



**No.1002-26/2010-11/Taxation/BSNL/Passive Infra Service Providers/3/2**

**Dated: 27/08/2012**

To

The Chief General Managers,

1. All Telecom Circles/ Metro Telephone Districts/Maintenance Regions/ Project Circles
2. Task Force/ Data Network/ NCES/QA/ T&D/ Telecom Stores/ Telecom Factories/ CPAO (ITI Bills)/ IT Circle Pune/
3. ALTTTC/BRBRAITT/ NATFM


**Sub.: Chargeability of Service tax on Electricity and Diesel bills in infrastructure sharing agreement(s) signed between BSNL and other Service provider(s)-Reg.**

Kindly refer to the above cited subject.

1. In this connection, Corporate Office has received queries from Assam and Karnataka Telecom Circles seeking clarification regarding chargeability of Service tax on Electricity and Diesel bill(s) in infrastructure sharing agreement(s) signed between BSNL and other Service provider(s). The matter has already been clarified through the following letters issued in this regard:-
  - i. No.1002-27/2008/Taxation/BSNL/590 dated 13/10/09 issued by Taxation Branch, BSNL C.O.
  - ii. No.61-38/08-CMTS Infra dated 09/12/2009 issued by CMTS-Infra Cell, BSNL C.O.
2. However, the matter was again re-examined based on the queries received from Assam and Karnataka Circles and the said circles have been clarified vide latter of even no. dated 27.06.2012 that Service Tax on payment of charges towards diesel and electricity consumption (based on actuals) is applicable in accordance with Section 67 of Finance Act, 1994 read with Rule 5(1) of Service Tax (Determination of Value) Rules, 2006. Relevant rulings are enclosed herewith as Annexure-'A'.
3. It was further clarified to the Circles mentioned in Para 2 that Service Tax paid on consumption/reimbursement of Diesel and Electricity Charges is available for Cenvat credit since BSNL is paying Service Tax on infrastructure services received from Infrastructure service providers. Such Service Tax payment on Infrastructure services would be input service for BSNL. It is to be noted that Service Tax on infrastructure service has to be paid subject to receipt of the invoice/bill/challan etc, issued in conformity with Rule 4A of Service Tax Rules, 1994.
4. The CGMs of all above mentioned Circles are requested to follow the instructions mentioned in Para 2 and 3 above.

This issues with the approval of competent authority.

Encl.: Annexure- A (Overleaf)

  
(K M Qanungo)  
DGM(Taxation)  
BSNL C.O.

Copy for information and necessary action to: GM (CMTS-Infra), BSNL CO, New Delhi

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## **ANNEXURE-'A'**

### **Section 67 of Finance Act, 1994 (As amended upto 28<sup>th</sup> May 2012)**

#### **Valuation of taxable services for charging Service tax**

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section,—

(a) “consideration” includes any amount that is payable for the taxable services provided or to be provided;

(b) \*\*\* omitted vide Finance Act, 2012

(c) “gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]]

#### **Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, provides that:**

“Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service”.

[Explanation.—For the removal of doubts, it is hereby clarified that for the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided.]