Pankaj Kr Agrawal
B.Com(H), CA Final & CS Final

LEGAL PROVISIONS REGARDING CONSTRUCTION SERVICES & WORK CONTRACT:

Construction Services & Work Contract under section 66E of the Finance Act, 1994

b) Construction Service
h) Service Part in a work contract

Definition of Construction Service

As per Section 66E(b) of the Finance Act, 1994, Construction of a Complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

According to the above definition, a service becomes taxable as work contract and construction service, when:

1. The service is provided (or to be provided) in relation to **Construction of a Complex, Building & Civil Structure or a part thereof.**
2. Service of construction include additions, alterations, replacement or remodeling of any existing civil structure
3. The service is provided to any person.
4. The service may be provided by any person within taxable territory.
5. The entire activity of the builder/developer/promoter would be deemed to be service only if any amount has been received prior to issuance of completion certificate by a competent authority. If amount is received in this behalf after issuance of completion certificate, then the activity would be mere transfer of title in immovable and thereby doesn't falling under the definition of service.
6. Competent authority means
    a. Architect registered with the council of Architecture constituted under the Architects Act, 1972.
    b. Chartered Engineer registered with the Institution of Engineers (India)
    c. Licensed surveyor of the respective local body of the city or town or village or development or planning authority.

Mega Exemptions:

The Government has issued Exemption NN-25/2012-ST containing host of exemption with respect to various services. Out of these, the entries related to exemption with reference to work contract or construction service area as under-

Exemption NN-25/2012-ST- Entry 12

- **Service provided to the government, local authority or a government authority by way of construction erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of-**

a) a civil structure or any other original work meant predominantly for use other than for commerce, industry, or any other business or profession

Explanation:

- Under this entry, only such services as are provided to Government, local authority or a government authority are exempt.
- It may be noted that the exemption is restricted to the service of specific description i.e. service is of the nature of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration. it simply does not apply to all works contract.
- The exemption is available for a civil structure or any other original work meant predominantly for use other than for commerce, industry, or any other business or profession. The significance of the word predominantly is that benefit of exemption will not be denied if the building is also incidentally used for some other purpose if it is used primarily for commerce, industry, or any other business or profession.

b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under, the Ancient Monuments and Archaeological sites and Remains Act, 1958

c) a structure menat predominantly for use as

i) an education
ii) a clinical, or
iii) an art or cultural establishment

d) canal, dam or other irrigation works

e) pipeline, conduit or plant for

i) water supply
ii) water treatment, or
iii) sewerage treatment or disposal

f) a residential complex predominantly menat for self-use or the use of their employees or other persons specified in the explanation 1 to clause 44 of section 65B of the said finance act.

Explanation:

Under this entry, the service of construction, erection, commissioning, installation, completion, fitting out, repairs, maintenance, renovation or alternation of a residential complex for self use of Government or other specified person is exempt. The above exemption available for

- Self use of the Government or local authority
- Use of employees of the Government or local authority
- Person covered in the explanation 1 to clause 44 of section 65B of said finance Act
    A. The Members of Parliament, Member of State Legislative, Member of Panchayats, Member of Municipalities and Member of other local authority; or
    B. Any person who holds any post in pursuance of the provision of the constitution in that capacity: or
    C. Any person as a Chairperson or a member or a director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Exemption NN-25/2012-ST- Entry 13

➢ **Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-**

a) road, bridge, tunnel, or terminal for road transportation for use by general public

b) a civil structure or any other original work pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awass Yojana

c) a building owned by an entity registered under section 12AA of the income Tax Act, 1961 and meant predominantly for religious use by general public

d) pollution control or effluent treatment plant, except located as a part of a factory: or a structure menat for funeral, burial or cremation of deceased

Exemption NN-25/2012-ST- Entry 14

- **Service of construction, erection, commissioning or installation provided for the original work pertaining to the following, are exempt from service tax-**

a) an airport, port or railway, including monorail or metro

b) a single residential unit otherwise than as a part of a residential complex

Explanation:

Under this clause, service of construction, erection, commissioning or installations provided for the original work pertaining to single residential unit other than as a part of a residential complex are exempt.

- **"Single residential unit"** means a self-contained residential unit which is designed for use, wholly of principally, for residential purposes or one family.
- **"Residential complex"** means any complex comprising of a building or buildings, having more than one single residential unit.

c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India.

d) Post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes

e) Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

Exemption NN-25/2012-ST- Entry 29

- **Service by the following persons in respective capacities-**

a) As per Clause (h) of entry 29 sub contractor providing services by way of work contract to another contractor providing work contract service which is exempt. Here there are two important points first it should be a sub-contract and secondly the service provided by the sub contract shall be in the nature of work contract.

Value of service and Abatement under NN.26/2012-ST

In case of construction services, where only labour is involved, service tax is to be discharged on the gross value charged by the service provider from the recipient of service.

- In terms of Notification No.26/2012-ST, effective from 01-07-2012, an abatement of 75% had been granted for construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration was received after issuance of completion certificate by the competent authority. Thus tax was payable on 25% value of total amount subject to the condition that the value of land is included in the amount charged from the service receiver.

  The above exemption has, however, been modified by Notification No.02/2013-ST, dated 01-03-2013.According to new exemption,

  1. where the carpet area of residential unit is upto 2000 square feet, or the amount charged is less than one Crore Rupees, in the case of ‘construction of complex, building or civil structure, or a part thereof, intended for sale to a buyer, wholly or partly except where the entire consideration is received after issuance of completion certificate by the competent authority, taxable portion for service tax purpose will remain as 25%
  2. in all other case taxable portion for service tax purpose will be 30% of the amount charged.

  in this context, the NN.26/2012-ST explains that the amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods and service supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-

  1. the amount charged for such goods or service supplied to the service provider, if any and
  2. the value added tax or sales tax, if any, levied thereon

- **<u>Cenvat Availability</u>**

It may by noted that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any input (i.e. input goods), used in or in relation to the said works contract, under the provision of CENVAT credit Rules, 2004. **Thus credit on capital goods and input service is available.**

In case of work contract including those services of construction which amounts to work contract service and, the value of service is to be determined under the specific rule 2A of the Valuation Rules as under

- Value of service portion in the execution of a work contract shall be equivalent to the gross amount charged for the work contract **less** the value of property in goods transferred in the execution of the said work contract.
  Thus, Value of service portion in the execution of a work contract= gross amount charged **minus** value of property in goods transferred.
  Gross amount charged shall not include value added tax or sales tax (CST).
- Rule 2A further provides that value of work contract service shall include the following
    - Labour charge for execution of the works
    - Amount paid to a sub contractor for labour and services
    - Charges for planning, designing and architect's fees
    - Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the work contract
    - Cost of consumables such as water, electricity, fuel used in the execution of the work contract
    - Cost of establishment of the contractor relatable to supply of labour and services
    - Other similar expenses relatable to supply of labour and services: and
    - Profit earned by the service provider relatable to supply of labour and services

<u>Where the value has not been determined by the above manner,</u> the person liable to pay tax on the service portion involved in the execution of the work contract shall determine the service tax payable in the following manner, namely:-

<u>COMPOSITION SCHEME</u>

1. **<u>40% taxability In case of</u>** work contracts entered into for execution of original work
2. **<u>70% taxability In case of</u>** work contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods
3. **<u>60% taxability In case of</u>** other work contracts, not covered under above clauses 1 and 2, including maintenance, repairs, completion and finishing service such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property

Person liable to pay service tax (REVERSE CHARGE MECHANISM)

The liability to pay service tax has been fastened in a different manner with reference to status of person (i) by whom service is provided (ii) to whom service is provided (iii) location of the provider or recipient of service in taxable or non taxable territory. Following are the relevant position-

a) In case of a works contract service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to a business entity registered as body corporate in taxable territory,
    - 50% service tax payable by service provider
    - 50% service tax payable by service recipient
b) In respect of work contract services provided by the Government or local authority to business entity located in taxable territory, 100% service tax is payable by service recipient.
c) In relation to any taxable service provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory, 100% service tax is payable by the service recipient
d) In all other cases, 100% service tax is payable by the service provider, which would include-
    - Service provided by a company to any person
    - Service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to a person other than business entity registered as body corporate in taxable territory
    - Service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to any person in the non taxable territory

Point of Taxation

Rule 3 Rules of Point of Taxation Rules, 2011

General rule for determination of point of taxation

The point of taxation shall be

1. If invoice is issued within 30 days from the date of completion of service
    a. Date of invoice or
    b. Receipt of payment;
    whichever is earlier

2. If invoice is not issued within 30 days from the date of completion of service
    a. Date of completion of service
    b. Receipt of payment;
    whichever is earlier.

Advance Payment: where any advance is received by whatever name known by the service provider towards providing taxable service, the point of taxation shall be the date of receipt of each such advance.

In case of Continuous Supply of Service

Where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service. Accordingly invoice should be issued within 30 days of completion of each such event.