Services by Government or local authority

Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—Sec. 66 D[a]

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) [*][any service], other than services covered under clauses (i) to (iii) above, provided to business entities;

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[*] Substituted by the Finance Act, 2015 w.e.f. 14.05.2015, Earlier it read as under: "support services"

With effect from 14.05.2015

"Government" means the Departments of the Central Government, a State Government and its Departments and a union territory and its departments but shall not be include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made their under

"Local Authority" means-

(a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government With, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution;

Departmental Clarifications

(A) D.O.F. No. 334/5/2015-TRU, Dated 28.02.2015

5.1 (iii) Presently, services provided by a Government or a local authority, excluding certain services specified under clause (a) of section 66D , are covered by the Negative List. Service Tax applies on the "support services" provided by the Government or local authority to a business entity . An enabling provision is being made, by amending section 66D to exclude all services provided by the Government or local authority to the business entity from the Negative List. Consequently , the definition of "support service" [section 65B(49)] is being omitted. Accordingly, as and when this amendment is given effect to, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted , or covered by any another entry in the Negative List, shall be liable to service tax.

(B) D.O.F. No. 334/5/2015-TRU, Dated 19.05.2015

3. Presently, services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66D , are covered in the Negative List. An enabling provision has been made, by an amending section 66D(a)(iv) , to exclude all service provided by the Government or local authority to the business entity from the Negative List [section 109(1) of Finance Act, 2015] . Consequently, the definition of "support service" [section 65B (49)] is also to be omitted from 14.05.2015 [section 107(h) of Finance Act ,2015].

Person responsible for discharge of Service Tax Liability in respect of above specified Services

Relevant Service	Person responsible for discharge of Service Tax
Specified services provided by Derpartment of Posts	Department of Posts
Services in relation to vessel	Concerned Government Department. For instance, Port Authorities
Services in relation to an Aircraft	Concerned Government Department. For instance, Airport Authority of India
Transport of Goods and/or passengers.	Concerned Government Department. For instance, Indian Railways , Delhi Transport Corporation.
Any Service [other than those covered by clauses (i) to (iii) to above] to business entities.	The Concern business entity by virtue of Reverse Charge Mechanism given under section 68(2) of the Act read with clause 6 of **Notification No. 30/2012-S.T. dated 20.06.2012**

Departmental clarification-Taxation of services- An Education Guide, Dated 20.06.2012

4.1.1 Are All Services provided by the Government or Local Authority Covered in the negative list?

No. Most services provided by the central or state Government or local authorities are in the negative list except the following:

(a) Services provided by the department of posts by way of speed post, express parcel post, life insurance and agency services carried out on payment of commission on non-Government business;

(b) Services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;

(c) Transport of goods and/or passengers ;

(d) Support Services, other than those covered by clause (a) to (c) above , to business entities

4.1.2 Would the taxable services provided by the Government be charged to tax if they are otherwise exempt or specified elsewhere in the negative list?

No. If the services provided by the Government or local authorities that have been excluded from the negative list entry are otherwise specified in the negative list then such services would also not be taxable.

4.1.3 'Government' has not been defined in the Act. What is the meaning of Government?

The Phrase 'Government' has not been defined in the Act. As per clause (23) of section 3 of the General Clauses Act, 1897 'Government' include both Central Government and any state Government As per clause (8) of section 3 of the said Act 'Central Government', in relation to anything done or to be done after the commencement of the constitution , mean the President. As per article 53 of the constitution the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further in term of article 77 of the Constitution all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore , the Central Government means the President and the officers subordinate to him while exercising the executive powers of the union vested in the President and in the name of the President.

Similarly as per clause (60) of section 3 of the General Clauses Act, 1897 'State Government', as respects anything done after the commencement of the Constitution, shall have been, in a State the Governor, and in Union Territory the Central Government Further as per article 154 of the Constitution the executive power of the state shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution all executive actions of the Government of state shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive power of the state vested in the Governor and in the name of Governor.

4.1.4 Are various corporations formed under Central Acts or State Acts or various Government companies registered under the Companies Act, 1956 or autonomous institutions set up by a special Acts covered under the definition of 'Government' ?

No. A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'Local Authority' as would be evident from the meaning of these terms explained in point nos. 2.4.7 and 2.4.8 above respectively. Such Statutory body, corporation or an Authority are normally created by the Parliament or a state Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively . It is a settled Position of law Government (*Agarwal Vs Hindustan Steel* AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies does not become officers subordinate to the president under article 53(1) of the Constitution . Such a Statutory Body, corporation or an authority as a juristic entity is separate from the state and cannot be regarded as central or state Government and also do not fall in the definition of 'Local Authority'.

Thus regulatory bodies and other autonomous entities which attain their entity under an act would not comprise either Government or Local Authority.

4.1.5 What entities are then covered under 'Government'?

'Government' would include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

4.1.6 Would a department of the Government need to get itself registered for each of the services listed in answer to Q. No. 4.1.1 above?

For the Support services provided by the Government, other than where such support services are by way of renting of immovable property , to business entities, Government departments will not have to get registered because service tax will be payable on such services by the service receiver i.e. the business entity receiving the service under reverse charge mechanism in terms of the provisions of section 68 of the Act and the notification issued under the said section as well Service Tax Rules, 1994. For Services mentioned at (a) to (c) of the list (point 4.1.1 above refers) tax will be payable by the concerned department

Conditions of Service) Act, 1971 (such services are performed by CAG under the statue and cannot be performed by the business entity themselves and thus do not constitute support services.)

4.1.8 Will the services provided by Police or security agencies to PSUs or corporate entities or sports events held by private entities be taxable?

Yes. Services provided by Government security agencies are covered by the main portion of the definition of support service as similar services can be provided by private entities. In any case it is also covered by the inclusive portion of the definition. However the tax will be actually payable on reverse charge by the recipient.

4.1.9 What is the meaning of Local Authority?

Local Authority is defined in clause (31) of section 65B and means the following:-

(i) A Panchayat as referred to in clause (d) of article 243 of the Constitution

(ii) A Municipality as referred to in clause (e) of article 243P of the Constitution

(iii) A Municipal committee and a District Board , legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund

(iv) A Cantonment Board as defined in section 3 of the Cantonment Act ,2006

(v) A regional Council or a district council constituted under the sixth Schedule to the Constitution

(vi) A development board constituted under article 371 of the Constitution , or

(vii) A regional council constituted under article 371A of the constitution

4.1.10 Are all local bodies constituted by a state or central law are local authorities?

No. The definition of 'Local Authority' is very specific as explained above and only those bodies which fall in the definition comprise 'local authorities'. It would not include other bodies which are merely described as a local body by virtue of a local law.

However it may be noted that services by a Governmental Authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the constitution are specifically exempt under the mega exemption. 'Government Authority' has been defined in the said mega exemption as a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a state Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution. Thus some of these local bodies may comprise Governmental authorities

Author's Note: The definition of term 'Government Authority' has been amended with effect from 30.01.2014 vide Notification No. 02/2014-ST dated 30.01.2014.

4.1.11 Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?

As per sub-clause (i) of clause (a) of section 66D services provided by the department of posts by way of speed post, express parcel post , life insurance, and agency services carried out on payment of commission on non-Government business are excluded from the negative list. Therefore , the following services provided by department of Posts are not liable to service tax.

Basic mail services known as postal services such as post card , inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.

Transfer of money through money orders , operations of savings accounts issue of postal orders, pension payments and other such services

4.1.12 Would agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are provided by the Department of Posts to non-Government entities be liable to service tax?

Yes. Agency services carried out on payment of commission on non-Government business are excluded from the negative list entry relating to services provided by Government or a Local Authority"

RELATED EXEMPTIONS IN NOTIFICATION NO. 25/2012

1. Entry No. 12 of Notification No. 25/2012-ST, Dated 20.06.2012 (As amended by Notification No. 06/2015-ST, Dated 01.03.2015)

With effect from 01.04.2015

Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation , completion, fitting out , repairing , maintenance, renovation or alteration, of –

(a) omitted;

(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(24 of 1958);

(c) omitted;

(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 ; or

(f) omitted

2. Entry 25 of Notification No. 25/2012-ST, Dated 20.06.2012 (Amended by Notification No. 03/2013-ST, Dated 01.03.2013 and Notification No. 6/2014-ST, Dated 11.07.2014

With effect from 11.07.2014

Services provided to Government, a local authority or a governmental authority by way of –

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or

(b) repair or maintenance of a vessel

3. Entry 34(a) of Notification No. 25/2012-ST, Dated 20.06.2012

provide exemption from levy of service tax to Services received from a service provider located in a non-taxable territory by the Government, a Local Authority **,** a Governmental Authority or an individual in relation to any purpose other than commerce , industry or any other business or profession.

4. Entry 39 of Notification No. 25/2012-ST, Dated 20.06.2012

provides exemption from levy of service tax to Services by a Government Authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.

About the Author:

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