

# FINAL AMENDMENTS IN SERVICE TAX

BY  
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15<sup>th</sup> JULY 2012 J.B.NAGAR CPE STUDY CIRCLE

## COVERAGE

- ➔ CHARGING SECTION
- ➔ SERVICES
- ➔ DECLARED SERVICES
- ➔ PRINCIPLES OF INTERPRETATION
- ➔ NEGATIVE LIST
- ➔ MEGA EXEMPTION NOTIFICATION


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## CHARGING SECTION - 66B

<p>➔ Section 66 - upto 30.06.2012 There shall be levied</p> <ul style="list-style-type: none"> <li>✓ A tax (hereinafter referred to as Service Tax) at the rate of 12%</li> <li>✓ Of the value of taxable services</li> <li>✓ Referred to in sub-clause (a), (d),(e)..... of Sec. 65(105), and</li> </ul> <p>✓ Collected in such manner as may be prescribed</p>	<p>➔ Section 66B - w.e.f. 1.07.2012 There shall be levied</p> <ul style="list-style-type: none"> <li>✓ A tax (hereinafter referred to as Service Tax) at the rate of 12%</li> <li>✓ On the value of all services</li> <li>✓ Other than those services, specified in Negative List,</li> <li>✓ Provided or agreed to be provided in the taxable territory</li> <li>✓ By one person to another and</li> <li>✓ Collected in such manner as may be prescribed</li> </ul>
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## RELEVANT DEFINITIONS

- ➔ Non-taxable territory - means the territory which is outside the taxable territory
- ➔ Taxable territory - means the territory to which the provisions of this Chapter apply
- ➔ Section 64(1) - this Chapter extends to the whole of India except the State of Jammu and Kashmir






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### Service - Section 65B(44)

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➤ **Means**

- ✓ Any Activity 
- ✓ carried out by a person for another 
- ✓ for consideration 

➤ **Includes**



- ✓ a declared service 

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### Service - Section 65B(44)

6

➤ **Excludes**

- ✓ Mere transfer of title in goods or immovable property by way of sale, gift or any other manner
- ✓ Transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution
- ✓ Transactions only in money or actionable claims 
- ✓ Provision of services by an employee to the employer
- ✓ fees taken by Court or Tribunal 


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### ACTIVITY

7

➤ **includes**



- ✓ an act done,
- ✓ a work done,
- ✓ a deed done,
- ✓ an operation carried out,
- ✓ execution of an act,
- ✓ provision of a facility etc
- ✓ Activity could be active or passive and
- ✓ would also include forbearance to act.



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### BY A PERSON FOR ANOTHER

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- Service to Self not covered
- An unincorporated association or a body of persons and its members 
- An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory
- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having establishment in that territory. 

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## FOR CONSIDERATION

9

- **means**
- ✓ everything received in return for a provision of service which
- **includes**
- ✓ monetary payment and
- ✓ non- monetary
- ✓ deferred consideration.







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## Transaction in Money- shall not include

10

- use of money or
- its conversion by cash or by any other mode,


➔

➔

➔


- for which a separate consideration is charged

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## Actionable Claim

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- means a claim
- ✓ to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or
- ✓ to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief,
- ✓ whether such debt or beneficial interest be existent, accruing, conditional or contingent

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## DECLARED SERVICES

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- renting of immovable property
- construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority


➔


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## RENTING - DEFINITION [Sec. 65B(41)]

13

### ⇒ means

- ✓ allowing, permitting or granting access
- ✓ entry, occupation, use or any such facility
- ✓ in an immovable property
- ✓ with or without transfer of possession or control

### ⇒ includes

- ✓ letting, leasing, licensing or other similar arrangements



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## CONSTRUCTION

14

### ⇒ Includes

- ✓ Additions
- ✓ Alterations
- ✓ Replacements
- ✓ Remodelling of any existing civil structure
- ⇒ Repair?

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## COMPETENT AUTHORITY

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### ⇒ Government Authority

### ⇒ In case of non requirement of such certificate

- Architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- Chartered Engineer registered with the institution of Engineers (India); or
- Licensed Surveyor of the respective local body of the city, town, village or development or planning authority.



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## DECLARED SERVICES

16

⇒ temporary transfer or permitting the use or enjoyment of any IPR

⇒ development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software

⇒ agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act



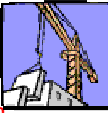
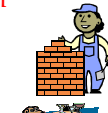

**No work**

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## DECLARED SERVICES

17

- ⇒ Transfer of goods by way of hiring, leasing, licensing or any such manner **without transfer of right to use** such goods
- ⇒ Activities in relation to **delivery of good on hire purchase**
- ⇒ **service portion in** execution of a works contract
- ⇒ **service portion in** supply of food or drink for human consumption

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## Section 65B(44) not apply to


18

- ⇒ functions performed by the MP, MLA, Members of Panchayats, Members of Municipalities and Members of other local authorities
- ⇒ any person who holds any post in pursuance of the provisions of the Constitution in that capacity
- ⇒ Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority

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## Principles of Interpretation

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- ⇒ unless otherwise specified, reference to service referred to as main service shall not include reference to a service which is used for providing main service
- ⇒ capable of differential treatment for any purpose based on its description - prevalence of more specific description over general description

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## Principles of Interpretation

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Bundled Service

Naturally  
In the ordinary  
Course of business

Provision of single  
Service gives **essential character**

Not naturally  
In the ordinary  
Course of business

Provision of single  
Service gives **results in highest liability**

bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services

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# Negative List




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# NEGATIVE LIST

- ⇒ Service by Government or a local authority
- ⇒ Excluding
  - ✓ speed post, express parcel post, life insurance and agency services provided to a person other than Government
  - ✓ in relation to an aircraft or a vessel
  - ✓ transport of goods or passengers
  - ✓ support services provided to business entities

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# SUPPORT SERVICES

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- ⇒ Section 65B(49)
- ✓ Means
  - infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain services by outsourcing from others for any reason whatsoever and
- ✓ Includes
  - advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis

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# NEGATIVE LIST

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- ⇒ Services by RBI
 



भारतीय रिज़र्व बैंक  
Reserve Bank of India  
India's Central Bank
- ✓ Services Received by RBI on which RBI is Liable to pay service tax
- ⇒ Foreign Diplomatic Mission(FDM)
- ⇒ Services relating to agriculture or agricultural produce
 

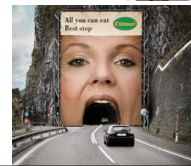


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## NEGATIVE LIST

25

- ⇒ **Trading of Goods**
  - ✓ Includes future contract of commodities
- ⇒ **Process amounting to manufacture or production of goods**
  - ✓ "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the **Central Excise Act, 1944** (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any **State Act** for the time being in force;
- ⇒ **Selling of space or time slots for advertisements other than advertisements broadcast by radio or television**



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## NEGATIVE LIST

26

- ⇒ **Service by way of access to a road or a bridge on payment of toll charges**
- ⇒ **Betting, gambling or lottery**
- ⇒ **Admission to entertainment events or access to amusement facilities**



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## NEGATIVE LIST

27

- ⇒ **Transmission or distribution of electricity by electricity transmission or distribution utility**
- ⇒ **Specified Education Service**
  - ✓ pre-school education and education up to higher secondary school or equivalent
  - ✓ education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force
  - ✓ education as a part of an approved vocational education course.



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## NEGATIVE LIST

28

- ⇒ **Renting of Residential Dwelling for use as residence**
  - ✓ does not include hotel, motel, inn, guest-house, camp-sit, lodge, house boat, furnished flats given on rent for temporary stay or like places given for temporary stay
  - ✓ Partly for Commercial?



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## NEGATIVE LIST

29

⇒ **Financial Services**

- ✓ services by way of extending loans advances to the extent consideration is represented by interest or discount
- ✓ inter-bank sale or purchase of foreign currency amongst banks or authorised dealers or amongst banks and such dealers




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## NEGATIVE LIST

30

⇒ **Transportation of Passengers**

- ✓ a stage carriage,
- ✓ railways in a class other than first class or an air-conditioned coach
- ✓ metro, monorail or tramway
- ✓ inland waterways;
- ✓ public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- ✓ metered cabs, radio taxis or auto rickshaws.







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## NEGATIVE LIST

31

⇒ **Transportation of Goods**


- ✓ Transportation of goods by road other than GTA or Courier Agency.
- ✓ Transportation of goods by an aircraft or a vessel from a place outside India upto the customs station of clearance in India.
- ✓ Transportation of goods by inland waterways



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## NEGATIVE LIST

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⇒ **Funeral, burial, crematorium or mortuary services**



- ✓ including transportation of the deceased

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## Important Exemptions


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## IMPORTANT EXEMPTIONS

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- ⇒ Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics. 
- ✓ Health Care Services **means** any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and **includes** services by way of transportation of the patient to and from a clinical establishment, **but does not include** hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.
- ✓ Clinical Establishment means a hospital, nursing home, clinic, sanatorium or an institution, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in **any recognised system of medicine**, established and administered or maintained by any person or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

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## IMPORTANT EXEMPTIONS

35

- ⇒ Services by an entity registered u/s. 12AA of the Income tax Act, 1961 by way of charitable activities
- ⇒ Charitable Activities means activities relating to -
  - ✓ Public health by way of -
  - Care or Counseling of .....
  - Public awareness of preventive health, family planning or prevention of HIV infection;
  - ✓ Advancement of religion or spirituality;



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## IMPORTANT EXEMPTIONS

36

- ⇒ Services by an entity registered u/s. 12AA ..... Charitable Activities (Cont...)
- ✓ Advancement of educational programmes or skill development relating to -
  - Abandoned, orphaned or homeless children, physically or mentally abused and traumatized persons, prisoners or persons over the age of 65 years residing in rural areas;
- ✓ Preservation of environment including watershed....
- ✓ Advancement of any other object of general public utility up to a value of - .....(monetary limits)

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## IMPORTANT EXEMPTIONS

37

- **Services by a person by way of,**
  - ✓ Renting of precincts (building or surrounding land) of a **religious place** meant for general public.
  - ✓ Conduct of any religious ceremony.
- Religious Place means a place which is primarily meant for conduct of prayers or worship pertaining to a religion

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## IMPORTANT EXEMPTIONS

38

- **Services provided by -**
  - ✓ **an arbitral tribunal to**
    - any person other than a business entity or,
    - a business entity with a t/o upto Rs. 10 Lacs in the preceeding F.Y.
  - ✓ **an individual as an advocate or a partnership firm of advocates by way of legal services to,-**
    - An advocate or partnership firm of advocate providing legal services
    - Any person other than a business entity or,
    - A business entity with a t/o upto Rs. 10 Lacs in the preceeding F.Y.
- ✓ **A person represented on and as arbitral tribunals.**



## IMPORTANT EXEMPTIONS

39

- **Services by way of training or coaching in recreational activities relating to**
  - ✓ arts
  - ✓ culture
  - ✓ Sports
- The training or coaching provided for recreational purposes is only exempt. However, T or C provided to make art, culture or sports as a profession will not be exempt



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## IMPORTANT EXEMPTIONS

40

- **Services provided to or by an educational institution in respect of education by way of**
  - ✓ Renting of immovable property
  - ✓ Auxiliary educational services



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## IMPORTANT EXEMPTIONS

41

### Services provided to or by an educational...

- ✓ Auxiliary educational services **means** any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, **including** services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

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## IMPORTANT EXEMPTIONS

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### Services provided to a recognized sports body by,

- ✓ an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body.
- ✓ another recognised sports body



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## IMPORTANT EXEMPTIONS

43

### Services provided to the Government, local authority or Governmental authority by way of

- ✓ Construction
- ✓ Erection
- ✓ Commissioning
- ✓ Installation
- ✓ Completion
- ✓ Fitting out
- ✓ Repair
- ✓ Maintenance
- ✓ Alteration or
- ✓ Renovation of
- ✓ a civil structure or any other **original work** meant predominantly for a non-industrial or non-commercial use or any other business or profession;
- ✓ Original Works as defined in Rule 2A of Service Tax (Determination of Value) Rules, 2006



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## IMPORTANT EXEMPTIONS

44

### Services provided to the Government (cont...)

- ✓ a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958)
- ✓ canal, dam or other irrigation works;
- ✓ a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- ✓ pipeline, conduit or plant for (i) water supply (ii) water treatment or (iii) sewerage treatment or disposal; or
- ✓ a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Finance Act i.e. M.P., M.L.A., etc



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## IMPORTANT EXEMPTIONS

45

⇒ Services provided by way of

- ✓ Construction
- ✓ Erection
- ✓ Commissioning
- ✓ Installation
- ✓ Completion



- ✓ Fitting out
- ✓ Repair
- ✓ Maintenance
- ✓ Alteration or
- ✓ Renovation of



✓ a road, bridge, tunnel, or terminal for road transportation for use by general public



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## IMPORTANT EXEMPTIONS

46

⇒ Services provided by way of construction etc. (cont...)

- ✓ a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana
- ✓ a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for **religious use by general public**
- ✓ a pollution control or effluent treatment plant, except located as a part of a factory; or
- ✓ a structure meant for funeral, burial or cremation of deceased

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## IMPORTANT EXEMPTIONS

47

⇒ Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

- an airport, port or railways, including monorail or metro;
- low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages
- a single residential unit otherwise than as a part of a **residential complex**;



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## Residential complex

48

⇒ means any complex comprising of a building or buildings, having more than one single residential unit

⇒ **single residential unit**

- ✓ Means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for **one family**



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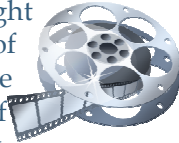
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## IMPORTANT EXEMPTIONS

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### Services in relation of Copy rights.

- ✓ Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films.



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## IMPORTANT EXEMPTIONS

50

### Services by a performing artist in folk or classical art forms of

- (i) music, or
- (ii) dance, or
- (iii) theatre,
- ✓ **excluding services** provided by such artist as a brand ambassador



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## IMPORTANT EXEMPTIONS

51

### Services provided by way of renting

- ✓ of a hotel, inn, guest house, club, campsite or other commercial places
- ✓ meant for residential or lodging purposes
- ✓ having declared tariff of a unit of accommodation below Rs. 1,000/- per day or equivalent



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## IMPORTANT EXEMPTIONS

52

### Services provided by Restaurants

- ✓ Services provided in relation to serving of food or beverages
- ✓ by a restaurant, eating joint or a mess,
- ✓ other than those having
- the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and
- which has a **license to serve** alcoholic beverage



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## IMPORTANT EXEMPTIONS

53

### Services provided by a goods transport agency by way of transportation of -

- ✓ fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- ✓ goods where gross amount charged for the transportation of goods on a **consignment** transported in a single goods carriage **does not exceed Rs. 1,000/-**; or
- ✓ goods, where gross amount charged for transportation of all such goods for a **single consignee** in the goods carriage **does not exceed Rs. 750/-**;



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## IMPORTANT EXEMPTIONS

54

### Services by way of giving on hire -

- ✓ to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- ✓ to a goods transport agency, a means of transportation of goods



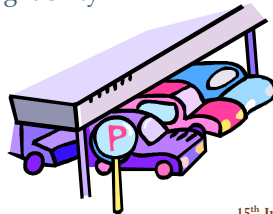
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## IMPORTANT EXEMPTIONS

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### Services by way of vehicle parking

- ✓ to general public
- ✓ excluding leasing of space to an entity for providing such parking facility



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## IMPORTANT EXEMPTIONS

57

### Service by an unincorporated body or a non-profit entity registered under any law for the time being in force to its own members by way of reimbursement of charges or share of contribution

- ✓ as a trade union;
- ✓ for the provision of carrying out any activity which is exempt from the levy of service tax; or
- ✓ **up to an amount of Rs. 5,000/-** per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

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## IMPORTANT EXEMPTIONS

61

- Services by an organiser to any person in respect of a business exhibition held outside India
- Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948)
- Services by way of transfer of a going concern, as a whole or an independent part thereof

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## Conveners and Participants

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Sincere  
Thanks  
For giving  
Opportunity  
To  
Express my  
Views.



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