

# Service Tax :

## Introduction

## & its Applicability to NGOs

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# Service Tax – Evolution

- Commenced effective – 15<sup>th</sup> July 1994 with tax at 5% on 3 services.
- 2003 – rate went up to 8%
- 2004 – rate went up to 10% with 2% Education Cess brought in
- 2006 – 12% rate
- 2007 – cess enhanced to 3% (for higher & secondary education) rate 12.36%
- 2012 – Concept of covering all services except ones covered by Negative & Exempt Lists effective 1-7- 2012
- Tax amount went up from Rs 410 Crore in 1994-95 to whopping Rs 168,132 crores in 2014-15 & budgeted to Rs 215,973 crores for FY 2015-16.

# Introduction to legislation

- Quite complicated
- No separate Act, but included under Finance Act 1994
- Courts have examined from time to time however it has stood the legislative scrutiny.

<http://www.constitution.org/cons/india/shedo7.htm>

- **Sections 64 to 98**
- Section 64 – Scope and Application
- Section 65B – Definitions
- Section 66A – Charge of service tax (prior to 1-7-12)
- Section 66B - Charge of service tax (post 1-7-12)
- Section 66C – Place of provisions of services
- Section 66D – Negative List
- Section 66E – Declared Services,
- Other sections mainly cover procedural issues, including Cenvat

# Applicability of Service Tax

- Applicable to entire India, except J&K
- Applicable on **taxable** services,
- Services included in negative list and exemptions are excluded
- Two important concepts which need to be considered are existence of 'service' & 'consideration'.
- Basically burden of service tax is to be borne by consumer.
- Effective 1<sup>st</sup> July 2012 all services are taxable at 12.36% (12%+3% cess on service tax), except Negative List and Exempt services.
- Effective 1<sup>st</sup> June 2015 tax rate is 14% from, subsuming cess.

# Negative List – S.66D

- A total of 17 services are covered.
- No Service Tax will be levied on services covered under this list. (*see Pg 32 of reading materials.*) Major ones are :
  - UN, RBI, Govt agencies (with some exceptions)
  - Agriculture, Toll charges, Renting for residential purposes
  - Trading, process of manufacture,
  - Education – pre school and upto higher secondary, advance education, approved vocational course.

# Negative List - Recent amendments

- Admission to entertainment events taken out of Negative List and added to Exemptions in amended form. (10)
- Process amounting to manufacture or production of goods amended to bring manufacture for alcoholic liquor under service tax net(6)
- ‘Support Service’ by Govt / local authority amended to ‘any service’. Impact all services by the Govt. / local authority to business entities brought under ST net. (1d)
- Services provided by chit fund foremen and distributors or selling agents of lottery (9)

# Definition of Govt

- Govt definition : Includes dept. of central govt, state govt and its depts. and UTs and its depts., but not to include any entity whether created by any statute whose accounts are not to be maintained under article 150 of Constitution (i.e Consolidated Fund of India).

# Exemptions

- Covered by Notification No. 25/2012 (updated by Finance Act 2013 – *see Reading Materials, Pg 42*)
- 47 activities listed in the list. Major ones include
  - Clinics, Doctors & para-medics
  - Renting of religious places
  - Advocates to non-business entities
  - Training / coaching for arts, culture, sports
  - Services or renting of property to educational institutions
  - Sports related services
  - A number of services provided to Govt / local authorities



# Exemptions .....*cont'd*

- A service for construction/ repairs of religious building registered under S. 12AA
- Construction of single residential Units, housing complex for upto 60 sq metre units.
- Services by a performing artist
- Hotels, Guest Houses below per day tariff of Rs 1000/-
- No service tax on restaurants without any air-conditioning / central heating.
- Transportation of relief materials for disaster victims, agriculture produce, etc.
- Services provided to Govt. normally undertaken by local body, including sanitation, water supply, public health, etc.

# Exemptions ..... amendments

- Exemptions added
  - ✓ Cord Blood Banks (2A)
  - ✓ Common bio-medical waste treatment facility (2B)
  - ✓ Pilgrimages by Haj Committee & Kumaon Mandal (5A)
  - ✓ National Skill Development Corporation & allied agencies (9A)
  - ✓ Food provided in AC/Centrally heated **canteen** in a factory (19A)
  - ✓ LIC for Janashree Bima, Aam Adami Bima Yojana, Micro Insurance Product upto Rs 50,000 (26A)
  - ✓ Services related to rice, cotton ginned /baled. (40)
  - ✓ Services rec'd by RBI from outside India for Management of Foreign Exchange Reserves (41)
  - ✓ Services of tour operator for foreign tourists for tours wholly outside India (42)

# Charitable Activities

## Under Circular 25/2012

- Public Health
- Religious / spirituality
- Education / skill Development
- Environment
- For General Public benefit clause (dropped effective Apr'13)

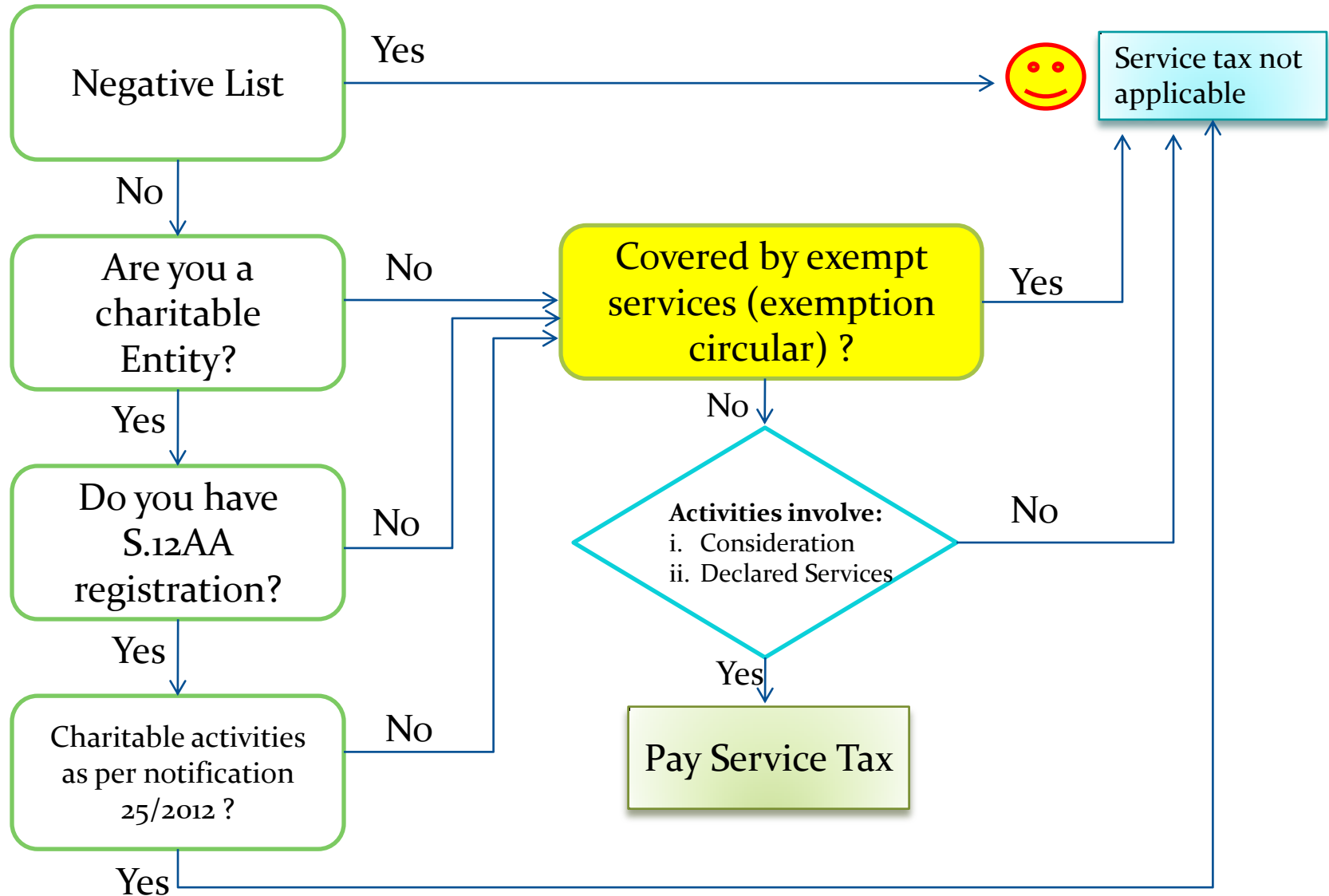
## Under definition of taxable services

- Donations generally not taxable
- Grants (Consideration major criteria)

# A few Legal precedents

- Computerised invoices downloaded from internet eligible documents for claiming Cenvat credits. [Suncity Art Exporters Vs. Comm. of CE & ST (New Delhi - CESTAT)]
- Prospectus / Forms cannot be subjected to Service Tax. [2015] 55 [taxmann.com](http://taxmann.com) 405 (Mumbai - CESTAT)/[2014] 35 STR 607 (Mumbai - CESTAT)
- A foreign company with no establishment or ops. in India, cannot be asked to pay service tax on services provided by it to Indian recipient merely because of a visit of its officers in India in course of providing service.

# Applicability of Service Tax NGOs





# THANK YOU