

### 1. C. INVOICE MODEL

Example: Say Saima Impex is service provider (SP) and B is **Customer** such that they fall under reverse charge and ratio applicable is 50-50 for SP & SR respectively. Say an invoice of 15 Lacs (excluding tax) has been raised on 1<sup>st</sup> August, 2012. For the given facts the computation of service tax shall be as under:

	<b>Particulars</b>	<b>Amount (in Rs)</b>
	Invoice Value (excluding tax)	15,00,000/-
	Service Tax ( Total Service tax) @ 12.36% (A)	1,85,400/-
	Total Value	16,85,400/-
	Less: Tax Attributable to service receiver and to be borne by Customer himself (50% of (A))	92,700/-
	<b>Amount Payable by Customer to Saima Impex</b>	<b>15,92,700/-</b>
	ST payable by Customer	92700/-
	ST payable by Saima Impex	92700/-

Against ST payable the Cenvat available with respective parties can be utilised subject to Cenvat credit rules, 2004.

### 1. D. Raising service invoice

Above mentioned table shall be our reference point to discuss raising a service invoice. In this case the total service payable i.e. Rs. 1, 85,400/- needs to be disclosed. In addition to that service tax attributable to service receiver i.e. Rs. 92,700/- shall be disclosed on invoice so that the SR knows the amount of service tax that is required to be paid by him.

## Reverse Charge – Practical Issues, Invoice & Cenvat

To give effect to this new reverse charge mechanism, some changes are being proposed: firstly, a proviso is being added to sub-section (2) of section 68 and both the service provider and service receiver will be considered as persons liable to pay the tax on notified taxable services and to the extent specified against each one of them.

Some practical issues that are relevant for trade, commerce & industry :

### 1. A. Services covered under reverse charge (Not. 15/2012 – ST)

<b>S.No</b>	<b>Service</b>	<b>By (SP)</b>	<b>To (SR)</b>
1	Insurance	Insurance agent	Any Person

2	Goods Transport by Road	GTA	a) Factory b) Society c) Cooperative Society d) Dealer under excise e) Body corporate f) Any partnership firm
3	Sponsorship	Any Person	a) Body corporate b) Partnership firm in taxable territory
4	Any service	1. Arbitral tribunal 2. Individual Advocate 3. Support service provided or agreed to be provided by Government or local authority	Any business entity in taxable territory
5	Renting or hiring any motor vehicle designed to carry passenger	a) Individual b) HUF c) Proprietorship firm d) Partnership firm e) AOP	a) Company b) business entity registered as body corporate located in the taxable territory
6	Works Contract Service	a) Individual b) HUF c) Proprietorship firm d) Partnership firm e) AOP	a) Company b) business entity registered as body corporate located in the taxable territory
7	Supply of manpower for any purpose	a) Individual b) HUF c) Proprietorship firm d) Partnership firm e) AOP	a) Company b) business entity registered as body corporate located in the taxable territory
8	Any service	Any person in non taxable territory	Any person in taxable territory

**1. B. Proportions of service tax Attributable to SP & SR (Not 15/2012 - ST)**

<b>S.No</b>	<b>Service</b>	<b>SP</b>	<b>SR</b>
1	Insurance	Nil	100%

2	Goods Transport by Road	Nil	100%
3	Sponsorship	Nil	100%
4	Any service by tribunal/advocates etc	Nil	100%
5	In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on abated value.	Nil	100%
	In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on non abated value.	60%	40%
6	Works Contract Service	50%	50%
7	Supply of manpower for any purpose	25%	75%
8	Import of service	Nil	100%

## 2. C. Computing taxes

Example: Say Saima Impex is service provider (SP) and B is **Customer** such that they fall under reverse charge and ratio applicable is 50-50 for SP & SR respectively. Say an invoice of 15 Lacs (excluding tax) has been raised on 1<sup>st</sup> August, 2012. For the given facts the computation of service tax shall be as under:

	<b>Particulars</b>	<b>Amount (in Rs)</b>
	Invoice Value (excluding tax)	15,00,000/-
	Service Tax ( Total Service tax) @ 12.36% (A)	1,85,400/-
	Total Value	16,85,400/-
	Less: Tax Attributable to service receiver and to be borne by Customer himself (50% of (A))	92,700/-
	<b>Amount Payable by Customer to Saima Impex</b>	<b>15,92,700/-</b>

	ST payable by Customer	92700/-
	ST payable by Saima Impex	92700/-

Against ST payable the Cenvat available with respective parties can be utilised subject to Cenvat credit rules, 2004.

## **2. D. Raising service invoice**

Above mentioned table shall be our reference point to discuss raising a service invoice. In this case the total service payable i.e. Rs. 1, 85,400/- needs to be disclosed. In addition to that service tax attributable to service receiver i.e. Rs. 92,700/- shall be disclosed on invoice so that the SR knows the amount of service tax that is required to be paid by him.

### **1. E. Availing and Utilisation of cenvat**

The SP shall utilise the the Cenvat of input, input services and capital goods as and when available as per Cenvat credit rules. There exists an issue regarding when the Cenvat for SR is available in regard to Service tax paid under reverse charge.

Say for example, the invoice is dated 29<sup>th</sup> August while the payment is made by SR to SP on 28<sup>th</sup> September, 2012 then in this case whether the Cenvat of tax paid under reverse charge shall be available and to utilised in payment of 5<sup>th</sup> September, 2012 or 5<sup>th</sup> October, 2012.

In my opinion, the Cenvat in above case shall be utilisable in payment to be made dated 5<sup>th</sup> October, 2012. The view finds its support in board clarification No. 345/1/2008 TRU – dated 27.6.2008 wherein it is clarified for the purpose of import of service that service tax **paid** under Section 66A is available as "input credit" under CENVAT Credit Rules, 2004 provided the said services are used as input services by the manufacturer or producer of final products or a provider of output taxable service. The same principle shall apply for cases of reverse charge other than import of services. Though board might come up with clarification soon on this issue.

### **1. F. SP eligible for benefit of Rs. 10Lacs exemption**

**In case say that the SP is eligible for benefit of threshold exemption of Rs. 10 Lacs then whether the SR is still liable to pay his share of taxes or will he also be not liable to pay any taxes. If the SP is claiming exemption for threshold benefit, fundamentally the service tax is exempt. Reverse charge should be seen as just a collecting mechanism of service tax and not the levying event. In this case SR shall not be liable to pay any taxes and invoice issued by the service provider shall be free from any service tax aspect.**

### **1. G. SR eligible for benefit of Rs. 10Lacs exemption**

Even if service receiver is below 10 Lacs or small entity covered incidentally in reverse charge, it needs to get registered under service tax and shall be liable to pay taxes under reverse charge as service receiver. Cenvat cannot be utilised against this payment so it shall be an explicit cash outflow. Further once the tax is **paid** under reverse charge the same can be utilised as Cenvat subject to Cenvat credit rules.

#### **1. H. SP / SR defaults in paying taxes – Repercussions**

It is clarified by board that the liability of the two persons is for respective amounts and is not influenced by compliance or the lack of it by the other side. Hence if either party defaults, there shall be no repercussion for the other party. Service provider is allowed Cenvat credit of tax paid by him on inputs and input services. The respective portions have been attempted such that the credits available will be well below the amount required to be paid by such persons. In extreme situations the small service provider is also being allowed the refund of unutilized Cenvat credit if any, available with him. Suitable changes will be made in Cenvat Credit Rules, to this effect