

Circular No. 162/13 /2012 –ST

F. No. 354/111/2012-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
(Tax Research Unit)

Room No 146, North Block, New Delhi-1,
Dated the 6th July 2012.

To

Chief Commissioner of Customs and Central Excise (All)
Chief Commissioner of Central Excise & Service Tax (All)
Director General of Service Tax
Director General of Central Excise Intelligence
Director General of Audit
Commissioner of Customs and Central Excise (All)
Commissioner of Central Excise and Service Tax (All)
Commissioner of Service Tax (All)

Madam/Sir,

Subject: Clarification on Point of Taxation Rules - regarding.

Consequent to the changes introduced at the time of Budget 2012 in the Point of Taxation Rules, 2011, together with revision of the service tax rate from 10% to 12% and the subsequent changes that have been made effective from 01.07.2012, the following clarifications have been desired:

- (a) Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;
- (b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and
- (c) Applicability of partial reverse charge provisions in respect of specified services.

2.1 The issues have been examined. The continuous supply of services was governed by rule 6 until 31.03.2012. The rule started with the wordings “notwithstanding anything contained in rules 3, 4 ...” Therefore, the point of taxation in respect of services provided in terms of the said rule on or before 31.03.2012 would remain unaffected by rule 4.

2.2 To clarify the matter further, if the invoice had been issued or payment received in respect of such services on or before 31.03.2012, the point of taxation would stand determined under rule 6 accordingly and shall not alter due to the subsequent changes in the Point of Taxation Rules, 2011 that became effective only from 1.4.2012.

3.1 However the position has undergone a change at the time of transition towards the Negative List and the introduction of other accompanying changes in Service Tax (Determination of Value) Rules, 2006 and partial reverse charge. At the said time rule 6 stood omitted and the point of taxation was required to be determined ordinarily in such cases under the main rule i.e. rule 3. This rule is, however, overridden by rule 4 when there is a change in effective rate of tax. The “*change in effective rate of tax*” has been defined in clause (ba) of rule 2 to include a change in the portion of value on which tax is payable.

3.2 To illustrate, the following would be changes in effective rate of tax:-

- (i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount

charged, or effectively @ 7.2% now).

- (ii) exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.
- (iii) taxability of certain works contracts which were hitherto exempted.
- (iv) change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

3.3 However, the following will not be a change in effective rate of tax:-

- (i) works contracts earlier paying service tax @ 4.8% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again at 4.8% (as only the manner of expression has been altered).
- (ii) works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)

3.4 Thus the point of taxation for services provided in respect of taxable works contracts in progress on 01.07.2012 would need to be determined under rule 4 of the Point of Taxation Rules unless there is no change in effective rate of tax.

4. It is further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.

5. This Circular may be communicated to the field formations and service tax assessees, through Public Notice/ Trade Notice. Hindi version to follow.

Yours faithfully,

(Dr. Shobhit Jain)
O.S.D. (TRU)
Fax: 23093037