

KJM INC.

The Finance Minister has introduced Finance Bill, 2008 in the Lok Sabha on 29th February 2008.

Changes relating to service tax are in, -

(i) Clause 85 of the Finance Bill, 2008, and

(ii) Notification Nos.4/2008-Service Tax to 15/2008-Service Tax, all dated 1st March 2008.

Changes are being proposed in the provisions of the,-

- ✓ Finance Act, 1994,
- ✓ Service Tax Rules, 1994,
- ✓ CENVAT Credit Rules, 2004,
- ✓ Export of Services Rules, 2005,
- ✓ Taxation of Services (Provided from outside India and Received in India) Rules, 2006, and
- ✓ Works Contract (Composition Scheme for Payment of Service tax) Rules,2007.

Salient features of the changes are discussed hereinafter:

### **INCREASE IN THRESHOLD EXEMPTION LIMIT FOR SMALL SERVICE PROVIDERS**

- ✓ The annual threshold limit of service tax exemption for small service providers is being increased from Rs.8 lakh to Rs.10 lakh by amending notification No.6/2005-Service Tax, dated 01.03.05 vide notification No.8/2008-Service Tax, dated 01.03.08. Amendment shall come into effect from 01.04.2008.
- ✓ Consequent upon the increase in the threshold exemption limit from Rs.8 lakh to Rs.10 lakh, the annual turnover limit for obtaining service tax registration shall also be increased from Rs.7 lakh to Rs.9 lakh by amending notification Nos.26/2005-Service Tax and No.27/2005-Service Tax, both dated 07.06.05 vide Notification Nos. 9/2008-ST and 10/2008-ST, both dated 01.03.08 respectively.
- ✓ **Amendments shall come into effect from 01.04.2008.** Increased threshold limit of Rs.10 lakh shall be applicable to small service providers for the financial year 2008-09 onwards.

### **FOLLOWING SERVICES ARE SPECIFICALLY INCLUDED IN THE LIST OF TAXABLE SERVICES:**

- ✓ Services provided in relation to information technology (IT) software for use in the course, or furtherance, of business or commerce [section 65(105)(zzzz) refers];

## KJM INC.

- ✓ Services provided in relation to management of investment, known as segregated fund, under unit linked life insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme [section 65(105)(zzzf) refers];
- ✓ Services provided by a recognised stock exchange in relation to securities [section 65(105)(zzzg) refers];
- ✓ Services provided by a recognised association or a registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts [section 65(105)(zzzh) refers];
- ✓ Services provided by a processing and clearinghouse in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts [section 65(105)(zzzi) refers];
- ✓ Services provided in relation to supply of tangible goods, without transferring right of possession and effective control of said tangible goods [section 65(105)(zzzj) refers]; and
- ✓ Services provided in relation to internet telecommunication [section 65(105)(zzzu) refers]. Services provided in relation to Internet telephony has been covered within the scope of the proposed service. Hence Internet telephony service shall be omitted.

**The above shall be effective from a date to be notified after the enactment of the Finance Bill, 2008**

### **1. INFORMATION TECHNOLOGY SOFTWARE SERVICE:**

- ✓ Information Technology (IT) software service includes,-
  - a) Development (study, analysis, design and programming) of software.
  - b) Adaptation, up-gradation, enhancement, implementation and other similar services in relation to IT software.
  - c) Provision of advice and assistance on matters related to IT software, including:
    - Conducting feasibility studies on the implementation of a system,
    - Providing specifications for a database design,
    - Providing guidance and assistance during the start-up phase of a new system,
    - Providing specifications to secure a database,
    - Providing advice on proprietary IT software.
  - d) Acquiring the right to use,-

## KJM INC.

- IT software for commercial exploitation including right to reproduce, distribute and sell,
  - Software components for the creation of and inclusion in other IT software products,
  - IT software supplied electronically.
- ✓ Software consists of carrier medium such as CD, Floppy and coded data. Software's are categorized as "normal software" and "specific software". Normalised software is mass-market product generally available in packaged form off the shelf in retail outlets. Specific software is tailored to the specific requirement of the customer and is known as customized software.
- ✓ Packaged software sold off the shelf, being treated as goods, is leviable to excise duty @ 8%. In this budget, it has been increased from 8% to 12% vide notification No. 12/2008-CE dated 01.03.2008. Number of IT services and IT enabled services (ITeS) are already leviable to service tax under various taxable services:
- Consulting engineer's service - advice, consultancy or technical assistance in the discipline of hardware engineering [section 65(105)(g)].
  - Management or business consultant's service - procurement and management of information technology resources [section 65(65)].
  - Management, maintenance or repair service - maintenance of software, both packaged and customized and hardware [section 65(64)].
  - Banking and other financial services - 'provision and transfer of information and data processing' [section 65(12)].
  - Business support service - various outsourced IT and IT enabled services [section 65(105)(zzzq)].
  - Business auxiliary service - services provided on behalf of the client such as call centres [section 65(19)].
- ✓ IT software services provided for use in business or commerce are covered under the scope of the proposed service. Said services provided for use, other than in business or commerce, such as services provided to individuals for personal use, continue to be outside the scope of service tax levy. Service tax paid shall be available as input credit under Cenvat credit Scheme.
- ✓ Software and upgrades of software are also supplied electronically, known as digital delivery. Taxation is to be neutral and should not depend on forms of delivery. Such supply of IT software electronically shall be covered within the scope of the proposed service.
- ✓ With the proposed levy on IT software services, information technology related services will get covered comprehensively.
- ✓ Following consequential amendments in other taxable services are also being made:
- At present, 'Information technology service' is specifically excluded from the scope of Business auxiliary service [section 65(105)(zzb)]. Consequent on the proposed IT software service, information technology services get covered

## KJM INC.

comprehensively for the purpose of levy of service tax and, therefore, specific exclusion of 'Information technology service' under Business auxiliary service is being deleted.

- To include 'testing and analysis of IT software' services under Technical testing and analysis service [section 65(105)(zzh)].
- To include 'Certification of IT software' services under Technical inspection and certification service [section 65(105)(zzi)].
- **To clarify as removal of doubts** that 'Management, maintenance or repair of properties' includes Management, maintenance or repair of IT software [section 65(105)(zzg)]. Maintenance of packaged software (being goods) is also leviable to service tax under the said service.
- Services provided in relation to advice, consultancy and assistance on matters related to IT software shall be leviable to service tax under the IT software service. Consulting engineer's service [section 65(105)(g)] in the discipline of computer hardware engineering is leviable to service tax whereas consulting engineer's service in the discipline of computer software engineering is not leviable to service tax by way of specific exclusion. Specific exclusion of 'consultancy in the discipline of computer software engineering' from the scope of 'consulting engineer's service' is not necessary and, therefore, being deleted.
- To clarify that a consultancy service, covering both hardware and software consultancy, shall be classifiable under 'Consulting engineer's service'.

## 2. INVESTMENT MANAGEMENT SERVICE PROVIDED UNDER ULIP:

- ✓ Unit-Linked Insurance Plan (ULIP) is an insurance product offered by life insurance companies combining both risk cover and benefits of investment. ULIP being a combination product, premium amount paid under ULIP consists of risk premium and investment component. Risk premium may be for life or health or any other authorized purposes. Unlike in the case of traditional life insurance policies, policyholder of ULIP can choose portfolios for investment with different investment aims such as low, medium and high-risk category or combination thereof. ULIP enables the policyholder to take part in the scheme collectively and becoming the beneficiary like mutual funds. The investment risk is borne by the ULIP policyholder.
- ✓ The fund available for investment is known as segregated fund. Insurance companies charge from the policyholder, initially and periodically, various charges, in addition to risk premium, relating to management of the segregated fund under various names, such as, premium allocation charges, fund management fees, fund switching charges, surrender charges etc. These are consideration for providing services relating to investment management.
- ✓ The proposed service enables levy of service tax on services provided in relation to management of the investment portion of ULIP premium also known as segregated fund. Consideration for management of the segregated fund shall be computed as the difference between the total premium paid and the sum of premium for risk cover

## KJM INC.

plus amount of segregated fund. Service tax is liable to be paid as and when an amount is charged from the policyholder.

### Illustration

(a) Total ULIP premium	:	Rs.100
(b) Premium for risk cover	:	Rs.10
(c) Segregated fund for investment	:	Rs.85
(d) Gross amount charged for the Management of segregated fund	:	Rs.5 [100 – (10 + 85)]
(e) Service tax @ 12%	:	Re 0.60 [12% of 5 ]

- ✓ It may be noted that in the case of ULIP, risk premium attributable to risk cover is taxed under 'Insurance service' and management of investment is taxed under the proposed taxable service.

### **3. STOCK EXCHANGE, COMMODITY EXCHANGE AND PROCESSING & CLEARING HOUSE SERVICES:**

- ✓ Stock exchanges such as National Stock exchange, Bombay Stock Exchange are providing services to their members relating to transaction of securities for a consideration. Similarly, commodity exchanges such as Multi Commodity Exchange of India and National Commodities and Derivatives Exchange of India provide services relating to trading in goods and forward contracts. These bodies are regulated by Securities Contract (Regulation) Act, 1956 and the Forward Contracts (Regulation) Act, 1952. Stock exchanges and commodity exchanges also perform the duties and functions of processing and clearing of transactions either by themselves or by transferring such duties and functions to processing and clearing houses including Clearing Corporation.
- ✓ It is proposed to levy service tax on services provided by recognised stock exchanges, recognised associations and registered associations commonly known as commodity exchanges and processing and clearing houses.
- ✓ Large number of intermediation services relating to capital market are already leviable to service tax. Service tax paid is available as input credit under Cenvat Credit Scheme.

### **4. SUPPLY OF TANGIBLE GOODS FOR USE:**

- ✓ Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods [Article 366(29A)(d) of the Constitution of India]. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.
- ✓ Excavators, wheel loaders, dump trucks, crawler carriers, compaction equipment, cranes, etc., offshore construction vessels & barges, geo-technical vessels, tug and barge flotillas, rigs and high value machineries are supplied for use, with no legal

## KJM INC.

right of possession and effective control. Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.

- ✓ Proposal is to levy service tax on such services provided in relation to supply of tangible goods, including machinery, equipment and appliances, for use, with no legal right of possession or effective control. Supply of tangible goods for use and leviable to VAT / sales tax as deemed sale of goods, is not covered under the scope of the proposed service. Whether a transaction involves transfer of possession and control is a question of facts and is to be decided based on the terms of the contract and other material facts. This could be ascertainable from the fact whether or not VAT is payable or paid.

### **5. INTERNET TELECOMMUNICATION SERVICE:**

- ✓ In budget 2007-08, six separate taxable services (telephone, pager, leased circuit, telegraph, telex and fax) related to telecommunication were merged into a single taxable service namely telecommunication service. Telecommunication service was comprehensively defined so as to include all services provided in relation to telecommunication.
- ✓ Telecommunication services are also provided through internet. Services provided by any person in relation to internet telephony is leviable to service tax [section 65(105)(zzzu)].
- ✓ Proposal is to define comprehensively Internet telecommunication service and omit the present definition of Internet telephony service. It may be noted that,-
  - a) The present 'internet telephony service' shall get subsumed with in the proposed 'internet telecommunication service' [section 65(105)(zzzu)];
  - b) Internet telecommunication service includes, -
    - i) Internet backbone services, including carrier service of internet traffic by one Internet Service Provider (ISP) to another ISP,
    - ii) Internet access services, including provision of a direct connection to the internet and space for the customer's web page, and
    - iii) Telecommunication services, including fax, telephony, audio conferencing and video conferencing, provided over the Internet.
- ✓ Service provided by ISPs for accessing the Internet through the computer network shall be specifically covered under the proposed service. At present, this service is covered under 'On-line information and database access or retrieval service'.

### **SCOPE OF SPECIFIED TAXABLE SERVICES IS BEING AMENDED AS FOLLOWS:**

#### **FOREIGN EXCHANGE BROKER SERVICE:**

## KJM INC.

- ✓ Foreign Exchange (Forex) broking service is leviable to service tax. Foreign exchange brokers provide services as an intermediary in relation to purchase or sale of foreign currency on a commission/brokerage basis. Purchase or sale of foreign currency is undertaken by foreign exchange broker and also by persons authorised under Foreign Exchange Management Act, 1999 to deal in foreign exchange and having licence issued by RBI. Such authorised persons are known as moneychangers or authorised dealers of foreign exchange. Services in relation to purchase or sale of foreign currency is, therefore, provided by foreign exchange broker, money changer and also authorised dealer of foreign exchange.
- ✓ Foreign exchange broker indicates the consideration for the services provided (commission) explicitly. Whereas money changers/authorised dealers of foreign exchange providing same services may not necessarily indicate the consideration explicitly.
- ✓ Section 65(12) is being amended so as to levy service tax on purchase or sale of foreign currency, including money changing, provided by an authorized dealer in foreign currency or an authorised moneychanger, in addition to a foreign exchange broker. An explanation is being added to the effect that explicit mention of the consideration for the services provided in relation to purchase or sale of foreign currency is not relevant for the purpose of levy of service tax. Taxable services [sections 65(105)(zzk) and 65(105)(zm)] are being amended suitably. With these amendments, services provided in relation to purchase or sale of foreign currency by a foreign exchange broker, money changer and authorised dealer of foreign exchange shall also be leviable to service tax.
- ✓ To enable determination of taxable value, where the consideration for the services provided in relation to purchase or sale of foreign currency is not explicitly indicated by the service provider, a method under rule 6(7B) of the Service Tax Rules, 1994 shall be prescribed. As per this provision, the service provider has the option to pay service tax calculated at the rate of 0.25% of the gross amount of currency exchanged.

### Illustration:

Buying rate : US\$ 1 = Rs.38 // Selling rate : US\$ 1 = Rs.40

(i) Purchase of US\$ 100 by the service provider:

Gross amount of currency exchanged in rupees = Rs.3800 (Rs.38 x 100)

Service tax payable = Rs.9.5 (0.25% x 3800)

(ii) Sale of US\$ 100 by the service provider:

Gross amount of currency exchanged in rupees = Rs.4000 (Rs.40 x 100)

Service tax payable = Rs.10 (0.25% x 4000)

### **CARGO HANDLING SERVICE:**

- ✓ Cargo handling service does not cover mere transportation of goods. Mere transportation of goods by road is covered under 'Goods transport agency service'.

## KJM INC.

Service providers, commonly known as packers and movers provide services of packing together with transportation, with or without other services like unpacking, loading, unloading etc. Such composite services, at present, are classifiable under cargo handling service or goods transport agency service depending upon their essential or predominant character of the services provided.

- ✓ Section 65(23) which defines cargo handling service is being amended so as to include services of packing together with transportation of cargo or goods, with or without one or more other services like loading, unloading, unpacking, under cargo handling service. With this amendment, packing with transportation will be classifiable under cargo handling service only.

### **TOUR OPERATOR SERVICE:**

- ✓ Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service. Tour in a vehicle covered by the following categories of permits granted under the Motor Vehicles Act (MVA), 1988 and rules made thereunder are clearly leviable to service tax under tour operator service:
  - (i) Contract Carriage permit granted under section 74 of the MVA, 1988 and authorisation certificate issued under Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993; and
  - (ii) Permit granted under section 88(9) in accordance with the provisions of section 74 of the MVA, 1988 in respect of tourist vehicles, for the purpose of promoting tourism.

Since the permits under the above two categories are granted only for tourist vehicle, service tax is leviable if the tour is provided in the above categories of vehicles.

- ✓ Section 65(115) defining tour operator is being amended so as to include services provided in relation to a journey from one place to another, generally known as point-to-point tour, in a vehicle having contract carriage permit, even if the vehicle does not meet the criteria specified for tourist vehicles. With this amendment, journey from one place to another conducted in a vehicle having contract carriage permit shall be leviable to service tax under tour operator service. Service tax is not leviable under tour operator service only if the tour is conducted in a vehicle having stage carriage permit.
- ✓ It may be noted that services provided in relation to a journey from one place to another conducted in a tourist vehicle having contract carriage permit for use by educational bodies shall be excluded from the scope of the taxable service. Educational bodies do not include commercial training or coaching centres.

### **BUSINESS AUXILIARY SERVICE:**

- ✓ Services provided in relation to promotion or marketing of service provided by the client is leviable to service tax under business auxiliary service. Organization and

## KJM INC.

selling of lotteries are globally treated as supply of service. Lotteries (Regulation) Act, 1998 enables State Governments to organize, conduct or promote lotteries. Lottery tickets are printed by the State governments and are sold through agents or distributors. Tickets are delivered by the State Government to the distributors at a discounted price as compared to the face value of the tickets. Services provided by the distributors or agents in relation to promotion or marketing of lottery tickets are leviable to service tax under the existing business auxiliary service.

- ✓ Lotteries fall under the category of games of chance. Games of chance are known under various names like lottery, lotto, bingo etc. and are also conducted through Internet or other electronic networks.
- ✓ **To clarify as removal of doubts**, an explanation is added under business auxiliary service stating that services provided in relation to promotion or marketing of games of chance organized, conducted or promoted by the client are covered under the existing definition of business auxiliary service.

### **RENTING OF IMMOVABLE PROPERTY SERVICE:**

- ✓ Use of immovable property is allowed for placing vending / dispensing machines in malls and other commercial premises and erection of communication towers on buildings. In such cases, there may or may not be transfer of right of possession or control of the immovable property in favour of the person using such property.
- ✓ Renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce. Transactions mentioned in para 5.5.1 get covered under the category of other similar arrangement, if not covered under other categories.
- ✓ It is proposed **to clarify by way of removal of doubts** that renting of immovable property service includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the immovable property.

### **TRANSACTIONS BETWEEN ASSOCIATED ENTERPRISES:**

- ✓ Service tax is levied at the rate of 12% of the value of taxable services (section 66). Section 67 pertaining to valuation of taxable service for charging service tax states that value shall be the gross amount charged for the service provided or to be provided and includes book adjustment. As per rule 6 of the Service Tax Rules, 1994, service tax is required to be paid only after receipt of the payment.
- ✓ It has been brought to the notice that the provision requiring payment of service tax after receipt of payment are used for tax avoidance especially when the transaction is between associated enterprises. There have been instances wherein service tax has not been paid on the ground of non-receipt of payment even though the transaction has

## KJM INC.

been recognized as revenue/expenditure in the statement of profit and loss account for the purpose of determining corporate tax liability.

- ✓ As an anti-avoidance measure, it is proposed to clarify that service tax is leviable on taxable services provided by the person liable to pay service tax even if the amount is not actually received, but the amount is credited or debited in the books of account of the service provider. In other words, service tax is required to be paid after receipt of payment or crediting/debiting of the amount in the books of accounts, whichever is earlier. However, this provision is restricted to transaction between associated enterprises. This provision shall also apply to service tax payable under reverse charge method (Section 66A) as taxable services received from associated enterprises. For this purpose section 67 and rule 6(1) are being amended.
- ✓ The term 'associated enterprise' has the same meaning as assigned to it in section 92A of the Income Tax Act, 1961. It is a relative concept i.e. an enterprise is an associated enterprise when it is viewed in relation to other enterprises. This concept is used in the Income Tax Act for applying transfer pricing provisions. An enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise is considered as associated enterprise. It also covers an enterprise in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.
- ✓ Section 92A(2) of the Income Tax Act specifies various situations under which two enterprises shall be deemed to be associated enterprises. Enterprise means a person who is engaged in the provision of any services of any kind. For details, relevant provisions of Income Tax Act may be referred to.

**The above shall be effective from a date to be notified after the enactment of the Finance Bill, 2008**

### **EXEMPTIONS FROM LEVY OF SERVICE TAX:**

- ✓ Taxable service provided by a person located outside India, in relation to booking of an accommodation in a hotel located in India for a customer located outside India, is being exempted from levy of service tax (Notification No.14/2008-ST dated 01.03.2008).
- ✓ In the case of services provided for the transport of goods by road in a goods carriage, service tax is required to be paid by certain categories of persons who pay the freight instead of the service provider namely Goods Transport Agency. The actual amount of service tax payable is 25% of the amount of freight i.e. 75% of the amount of freight is provided as abatement, subject to the condition that no Cenvat credit of the duty paid has been availed of under Cenvat Credit Scheme. It has been represented that fulfillment of the condition of non-availment of Cenvat credit by the service provider is, at times, difficult to prove, when the service tax is required to be paid not by the service provider but by the consignor or consignee who pays the freight. Taking into account the special nature of the goods transport agency (GTA) service, it is being exempted from the payment of service tax unconditionally to the extent of

## KJM INC.

75% of the freight. In other words, service tax is required to be paid only on 25% of the freight irrespective of who pays the service tax. Simultaneously, the benefit of Cenvat credit has been withdrawn to GTA service under Cenvat Credit scheme by deleting the said service from the scope of output service in the CENVAT Credit Rules, 2004. Henceforth, the person who is required to pay service tax under reverse charge method on GTA service can pay service tax on 25% of the freight unconditionally. Recipient of GTA service paying service tax under reverse charge method is no more required to prove non availment of CENVAT credit by the GTA service provider.

**The above exemptions shall come into effect from 1st March, 2008.**

### **PENALTY**

- ✓ Penalty for delayed payment of service tax is levied under section 76. Penalty under section 78 is levied for failure to pay service tax on account of fraud, misdeclaration etc. Section 78 is being amended so as to provide that penalty for failure to pay service tax under section 76 shall not apply where penalty is leviable under section 78.
- ✓ Section 77 is being amended so as to provide specific penalty for specific contraventions.

**The above shall come into effect from the date of enactment of the Finance Bill, 2008**

### **OTHER AMENDMENTS IN THE ACT:**

- a. **Replacement of “client” or “customer” with “any person”:** In number of taxable services, recipient of service is specified as “client” or “customer”. Service tax is levied on services. Ordinarily, the status of recipient of service should not determine the tax treatment of a given service. 39 specified taxable services are being amended so as to substitute “any person” in place of “client” or “customer”. **This change will come into effect from a date to be notified after enactment of the Finance Bill, 2008.**
- b. Section 66 is being amended so as to include seven newly specified services in the list of taxable services. **This change will come into effect from a date to be notified after enactment of the Finance Bill, 2008.**
- c. To facilitate small taxpayers in filing and furnishing income tax returns, a scheme known as Tax Return Preparers Scheme was announced by the Finance Minister in the Budget, 2006-07. In order to facilitate small service taxpayers in filing of service tax returns, a similar scheme is proposed in the Budget, 2008-09. Section 71 is being incorporated for this purpose.
- d. Section 72 is being incorporated to authorise Central Excise Officer to make assessment on the basis of best judgment in certain specified circumstances.
- e. In order to settle disputes pending as on 01.03.2008 involving tax arrears (service tax, interest and penalty) not exceeding Rs.25,000/-, Service Tax Disputes

## KJM INC.

Resolution Scheme is being introduced. The scheme is valid during 1st July, 2008 to 30th September, 2008.

- f. Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in respect of implementing, classifying or assessing the value of any taxable service incorporated by the Finance Bill, 2008 upto one year from the date of enactment of the Finance Bill, 2008.

**The changes mentioned above [except a. and b.] will come into force from the date of enactment of the Finance Bill, 2008.**

### **AMENDMENTS IN THE SERVICE TAX RULES, 1994:**

- ✓ PAYMENT OF SERVICE TAX IN ADVANCE: Assessee having centralized registration is allowed to pay service tax in advance. However, such facility is not available for other categories of taxable persons. It is proposed to extend the facility to pay service tax in advance to all taxable persons subject to the condition that the details of advance payment should be intimated to the jurisdictional Superintendent of Central Excise within 15 days of such payment. Service tax paid in advance is allowed to be adjusted against service tax liable to be paid for the subsequent period. It is sufficient to intimate the details of such adjustment in the periodical return to be filed. For this purpose, rule 6 (1A) is being incorporated.
- ✓ Rule 6(4B)(iii) provides self-adjustment of excess amount of service tax paid in certain circumstances with a monetary limit of Rs.50,000/-. This rule is being amended to increase the said monetary limit from Rs.50,000/- to Rs.1,00,000/-
- ✓ Rule 7B provides facility to file revised return to correct mistake or omission, within a period of 60 day from the date of submission of the return. This rule is being amended to increase the said time limit from 60 days to 90 days
- ✓ Rule 7C empowers the Central Excise Officer to reduce or waive the penalty for delayed filing of return, where the gross amount of service tax payable is nil. (Notification No.4/2008-ST dated 01.03.2008).

**The above changes will come into effect from 1st March, 2008.**

### **AMENDMENTS IN CENVAT CREDIT RULES, 2004:**

- a. Service tax payable on GTA service shall be only on 25% of the gross amount charged as freight. GTA service providers shall not be allowed to avail input credit under Cenvat Credit Scheme. Rule 2(p) is being amended so as to exclude goods transport agency service from the scope of “output service”.
- b. Rule 3 is being amended to allow removal of capital goods outside the premises of the provider of output service without any time restriction, if the same is for providing output service.

## KJM INC.

- c. Rule 6 is being amended to provide the following options to a provider of output services, using common inputs or input services for providing taxable as well as exempted services and opting not to maintain separate accounts, namely:-
  - (i) either reverse the credit attributable (to be worked out in a manner prescribed in the rule, ***PLEASE REFER IN THIS NEWSLETTER TITLE CENTRAL EXCISE NOTIFICATION NO. 10/2008 FOR DETAILS WITH ILLUSTRATION***) to the inputs and input services used for providing exempted service, or
  - (ii) pay 8% amount of the value (to be determined in accordance with section 67 of the Finance Act, 1994) of the exempted service.
- d. Rule 7A is being inserted to prescribe a procedure to enable the provider of output services to take credit on inputs and capital goods on the basis of an invoice, bill or challan issued by its other office.
- e. Rule 15A is being inserted to provide for general penalty upto Rs.5,000/- in case of contravention of any of the provisions of the CENVAT Credit Rules, 2004, for which no specific penal provision exists. (Notification No.10/2008-Central Excise (N.T.), dated 01.03.2008).
- f. Rule 2 (1) for the words “Clearance of final products from the place of removal” the words “Clearance of final products, up to the place of removal,” is substituted

### **The changes mentioned in,-**

- (i) (a), (e) and (f) will come into effect from 1st March, 2008, and**
- (ii) (b), (c) & (d) will come into effect from 1st April, 2008.**

### **CROSS BORDER SERVICES RELATING TO TANGIBLE GOODS:**

- ✓ Information technology is used to provide services in relation to tangible goods located distantly. In such cases, the actual place of performance of the service is different from the actual location of the tangible goods (place of consumption of service).
- ✓ The place of performance and the physical location of the goods are immaterial when both places are within a single taxing jurisdiction i.e. country of taxation. However, if these two places are in two different taxing jurisdictions, the taxing jurisdiction shall be the place of actual location of the goods at the time of provision of service.
- ✓ Rule 3(1)(ii) of the Export of Services Rules, 2005 and rule 3(ii) of Taxation of Services (Provided from Outside India and received in India) Rules, 2006 are being amended (Notification Nos.5/2008-ST and 6/2008-ST, both dated 01.03.2008) by inserting a proviso to determine the country of use or consumption of the taxable services provided. The proviso enables to determine the taxing jurisdiction based on the place of actual location of the tangible goods at the time of provision of service in the case of following three services:
  - (a) management, maintenance or repair,
  - (b) technical testing and analysis, and
  - (c) technical inspection and certification,

KJM INC.

These services are also provided remotely through Internet or any electronic network including a computer network, or any other means.

**The above change shall come into effect from 1st March 2008.**

**WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007**

- ✓ Service tax payable for works contract service under the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 is being increased from 2% to 4% of the total value of the works contract. Rule 3(1) of the said rules is being amended suitably (Notification No.7/2008-ST dated 01.03.2008).

**The above change will come into effect from 1st March, 2008.**

**SERVICE TAX DISPUTE RESOLUTION SCHEME. 2008**

The new Settlement Scheme shall come into force from July 1, 2008 and extends upto September 30, 2008.

- ✓ It applies to tax arrears upto Rs 25,000 that may be on account of either an order already passed against the tax payer or a demand notice issued to him.
- ✓ Once the tax payer makes an application under the scheme the amount payable thereafter will be determined at 50% of the tax amount.
- ✓ In case the tax arrear relates to interest or penalty the amount payable shall be 25% of this amount.
- ✓ It is also provided that once this new Scheme is applied all appeals and other proceedings relating to the disputed amounts shall cease.

**CENTRAL EXCISE NOTIFICATION NO. 10/2008 DATED 1/3/08 (RELEVANT EXTRACT IN RELATION TO RULE 6 OF CENVAT CREDIT RULES, 2004)**

“(3) Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer of goods or the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-  
(i) the manufacturer of goods shall pay an amount equal to ten per cent of value of the exempted goods and the provider of output service shall pay an amount equal to eight per cent. of value of the exempted services; or  
(ii) the manufacturer of goods or the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in

## KJM INC.

relation to, the manufacture of exempted goods or for provision of exempted services subject to the conditions and procedure specified in sub-rule (3A).

*Explanation I.*- If the manufacturer of goods or the provider of output service, avails any of the option under this sub-rule, he shall exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option shall not be withdrawn during the remaining part of the financial year.

*Explanation II.*-For removal of doubt, it is hereby clarified that the credit shall not be allowed on inputs and input services used exclusively for the manufacture of exempted goods or provision of exempted service.

(3A) For determination and payment of amount payable under clause (ii) of sub-rule (3), the manufacturer of goods or the provider of output service shall follow the following procedure and conditions, namely:-

(a) while exercising this option, the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

(i) name, address and registration No. of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of dutiable goods or taxable services;

(iv) description of exempted goods or exempted services;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

(b) the manufacturer of goods or the provider of output service shall, determine and pay, provisionally, for every month,-

(i) the amount equivalent to CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, denoted as A;

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services (provisional)=  $(B/C)$  multiplied by D, where B denotes the total value of exempted services provided during the preceding financial year, C denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the preceding financial year and D denotes total CENVAT credit taken on inputs during the month minus A;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services (provisional) =  $(E/F)$  multiplied by G, where E denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the preceding financial year, F denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the preceding financial year, and G denotes total CENVAT credit taken on input services during the month;

(c) the manufacturer of goods or the provider of output service, shall determine finally the amount of CENVAT credit attributable to exempted goods and exempted services for the whole financial year in the following manner, namely:-

(i) the amount of CENVAT credit attributable to inputs used in or in relation to manufacture of exempted goods, on the basis of total quantity of inputs used in or in relation to manufacture of said exempted goods, denoted as H;

## KJM INC.

(ii) the amount of CENVAT credit attributable to inputs used for provision of exempted services =  $(J/K)$  multiplied by L, where J denotes the total value of exempted services provided during the financial year, K denotes the total value of dutiable goods manufactured and removed plus the total value of taxable services provided plus the total value of exempted services provided, during the financial year and L denotes total CENVAT credit taken on inputs during the financial year minus H;

(iii) the amount attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services =  $(M/N)$  multiplied by P, where L denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, M denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and N denotes total CENVAT credit taken on input services during the financial year;

(d) the manufacturer of goods or the provider of output service, shall pay an amount equal to the difference between the aggregate amount determined as per condition (c) and the aggregate amount determined and paid as per condition (b), on or before the 30th June of the succeeding financial year, where the amount determined as per condition (c) is more than the amount paid;

(e) the manufacturer of goods or the provider of output service, shall, in addition to the amount short-paid, be liable to pay interest at the rate of twenty-four per cent. per annum from the due date, i.e., 30th June till the date of payment, where the amount short-paid is not paid within the said due date;

(f) where the amount determined as per condition (c) is less than the amount determined and paid as per condition (b), the said manufacturer of goods or the provider of output service may adjust the excess amount on his own, by taking credit of such amount;

(g) the manufacturer of goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of fifteen days from the date of payment or adjustment, as per condition (d) and (f) respectively, the following particulars, namely:-

(i) details of CENVAT credit attributable to exempted goods and exempted services,

monthwise, for the whole financial year, determined provisionally as per condition (b),

(ii) CENVAT credit attributable to exempted goods and exempted services for the whole financial year, determined as per condition (c),

(iii) amount short paid determined as per condition (d), alongwith the date of payment of the amount short-paid,

(iv) interest payable and paid, if any, on the amount short-paid, determined as per condition (e), and

(v) credit taken on account of excess payment, if any, determined as per condition (f);

(h) where the amount equivalent to CENVAT credit attributable to exempted goods or exempted services cannot be determined provisionally, as prescribed in condition (b), due to reasons that no dutiable goods were manufactured and no taxable service was provided in the preceding financial year, then the manufacturer of goods or the provider of output service is not required to determine and pay such amount provisionally for each month, but shall determine the CENVAT credit attributable to exempted goods or exempted services for the whole year as prescribed in condition (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

KJM INC.

(i) where the amount determined under condition (h) is not paid within the said due date, i.e., the 30th June, the manufacturer of goods or the provider of output service shall, in addition to the said amount, be liable to pay interest at the rate of twenty four per cent. per annum from the due date till the date of payment.

*Explanation I.*- "Value" for the purpose of sub-rules (3) and (3A) shall have the same meaning assigned to it under section 67 of the Finance Act, 1994 read with rules made thereunder or, as the case may be, the value determined under section 4 or 4A of the Central Excise Act, 1944 read with rules made thereunder.

*Explanation II.*-The amount mentioned in sub-rules (3) and (3A), unless specified otherwise, shall be paid by the manufacturer of goods or the provider of output service by debiting the CENVAT credit or otherwise on or before the 5th day of the following month except for the month of March, when such payment shall be made on or before the 31st day of the month of March.

*Explanation III.*- If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (3) or as the case may be sub-rule (3A), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.'.

**Illustration:**

*X, a service provider wishes to determine the equivalent amount of cenvat credit on input and input services used in or in relation to provision of exempted services*

Cenvat credit on inputs in relation to exempted goods (As X, is not a manufacturer) **(A)** = Nil

Total Value of exempted services provided in the preceeding F.Y 07-08 **(B)** = Rs. 1,00,000

Value of dutiable goods manufactured = Nil

Value of taxable services provided in the preceeding F.Y 07-08 = Rs. 4,00,000

Total Value of dutiable goods, exempted service and taxable services provided in the preceeding F.Y 07-08 **(C)** = 5,00,000

Total Cenvat Credit on inputs during the month, say April 08 **(D)** = Rs. 1000

Value of exempted goods = Nil

Total Value of exempted services and exempted goods **(E)** = Rs.1,00,000

Total Value of exempted and dutiable goods and exempted and taxable service provided **(F)** = 5,00,000

KJM INC.

Total Cenvat credit on input services (G) = Rs. 500

Cenvat credit on inputs used in or in relation to provision of exempted services shall be now determined as under:

$(D-A) * B/C$  i.e.  $(1000 - Nil) * 1,00,000/5,00,000 = Rs. 200$

Thus, the service provider on a provisional basis will restrict the utilization of cenvat credit on inputs for the month of April 08 to Rs. 800 (1000-200)

Cenvat credit on inputs services used in or in relation to provision of exempted services shall be now determined as under:

$G * E/F$  i.e.  $500 * 1,00,000/5,00,000 = Rs. 100$

Thus, the service provider on a provisional basis will restrict the utilization of cenvat credit on input service for the month of April 08 to Rs. 400 (500-100)

After the end of the Financial Year, X will recalculate the above on the basis of the amount determined for the F.Y 08-09 as explained under sub rule (c) of Rule (3A) mentioned above.

X shall pay an amount equal to the difference between the aggregate amount determined under sub rule (b) and sub rule (c) on or before the 30th June of the succeeding financial year i.e 30/6/09, where the amount determined as per sub rule (c) is more than the amount paid as per sub rule (b),

Where the amount determined as per sub rule (c) is less than the amount determined and paid as per sub rule (b), X may adjust the excess amount on his own, by taking credit of such amount

**The above is effective from 1/4/08**