lakshman. He provides service to Sita Pvt. Ltd and charges Rs.2000 and reverse charge is applicable.

- (i) If Ram has followed (i) above, Lakshman can take credit of Rs.185. Lakshman is not entitled for any abatement and his total service tax liability would be Rs.247. Lakshman shall pay Rs.123.50 and Sita Pvt. Ltd. Shall pay Rs.123.50 {7 (b) above}.
- (ii) If Ram has followed (ii) above, Lakshman can take credit of Rs.74. Lakshman is not entitled for any abatement and his total service tax liability would be Rs.247. Lakshman shall pay Rs.123.50 and Sita Pvt. Ltd. Shall pay Rs.123.50 {7 (b) above}.
- (iii) Lakshman is not at all taking any cenvat credit. Lakshman is not liable to pay any service tax. Sita Pvt. Ltd. Shall pay service tax @ 12.36 % on 40 % of Rs.2000, i.e. 99 {7 (a) above}.

Moral of the story. Purchase as many vehicles as possible and never ever in your life hire a vehicle.