

Rent a cab and Reverse charge - Better to walk.

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1.0 The issue of service tax liability payable under reverse charge in respect of renting of passenger vehicles and the quantum of abatement available for the said service is beset with complications and the same is explained below.

2.0 Notification 26/2012 ST Dt. 20.06.2012 prescribes various abatements for various services, i.e. the percentage of value on which service tax is payable for different services. The service tax thus payable under this notification shall be paid, normally by the service provider or by the service recipient or by both, if the service is notified for reverse charge. Since this is an exemption notification, the same has been issued under section 93 of the Finance Act, 1994.

3.0 As per section 68 (1) of the Finance Act, 1994, service tax is payable by the service provider. As per section 68 (2), the Government can notify the services in which service tax is payable by any other person other than the service provider and the extent of such service tax payable by such person can also notified by the Government. In accordance with Section 68 (2), Notification 30/2012 ST Dt. 20.06.2012 has been issued, wherein various services have been notified, where the service tax is payable by the service recipient in certain circumstances (reverse charge). The said notification also prescribes the extent to which such service tax shall be payable by the service recipient. In some cases, the entire service tax liability is payable by the service recipient and in some cases, the service tax liability shall be discharged in the given proportion by the service provider and service recipient.

4.0 It may be noted that the quantum of service tax payable shall be determined first, with reference to various abatements available under notification 26/2012 and thereafter the applicability of reverse charge and the extent of service tax payable by the service recipient and service provider shall be determined as per Notification 30/2012.

5.0 Quantum of abatement for the service of renting of passenger vehicles.

5.1 As per S.No. 9 of Notification 26/2012, service tax is payable on 40 % of the gross amount in case of rent a cab service. The said entry, as it was effective from 01.07.2012 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.

5.2 With effect from 01.10.2014, certain amendments were made in Notification 26/2012, vide Notification 8/2014 ST Dt. 11.07.2014 and the amended entry reads as below.

Sl.No	Description of taxable service	Percent-age	Conditions
(1)	(2)	(3)	(4)
9	Renting of motor cab.	40	<p>"(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;</p> <p>(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 :</p> <p>(a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent of the value; or</p> <p>(b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value;</p> <p>(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."</p>

5.3 It may be observed from the above that in respect of "motor cab" the following cenvat credit is permitted, even when abatement is claimed.

- If the vehicle is hired from another person for the purpose of renting it out and such person has paid service tax on 40 % of the value, the entire service tax can be availed as cenvat credit by the service provider.

- If the vehicle is hired from another person for the purpose of renting it out and such person has paid service tax on the entire value (probably he would have

availed cenvat credit on inputs / capital goods / all input services), 40 % of such service tax can be availed as cenvat credit by the service provider.

- Though the term "motor cab" is not defined in the Finance Act, 1994 post 01.07.2012, as per the pre 01.07.2012 definition of the said term with reference to the Motor Vehicle Act, it is a vehicle carrying upto 6 passengers excluding the driver.

5.4 The following entry has also been introduced vide the same notification, w.e.f. 11.07.2014. (This should have been made effective only from 01.10.2014, but may be due to inadvertence, this is made effective from 11.07.2014. But in view of the broad coverage under S.No. 9, which covered renting of any motor vehicle designed to carry passengers, this 9 A would actually take effect from 01.10.2014, when S.No. 9 is amended as covering only motorcab. Further, the quantum of abatement and the conditions are same under both entries and hence there is no significance for this S.No.9A until 30.09.2014).

"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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5.5 Services of transport of passengers by radio taxis was specified in the negative list, under Section 66 D of the Act and the same has been removed from the negative list, with effect from 01.10.2014. After this, the above entry 9A has been amended as below, with effect from 01.10.2014.

"9A	Transport of passengers, with or without accompanied belongings, by (a) a contract carriage other than motorcab (b) 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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5.6 It may be noted from the above that in case of vehicles other than motor cab and radio taxis, if the benefit of abatement is claimed, no cenvat credit can be availed.

5.7 The above amendments in abatements can be tabulated as below, for ease of understanding.

From	To	Nature of Service	Service tax payable on	Conditions	Remarks
01.07.12	30.09.14	Renting of any motor vehicle designed to carry passengers.	40 %	No cenvat credit can be availed on any inputs, capital goods or input services.	The term motor vehicle designed to carry passengers would cover all types of passenger vehicles.
01.10.14	Till date	Renting of motor cab.	40 %	<ul style="list-style-type: none"> - No Cenvat credit can be taken on any inputs and capital goods. - If the motor cab is hired from another person who pays ST on 40 %, such ST can be taken as credit. - If the motor cab is hired from another person who pays ST on the entire value (he would have availed cenvat credit on inputs, capital goods) such ST can be taken as credit, to an extent of 40 %. - No other cenvat credit on any input service can be taken. 	<p>Motor cab means passenger vehicles carrying upto 6 passengers.</p> <p>It may be noted that limited cenvat credit has been allowed for renting of motor cabs.</p> <p>If any credit more than what is permitted is taken, this abatement would not be entitled.</p>

01.10.14	Till date	Transport of passengers, with or without accompanied belongings, by (a) a contract carriage other than motorcab (b) radio taxi.	40 %	No cenvat Credit on any inputs, capital goods and input services can be taken.	For vehicles other than motor cabs, no cenvat credit is allowed, if abatement is claimed.

6.0 Applicability of Reverse Charge:

6.1 The service tax liability shall be determined as above and then the applicability and extent of reverse charge has to be determined.

As per Notification 30/2012, reverse charge shall apply only in the following circumstances.

- i) No reverse charge will apply if the vehicles are hired to another person who is in the same line of business of renting of vehicles.
- ii) The service provider should be an individual, partnership firm, Hindu Undivided Family or Association of Persons.
- iii) The service recipient should be a business entity and body corporate.

7.0 Extent of service tax payable by service provider and service recipient during the period from 01.07.2012 to 30.09.2014.

7.1 The extent of service tax payable by the service provider and service recipient has been prescribed vide S.No. 7 of the table under the Notification 31/2012, as below, with effect from 01.07.2012.

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	Nil	100%
	(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%

7.2 If service tax is payable on abated value, then the entire service tax liability has to be paid by the service recipient. It may be noted that as per S.No.9 of Notification 26/2012 abatement is entitled if no cenvat credit whatsoever has been availed by the service provider. In such case, service tax is payable on 40 % of the value and such service tax, in its entirety shall be paid by the service recipient, as per S.No. 7(a) above.

7.3 If the service provider has availed any cenvat credit, no abatement can be claimed and service tax has to be paid on the total value. In such cases, the service provider shall pay 60 % of the liability and the service recipient shall pay 40 % of the liability, as per S.No. 7 (b) above.

7.4 In both the cases, the service tax payable by the service recipient would remain the same. For example, if the value is Rs.5000, under 7 (a), service tax is

payable on 40 % of the value i.e on Rs.2000 (@ 12.36 % at that time- Rs.247 and the entire Rs.247 shall be paid by the service recipient. Under 7 (b), service tax is payable on Rs.5,000 (@ 12.36 % - Rs.618, out of which 60 % i.e. Rs.371 shall be paid by the service recipient and 40 %, i.e. Rs.247 shall be paid by the service recipient). The service tax payable by the service recipient is Rs.247 in both circumstances.

8.0 Extent of service tax payable during the period from 01.10.2014.

The above S.No. 7 of Notification 30/2012 has been amended as below 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 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	Nil 50%	100% 50%

For motor cabs:

8.1 It may be noted that as per the amendments carried out in Notification 26/2012, prescribing abatements, abatement is entitled in case of renting of motor cabs, even if limited cenvat credit is availed. So, even if the service provider has availed such limited credit (on similar services availed by him, to the extent specified in Notification 26/2012), service tax is payable only on 40 % of the value and such service tax shall be fully discharged by the service recipient, as per S.No. 7 (a) above. In other words, even though the service provider has availed such limited cenvat credit as permitted under Notification 26/2012, he will not pay any service tax (if the conditions prescribed for applicability of reverse charge are satisfied) and such credit can be used by him for any

other purpose or can be claimed as refund under Rule 5 B of Cenvat Credit Rules, 2004. From the point of view of service recipient, if no service tax is charged by the service provider, it would convey either the service provider has not availed any cenvat credit or has availed only the permitted credit as per Notification 26/2012. So, the service recipient shall pay the entire service tax, payable on 40 % of the value. Continuing with the same example, if the bill value is Rs.5,000, service tax on 40 % of the value would be Rs.280 (currently @ 14 %) and the entire Rs.280 shall be paid by the service recipient under reverse charge and no service tax would be payable by the service provider.

8.2 If the service provider has availed more credit than what is permitted under Notification 26/2012, then no abatement is permissible and service tax is payable on the entire value. In such case, 50 % of the service tax liability shall be paid by the service provider and the remaining 50 % of the liability shall be paid by the service recipient. From the point of view of the service recipient, if the service provider has already paid 50 % of the service tax liability on the entire value, this would mean that the service provider has availed more cenvat credit than what is permitted under Notification 26/2012 and hence abatement is not entitled and the service recipient shall pay the remaining 50 % of the liability, as per S.No. 7 (b) above. Continuing with the same example, if the bill value is Rs.5,000, service tax is payable on the entire value, without any abatement i.e Rs.700 (@ 14 %) and 50 % of this liability, i.e. Rs.350 shall be paid by the service provider and the remaining 50 %, i.e. Rs.350 shall be paid by the service recipient. From the point of view of service recipient, if the service provider has charged service tax on the entire value and paid 50 % of it, it would convey either the service provider has availed cenvat credit more than the permitted credit as per Notification 26/2012 and hence the service recipient shall pay the remaining 50 % liability.

Other than motor cabs.

8.3 If the service provider has not availed any cenvat credit, abatement is entitled and the service tax liability shall be discharged by the service recipient (Similar to the example under 8.1 above). If the service provider has availed any cenvat credit, no abatement is entitled and service tax is payable on tire value. 50 % of such service tax shall be paid by the service provider and the remaining 50 % shall be paid by the service recipient (Similar to the example under 8.2 above).

9.0 The extent of service tax payable under reverse charge after 01.10.2014 is further explained by the below example.

(Assumptions: Value in all cases is assumed as Rs.5,000. ST rate is 14 %. All conditions for applicability of reverse charge are satisfied)

S.No.	Description of activity	Amount of service tax payable by service provider	Amount of service tax payable by service recipient	Remarks	Relevant provision
1	Motor cab is rented. The service provider has availed only permitted cenvat credit as per Notification 26/2012	NIL	Rs.280	Abatement is entitled. 100 % of ST payable is to be paid by service recipient.	S.No. 9 of Notification 26/2012 and S.No. 7 (a) of Notification 30/2012
2	Motor cab is rented. The service provider has availed more cenvat credit that what is permitted as per Notification 26/2012.	Rs.350	Rs.350	No abatement is entitled. The ST payable shall be shared 50 : 50.	S.No. 7 (b) of Notification 30/2012
3	Vehicle other than motor cab is rented. Service provider has not availed any cenvat credit.	NIL	Rs.280	Abatement is entitled. The ST payable shall be paid in full by service recipient.	S.No. 9 A of Notification 26/2012 and S.No. 7 (a) of Notification 30/2012
4	Vehicle other than motor cab is rented. Service provider has not availed any cenvat credit.	Rs.350	Rs.350	No abatement is entitled. The ST payable shall be shared 50 : 50.	S.No. 7 (b) of Notification 30/2012

Simply stated, the reverse charge liability shall be determined as below.

- If the service provider has not charged any service tax, service tax is payable on 40 % of the value by the service recipient.
- If the service provider has charged service tax (50 % of the service tax liability on total value), the service provider shall pay the remaining 50 % of the service tax liability on total value.

