

## **IN-DEPTH ANALYSIS OF VARIOUS AMENDMENTS MADE IN AUTHORISED SERVICE STATION'S SERVICES BY FINANCE ACT, 2011**

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Finance Act, 2011 has, amongst other things, amended the scope the seven existing taxable services with effect from 08.04.2011. One of such existing taxable services is "Authorised Service Station's Services which have been brought within the ambit of Service Tax ever since 16.07.2001. In the ensuing paragraphs various dimensions of amendments brought by Finance Act, 2011 in Authorised Service Station's Services have been discussed:

First of all, the relevant amended sub- clause (zo) of clause (105) of Section 65 is given below. In addition, the relevant sub- clause (zo) which was prevailing immediately before such amendment is also reproduced below for instant reference:

### **TAXABLE SERVICE**

#### **With effect from 08-04-2011**

Taxable service means **any service** provided or to be provided to **any person**, by any other person , **in relation to any service** for repair, reconditioning ,restoration or **decoration or any other similar services**, of any motor vehicles other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage-  
Section 65(105)(zo)

#### **16.05.2008 to 07-04-2011**

Taxable service means **any service** provided or to be provided to **any person**, by an **authorised service station**, **in relation to any service**, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles, **in any manner** -  
Section 65(105)(zo)

## **Essential Ingredients of these services w.e.f. 08.04.2011**

On careful analysis of above-mentioned substituted sub-clause (zo) [which has come into force w.e.f. 08.04.2011], following essential ingredients of these services come into light:

### **(A) Status of Service Provider**

Services are provided by any other person [**authorised service station upto 07-04-2011**]. Thus, w.e.f. 08.04.2011 it is no longer necessary that service provider must be an authorised service station. In other words, any person who is engaged in providing these services even if he is not an authorised service station will fall within the scope of these services.

### **(B) Status of Service Recipient**

Services are provided *or to be provided to any person*. The term 'person' is generally understood as natural human being but in the context of fiscal laws [including Service Tax] the term 'person' includes artificial and juristic persons also. In different words, the said term 'person' includes Individual, Proprietorship Firm, Partnership firm, Company, Society, Co-operative Society, Trust, Body Corporate, Hindu Undivided Family, Club, Any Associations of persons by whatever name called.

Thus, status of person receiving the taxable service under the category of "Authorised Service Station's Services" is inconsequential in determining the issue of taxability because these services are taxable irrespective of kind of service recipient.

### **(C) Kinds of Services falling within the scope of these services**

Such services are in relation to any service for repair, reconditioning, restoration or **decoration or any other similar services**. It is worth highlighting that w.e.f. 08.04.2011 the scope of these services has been widened by inclusion of the expression "**decoration or any other similar services**" within the purview of these services. If the foregoing expression is minutely analysed, it becomes clear that following two kinds of inclusions have been made:-

**Specific Inclusion:** In this category **services in relation to decoration** have been included. Since the term “**decoration**” has not been statutory defined in Finance Act, 1994, following brief table will be useful in understanding the scope of the term “decoration”:

<b>Meaning of term “Decoration”</b>	<b>Relevant Source</b>
Beautification, Adornment, Embellishment	Oxford Advanced Learners’ Dictionary [6 <sup>th</sup> Edition]
<b>Decorations</b> are features that are added to something in order to make it look more attractive.	Collins CoBuild Dictionary [6 <sup>th</sup> Edition]
<b>1</b> the act of decorating <b>2</b> anything used for decorating; ornament	Webster Dictionary

On the basis of above dictionary meanings, it can be inferred that in the present context services of beautifying/ adorning/ embellishing any motor vehicles [other than excluded ones which have been discussed hereinafter] will attract service tax.

**General Inclusion:** By incorporating the expression/phrase “**any other similar services**” the purview of these services has been further widened. In other words, not only **four specific services** [services in relation to for repair, reconditioning, restoration or **decoration**] are taxable but services falling under residual category [**any other similar services**] will also service tax. It is pertinent to add here that while determining the services which fall under the foregoing residual category [any other similar services] the Rule of **Noscitur A Sociis [i.e. Rule of Construction of Associated Words]** is to be followed. As per aforementioned rule, the meaning of a word is derived from its associate words i.e. the meaning of a word is to be judged by the company it keeps. The words in a statute are construed with reference to the words found in immediate connection with them. To put it differently, if two or more words which are capable of analogous (similar or Parallel) meaning, are grouped together, they should be understood in

cognate sense i.e. they are interpreted to take their colour from each other and are given a similar or related meaning.

Thus, in the present context, by applying the Rule of **Noscitur A Sociis**, services which are similar in nature to four specific services [services in relation to for repair, reconditioning, restoration or **decoration**] will also attract service tax.

#### **(D)Kinds of Motor Vehicles Included and Excluded**

In order to truly appreciate the kinds of motor vehicles included and excluded under the substituted sub-clause (zo) following comparative table has been prepared:

<b>Point of Distinction</b>	<b>Substituted Sub-Clause(zo) with effect from 08.04.2011</b>	<b>Erstwhile Sub-Clause (zo) prevailing from 16.05.2008 to 07.04.2011</b>
Types of Motor Vehicles <b>Included</b>	<b>Any Motor Vehicles</b> [barring two specified kinds of vehicles mentioned against the next point of distinction ] In simple words, all kinds of motor vehicles excepting two specified types have been brought within the sphere of taxable services under this category of services.	Motor Cars, Light Motor Vehicles or Two Wheeled Motor Vehicles. In other words, only three specified kinds of vehicles were included. According to Section 65(72) 'Motor Car' has the meaning assigned to it in section 2(26) of Motor Vehicle Act, 1988. And, as per foregoing section 2(26) 'Motor Car' means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor-cycle or invalid carriage. Therefore, in simple words, the term 'Motor Car' includes Cars, Jeeps or Vans. According to Section 65(62) 'Light Motor Vehicle' means

		any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver.
Kinds of Motor Vehicles <b>Excluded</b>	(a) Three-wheeler Scooter Auto Rickshaw. (b) Motor-Vehicles meant for goods carriage. To put it simply, all commercial motor-vehicles [such as Normal-Size Trucks, Tata-407 Brand Small Trucks etc.] which are engaged in the business of carrying of goods have been specifically excluded.	Any vehicle other than three specified above i.e. Motor Cars, Light Motor Vehicles or Two Wheeled Motor Vehicles

### **(E) Omission of phrase “in any manner”**

On a microscopic scrutiny of the newly substituted sub-clause (zo) of clause (105) of Section 65, it is observed that the phrase “in any manner” has been omitted. It is difficult to remark whether the said omission is intentional or due to inadvertence. In the opinion of the author, the foregoing omission appears to be due to inadvertence.

It is interesting to specify that as and when the phrase “**in any manner**” is given in any sub-clause of clause (105) of section 65, Hon’ble Tribunals or Courts, as the case may be, usually interpret the relevant sub-clause to give extended meaning to the concerned sub-clause. In different words, the manner of providing a taxable service by the concerned service provider has no bearing on the scope of taxability of the relevant service. If a service is taxable by its nature then the manner of provision of that service becomes inconsequential.

### **Concluding Remarks**

It is earnestly hoped that above in-depth analysis will be helpful in understanding the true scope of various amendments carried out in “Authorised Service Station’s Services”. Finally, in the opinion of the author, the name/heading of these services should have also been changed because under the amended sub-clause (zo) of clause (105) of Section 65 the word “authorised” has lost its relevance.