[This article appeared in "Taxmann's Service Tax Today" Vol. 8 Part 8 dt. 22-6-2007]

Works Contract under Service Tax- How to make it work?

By CA. Pradip R Shah

e-mail: pradip_shah@vsnl.com

Overlapping of Services

1.0 One of the surprising items of the Budget 2007 was levying Service Tax (ST) on Works Contract (WC). This is for the reason that no one has ever expected it nor it was debated at any level till date. Secondly, the existing provisions of S. 65(105)(zzh), 65(105)(zzq) and 65(105)(zzd) relating to services like commercial or industrial construction service, construction of complex, erection commissioning or installation were already taking care of the services covered under WC. A glance at the provisions of S. 65(105)(zzzza) of the Finance Act relating to definition of WC, will make one wonder how and in what respect it differs from the existing provisions. Was there any justification for inserting new service under the title "Execution of Works Contract"? Will it not lead to complications as the same service will fall into two different types of services? Which section will have to be applied for which service? Like these many other issues will crop-up.

1.1 WC has various aspects viz. definition, which goods have been transferred, value of goods transferred, credit for tax paid etc. An attempt as been made here to discuss definition and other connected aspects like classification of goods. In view of space constraint other issues viz. valuation, tax credit, composition scheme etc. emerging out of taxation of WC have not been covered.

WC under Local Sales Tax Laws

2.0 Levying tax on WC under local sales tax has generated lot of heat till date and will continue to do so even under the existing provisions of Value Added Tax (VAT) Act. Ever since the judgment of the Supreme Court in the case of Gannon Dunkerley, the heat has not cool down. This is despite the fact that large number of judgments by the Supreme Court and High Courts of the various states since 1954 i.e. the judgment of the Madras High Court in the case of Gannon Dunkerley, have tried to examine the issues involved from various angles. In the process, what has happened is that more and more new dimensions have been added, making the issue more complex.

2.1 As if this was not enough, the introduction of ST on WC has added one more dimension to the issue, though not in the realm of VAT but adding wooes for the service providers. The objective of levying tax on service is to put at par the service providers with manufacturers of the goods and have additional source of revenue. However, reading the provisions of ST on WC one is left in no doubt that the Government will not only get more revenue from WC service provider but also from chartered accountants as well. This is for the reason that these provisions will give additional boost to their professional assignments!

Wooes of WC under Sales Tax Laws

3.0 Levying tax on WC has not been easy task for any of the Sate Governments. Since the State Governments are not permitted to tax services, vivisecting the WC transaction and levying tax on transfer of property involved therein has posed serious problems. The issues arising therein are:

-Is the transaction a sale of goods or service?
-Is it a job work or works contract?
-If it is WC whether any property in the goods passes to the buyer?
-If the property is passing to the buyer then at which stage and in what form?
-Is it necessary that all the goods used should exist at the time of passing of the property?
-What will happen if certain goods get extinguished in the process of execution of WC and thus do not get transferred to the buyer?
-How to determine value of goods passing to the buyer?
- How to exclude value of services and levy tax on goods transferred?
- Whether any value is required to be assigned for the goods which have been consumed and could not be transferred?

3.1 Apart from that, all the State Governments started extending the definition of WC so that more and more activities, not falling into the category of sale of goods, can be covered. Having created enough complications, there was no alternative but to find out a short-cut which can solve all these issues. An easy solution was to have a composition scheme. Under the scheme, various transactions were identified which can be treated as WC. Percentages on an ad hoc basis have been fixed for service element involved in each one and tax is being levied on the remainder portion.

3.2 The problems encountered by the State Governments in levying tax in transfer of property in goods can also be faced by the Central Government if it wants to levy ST on it. This is for the reason that of the two aspects involved in the transaction, service is the other aspect. Since the ST is being levied on the service element of the transaction, as against value of goods transferred under VAT, all the issues as mentioned above are bound to arise here as well. Therefore, the easiest way for the Central Government was to devise the whole scheme in such a way that the service provider need not redefine the services or recalculate value of service element but to extract it from the one which has already been computed under the State Laws. It is for this reason one will come across reference to "levying of tax on sale" by the State Government in the Service Tax provisions. It will be appreciated that two different types of taxes are being levied on the same set of transactions under two different statues. Therefore, total value for levying tax cannot exceed the valuation adopted in each case. In order to avoid legal complications, the best solution is to adopt the valuation in the case of sales tax / VAT.

3.3 An issue that still baffles one is the reason for having overlapping of services. Moreover, as against large number of items being covered under VAT laws, why only limited items have been covered under the definition of WC. It appears that the definition of WC will be expanded in such a way that all the items covered under the definition of WC under VAT laws of the State Governments may be covered under the ST provisions. In such a scenario, various services as referred to above may be withdrawn from charge of tax. If it so happens, there will be consistency in chargeability and valuation of services throughout the country.

Classification of Services

4.0 One cannot have any objection about the methodology followed. However, one would have expected a clear picture in this regard. As we shall see while discussing various other aspects of taxation of WC there is no clarity. Let us have a look at the provisions of S. 65(105)(zzzza) regarding WC and compare it with other provisions.

Clause (a) of the definition covers

WC Service	Existing Services under various other provisions
"works contract" means a contract wherein,— (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and (ii) such contract is for the purposes of carrying out,—	
	(*39a*) ***"erection, commissioning or installation"*** means any service provided by a commissioning and installation agency, in relation to,—
(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise,	(*i*)erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise; or
installation of electrical and electronic devices,	(ii) installation of— (a) electrical and electronic devices, including wirings or fittings therefor; or
plumbing, drain laying or other installations for transport of fluids,	(b) plumbing, drain laying or other installations for transport of fluids; or
heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work,	(c) heating, ventilation or air-conditioning including related pipe work, ductwork and sheet metal work; or
thermal insulation, sound insulation, fire proofing or water proofing,	(d) thermal insulation, sound insulation, fire proofing or water proofing; or
	(e) lift and escalator, fire escape

lift and escalator, fire escape staircases or elevators; or	staircases or travelators; or (f) such other similar services;

As can be seen, clause (a) covers *"including wirings or fittings therefore"* which is not the case under WC. It means that the services of pure wiring or fittings will not be covered under WC but will continue to be so under S. 65(39)(a).

Another difference here is clause *"(f) such other similar services"*. This is an enabling clause. However, provisions of WC are under (zzzza) very specific and similar services cannot be covered under WC.

4.1 Clause (b) is relating to construction of a building or a part thereof, laying down of pipeline etc. An important aspect hereof is that it should be related to commerce and industry only. Therefore, construction of building or laying down of pipeline for residential purpose will not fall under this clause. However, it may fall into other sub-clause.

WC Service	Existing Services under various other provisions
(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, ***primarily for the purposes of commerce or industry***; or	S. 65 (*25b*) ***"commercial or industrial construction service"*** means— (*c*) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or (*d*) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is— (*i*) used, or to be used, primarily for; or (*ii*) occupied, or to be occupied, primarily with; or (*iii*) engaged, or to be engaged, primarily in,

	commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;

S. 65(25)(b) is more exhaustive as it precisely defines what is covered there under. Later portion of S. 65(25)(b) specifically excludes services related to roads, airports, railways, transport terminals, bridges, tunnels and dams. These exclusions have been taken care of while drafting S. 65(105)(zzzza).

WC Service	Existing Services under various other provisions
(c) construction of a new residential complex or a part thereof; or	(*30a*) ***"construction of complex"*** means— (*a*)construction of a new residential complex or a part thereof; or
(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or	(*b*)completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex; (64) ***"management, maintenance or repair"*** means any service provided by— (i)any person under a contract or an agreement; or (ii) a manufacturer or any person authorised by him, in relation to,— (a) management of properties, whether immovable or not; (b) maintenance or repair of properties, whether immovable or not; or (c) maintenance or repair including reconditioning or

	restoration, or servicing of any goods, excluding a motor vehicle;

4.2 First part of WC services refers to completion and finishing services. Unlike in the case of S. 65(105)(30)(a), which is applicable to residential complexes only, provisions hereof are applicable in all the cases. Same is the case with repairs or alterations which is applicable to both the types of building i.e. commercial and residential.

4.3 As can be seen, services like commercial or industrial construction service, construction of complex, erection commissioning or installation and are falling under more than one category. This will naturally call for applying provisions of S. 65A which lays down principles of classification. Applying these principles, wherever the WC attracts provisions of local VAT laws, provisions of S. 65(105) (zzzza) i.e. "Execution of Works Contract Service" will be applicable. In case, if for any reason, in a particular State, no tax is levied as sale of goods then such contract will fall into the category of commercial or industrial construction service, construction of complex, erection commissioning or installation. This is for the reason that WC under section (zzzza) has been defined as "works contract" wherein, transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods." Thus, levy of tax as sale of goods is an essential condition; it is a specific condition for being chargeable under ST. If the WC fails to satisfy it then provisions of other clause may be applicable.

Applicability – new WC or Running WC

5.0 This may be true for new contract to be entered into henceforth. However, a question that remains to be answered is what will be the status of the contracts which are in the process of execution. It may be noted that bills in respect of such contracts are being raised in stages and each stage is billed separately. There is no direct answer to it. However, if the Dealer is not under composition scheme of the local VAT laws then services rendered after 1-6-2007 will be governed by the provisions of S. 65(105) (zzzza) and the tax will have to be paid accordingly. However, if the Dealer is under the Composition Scheme of the local VAT laws then it may not be possible to opt for the Composition Scheme under Service Tax. This is for the reason that the provisions of Rule 3 provides for the assessee to exercise the option prior to the payment of service tax in respect of such WC. Since the assessee has already started making payment for such ongoing WC, provisions of Rule 3 of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 cannot be invoked.

The table below will give some idea about the methodology to be adopted for classifying the services.

	Tax leviable under sales tax laws	Covered within the definition of WC u/s 65(105)(zzzza)	Whether the service is covered ***under any other provision*** of S. 65(105)	Chargeable under

Service A	Yes	Yes	Yes	WC
Service B	No	Yes	Yes	Under appropriate section – not as WC
Service C	No	No	Yes	Under appropriate section – not as WC
Service D	Yes	Yes	No	WC

Defining the WC

6.0 S. 65(105)(zzzza) defines "works contract" as

a contract wherein,—

(iii) transfer of property in goods involved in the *execution of such contract is leviable to tax as sale of goods,* and"

The wordings *"leviable to tax as sale of goods"* are vague. As we know, despite the Empowered Committee having drawn a model code of VAT Act, none of the State Governments have adopted it. Each State Government has drafted VAT laws as per their requirements. Thus, there is no consistency in the state laws. Let us see a few of definitions of WC under some of the State laws.

Gujarat VAT Act:

S. 2 (23) "sale" means a sale of goods made within the State for cash or deferred payment or other valuable consideration and includes,-

(b) transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract,

Explanation (ii):

for the purpose of sub-clause (b) of the expression "works contract" means a contract for execution of works and includes such works contract as the State Government may, by notification in the Official Gazette, specify;

Delhi VAT Act:

S. 2 (zo) "works contract" includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;

Karnataka VAT Act:

S. 2 (37) 'Works contract' includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

Andhra Pradesh VAT Act:

S. 2 (45) "Works contract" includes any agreement for carrying out for cash or for deferred payment or for any other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;

Haryana VAT Act:

S. 2 (zt) "works contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;

6.1 As can be seen from above, there are variations in definition of WC in each case. Looking to the provisions it appears that for the purpose of WC under Service Tax provisions of the respective state laws will have to be examined. If the services as mentioned in S. 65(105)(zzzza) are also covered under the state laws then it will be taxed as WC.

6.2 An offshoot of the application of the said definition will be in the case of a service which is, say, taxable as WC in the State of Maharashtra but may not be so in Karnataka or Andhra Pradesh. Does it mean that the same service will be treated separately under section 65(105)? As far as rate of tax is concerned it may not make any difference. However, it does make substantial difference when the assessee opts for composition scheme under WC. Composition Scheme under WC is more tax efficient than service being chargeable under other provisions. Is it not a case of discrimination?

Conclusion:

Transactions covered as WC under VAT laws forms fairly large portion of overall business activities. Same will be true for ST. Introduction of S. 65(105)(zzzza) is a beginning. Time is not far away when all the types of WC under ST may be brought under one umbrella of S. 65(105)(zzzza). The assessee will have to learn to live with it, earlier the better it is.

[This article appeared in "Taxmann's Service Tax Today" Vol. 10 dt. 5-10-07]

Composition Scheme for Works Contract Service under Service Tax – A Boon for Works Contractor?

By **CA. Pradip R Shah**
e-mail: pradip_shah@vsnl.com

Nature of the provisions

1.0 Under the normal scheme of taxation, tax liability is determined with reference to taxable value of the base with the rate of tax. However, due to complexity of the transactions, at times, it is not possible to determine the value of the base, determination of tax liability poses the problem. Since, in such a situation, any solution is prone to litigation and hardship, a via media is found by levying the tax on an ad hoc basis with reference to something which is easily identifiable and can be quantified. Here, the process of determining value of the taxable base is given complete by-pass. Under the taxing statute this is called Composition Scheme (CS). CS is prevalent under the VAT laws of almost all the states. For the purpose of levying tax under Works Contract(WC) which involves both, supply of goods and rendering of services, an option is given to the dealer for payment of tax under CS. Under the CS under VAT the dealer is not required to vivisect the transaction and determine value of property transferred in goods. VAT is required to be paid at substantially lower rate than the scheduled rate.

1.1 Administratively this process under CS is very convenient. However, the tax payer always has the pinch that he is being required to pay the tax on something which is not taxable at all under the statute. In order to take care of such complains, the rate of tax levied is kept substantially lower than the scheduled rate. This dilutes, to some extent, the complain by the taxpayers. While the tax payer is relieved of the hassles of determining value, there is a cost to it. It is in the form of denial of certain tax credit in respect of input. Under VAT scheme of taxation, the dealer is denied input credit of taxes paid on the goods used for executing the WC. However, the dealer is having the additional advantage of not required to detailed scrutiny of the records. Since the tax base is fixed in such a way that there is no ambiguity at all, there is no necessity to go through the said process.

1.2 It should be appreciated that CS is not an alternative tax but it is an alternative method of computing tax liability. Provisions with respect to CS are not the independent charging section. The State will continue to collect the tax under the charging section as provided under the Statute. The only difference being the tax payable in normal way is substituted by the tax to be paid as computed under CS. Thus, it is a rough and ready method of computation of tax.

CS under Service Tax

2.0 It is for the first time that the provisions have been made under the service tax (ST) to pay tax under CS. Notification No. 32/2007 dt. 22-5-2007 lays down detailed rules for composition scheme. ST is being levied for various services wherein supply of goods is involved along with rendering of services. However, in all such cases, abatement in the form of reduction in value of gross amount charged has been preferred by the authorities. The principal difference between abatement and CS is in the process. While in the case of abatement, value of service is determined by deducting value of goods from the gross amount charged on an ad hoc basis and the tax is levied on the balancing amount. However, in the case of CS, no attempt is being made to determine the value of services rendered at all. Tax is computed with reference to gross amount charged. Moreover, the rate of tax is also not the scheduled rate, but the one specifically laid down for this purpose. In the case of abatement, rate of abatement differs from services to services. However, the rate of tax remains the same for all the types of services i.e. the scheduled rate fixed under the Finance Act.

At a first sight, provisions of CS for services involved under WC is surprising. This is for the reason that the scheme of abatement is already in existence under the ST since long. However, the CS is quite popular under VAT laws of almost all the state governments. Perhaps, in order to keep the scheme of taxation of services of WC in alignment with that of the VAT, CS has been proposed.

Redeeming features of CS under ST

3.0 There are six noteworthy features of the CS under ST.

3.1 Firstly, the first part of Rule 3(1) of Works Contract (Composition Scheme for Payment of services) Rules, 2007 overrides the provision of S. 67 of the Finance Act. It is specifically provided that the payment of tax under CS will be discharging the tax liability under section 67. Thus, by not following the provisions of S. 67, there will not be any violation of the Finance Act.

3.2 Secondly, Rule 3(1) overrides the provisions of rule 2A of the Service (Determination of Value) Rules, 2006. Thus, the assessee is freed from the hassles of determining the value of services.

3.3 Thirdly, although not specifically stated so, the clause 3(2) also overrides certain portion of CENVAT Credit Rules. Generally, under the CS of VAT, input credit is not permitted. However, under CS under ST, input credit in respect of goods only is not permitted. It means that all the provisions of CENVAT Credit Rules, particularly input credit in respect of input services and capital goods are applicable.

3.4 Fourthly, unit of assessment under CS is each WC and not the total amount of services rendered during the taxable period WC. It means for WC under CS, tax will have to be ascertained separately and added to the total tax liability for other WC. Total amount of services rendered under WC under CS will not be added to the chargeable value of services for a particular month / quarter, as there is no determination of the volume of services under CS.

3.5 Fifthly, there is no upper limit of the value of the WC in respect of which the option can be exercised. Thus, irrespective of the amount of the WC, the option can be exercised.

3.6 Sixthly, there is live connectivity between provisions of WC under VAT and ST in many respects. For example, the applicability of taxation of services under WC itself is based on the applicability of VAT laws. However, the scheme of CS under ST is silent about it. One would have expected it to be applicable in the case only if the assessee has opted for the same under VAT. However, it is not so. The very fact that there is no reference to option exercised by the dealer under VAT for CS, it is entirely at the option of the assessee, to choose the most beneficial method of taxation.

Optional Scheme

4.0 Rule 3(1) provides that the assessee shall have the option to discharge his service tax liability. Here, two things are worth noting.

4.1 Firstly, there is no compulsion on the assessee to opt for the scheme. Realisation under WC involves value of goods and services, adoption of contract value cannot be permissible mode of levy for ST. Since, the CS is departing from the process of determining tax as laid down under the Statute, assessee's consent becomes essential. Having opted for the CS, the assessee cannot challenge its provision. It is for this reason the CS is always made optional. The assessee is permitted to follow the scheduled method of determining value of taxable base and pay the tax thereon. It is open for the assessee to work out cost benefit analysis of both the methods of taxation and follow the one wherein the tax liability is lower.

4.2 Secondly, tax paid under CS is considered as discharging the tax liability as laid down under the Finance Act. Thus, by making the payment of tax under CS, the assessee is in fact discharging his liability of ST as laid down under the Finance Act. Since the Rule specifically provides to this effect, it will not be open for the administrative authority requiring the assessee to determine the value of services under and pay tax under the scheduled method. Thus, by paying tax as computed under the CS the assessee will be complying the provisions of S. 67 of the Finance Act.

Determining the Taxable Base

5.0 In terms of provisions of S. 67 of the Finance Act, the tax is required to be paid in respect of service provided or to be provided. Thus, it covers both the contingencies i.e. amount received in respect of services rendered and advance received for the services to be rendered. Provisions as applicable in this respect under CS are also the same. The Rule 3(1) provides that tax will have to be paid on amount realised in respect of service provided or to be provided.

5.1 In the case of WC, at times, advance payment is being made by the contractee. In terms of provisions of S. 65(105), and Explanation 3 to section 67, ST is required to be paid thereon. Therefore, in such cases the assessee will have to take decision about the option at an early stage of execution of WC. If tax is paid on advance received then it will not be possible to exercise the option at a later stage and ST will have to be paid on the value determined as mentioned in Rule 2A of Determination of Value Rules.

5,2 The whole structuring of the CS is such that the assessee will have to make calculations in advance about the element of goods and services involved and carry out cost benefit analysis. Once the bill raised has been approved and dues have been realized, the liability to pay ST will arise. This may pose some problem when the payment is received at the fag end of the month/quarter as the liability to pay tax will arise by the 5th of the next month / quarter.

Rate of Tax

6.0 Generally the scheme of CS provides for by-passing the scheduled process of determining the value for computation of tax and the rate of tax provided in the statute. Accordingly Rule 3(1) provides that under the CS the assessee is permitted instead of paying service tax at the rate specified in section 66 of the Act to pay the tax at the rate as laid down under the scheme. Thus, by paying the tax under CS, the assessee is discharging his liability as laid down under section 67 of the Finance Act. A look at the following table will give idea about the whole process of payment of ST and how CS fit into it.

		Under Determination of Value Rule	Under CS
1	Execution of WC	Yes	Yes
2	Raising of provisional bill for work done	Yes	Yes
3	Approval of the work by architect etc.	Yes	Yes
4	Raising of final bill	Yes	Yes
5	Determination of consumption of material for computation of VAT	Yes	Yes
6	Determination of VAT liability	Yes	Yes
7	Payment of VAT	Yes	Yes
8	Receipt of money against the bill raised	Yes	Yes
9	Determination of value of services rendered for ST purposes	Yes	**No**
10	Computation of Input services	Yes	Yes
11	Computation of final ST / CS liability	Yes	Yes
12	Payment of ST	Yes	Yes

6.1 One may get the feeling that under CS only one step is avoided. This is at the cost of paying ST on value of goods involved in WC. However, it should be appreciated that Step 9 is the most difficult and complex part of the whole process. It is at this stage that one may have to face various factual and legal issues. Therefore, one will have to weigh pros and cons at the early stage of WC.

6.2 Rule 3(1) provides for the rate of tax at the amount equivalent to two per cent of the gross amount charged. Under the normal circumstances ST, is required to be paid at the rate as fixed under the Finance Act on value of services rendered only. However, CS differs here. Firstly, the rate as fixed under the Finance Act is not applicable. Secondly, value of services rendered is not required to be determined. Thirdly, the rate of tax will be as mentioned in the Rules. And lastly, tax will be computed not with reference to value of services rendered but with reference to the gross amount charged.

6.3 The wordings “gross amount charged” may lead one to conclude that CS will be required to be paid on bill raised. However, looking to the scheme of ST, the ST is required to be paid only when value of service is realised. Reference to 2.00% of gross amount charged is for the purpose of determining total tax liability. Assessee’s liability to pay the tax arises only when money is realised against WC executed. Therefore, if for any reason, certain amount is not received against the bill raised, there is no liability to pay the tax thereon.

Exclusion of VAT liability

7.0 As provided under Explanation (a) of Rule 2A(1)(i) of Service Tax (Determination of Value) Rules, 2006, under the CS also, as per Rule 3(2), gross amount charged shall not include Value Added Tax (VAT) or sales tax. Base for computation of CS is gross amount charged in the bill. This amount may be including VAT as well. If so, the amount of VAT required to be paid thereon will have to be deducted. This will avoid payment of ST on VAT. In case, if the assessee has opted for CS under VAT then the amount of CS under VAT will have to be considered, otherwise actual amount of VAT liability computed will have to be deducted. In case, if the bill comprises value of work done and amount of VAT separately then the value of work executed as shown will be the basis for computation of CS.

Input Credit

8.0 The most interesting aspect of CS is the provision for permitting the assessee to avail the benefit of tax paid on input services. Generally, as per the CS under VAT the dealer is not permitted to take input credit for tax paid on goods consumed. This is for the reason that the rate of tax fixed under the CS is substantially lower. Moreover, in many cases the dealer is not required to maintain detailed records as well. However, the CS departs here substantially from CS under VAT. Read the provisions in this respect which runs as follow:

shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract.

8.1 At a first glance, one may get an impression that input credit for tax paid is not permitted. However, it is only with reference to duty paid in respect of goods. WC involves rendering of services and for the said purpose the assessee might have availed the services of other service providers. The assessee also might have bought capital goods and paid duty thereon. The Rule, as mentioned above, does not prohibit claiming so. Please note that the provisions of CENVAT Credit Rules have not been overridden. The assessee is permitted to take input credit in respect of both of these items. See the following extract from clarification No. 097.01/23-8-2007 of Circular No. 96/7/2007 dt. 23-8-2007.

097.01 / 23.08.07	Whether CENVAT credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider who opts to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notified vide notification No.32/2007-Service Tax dated 22.05.07?	Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004. ***There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.***

8.2 It categorically states that the assessee can claim input credit for input services and capital goods. This is for the reason that the provisions of CENVAT Credit Rules are applicable to the full extent except to the extent of duty paid on input goods. This is certainly a beneficial provision for the assessee as he is not only paying the tax at a substantially lower rate but also permitted to take credit for tax paid on input services and capital goods. Isn’t it icing on the cake?

Input Credit at Global Level?

9.0 Sub-clause (2) does not permit credit in respect of duty paid on input goods. Thus, input credit on services and capital goods are permitted. A question that may arise is whether the said amount is permitted at global level i.e. whether excess input credit of a particular WC can be adjusted against tax liability arising under other WC under CS or even otherwise? This is for the reason that, in the initial phase of the execution of the contract, payment for input services will start while realization may be at a much later date. What will happen, if during the intervening period, the assessee is required to pay the tax and file ST Returns? There is no clarity about it. It should be appreciated that under the scheme of ST, it is not necessary to follow the principle of one-to-one matching of the services rendered and input services. Therefore, there should not be any problem in claiming input credit in the cases wherein realization of the service is zero or lower than input services.

Time Element of CS

10.0 The CS imposes certain conditions on the assessee with respect to exercising the option. The first condition is that the assessee will have to exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract. The assessee is required to exercise the option before the payment of ST. Once the payment of ST in respect of a particular WC is commenced, the option cannot be exercised. Does this mean that the option can be exercised even though due date of payment of tax has already lapsed? This is for the reason that the option is required to be exercised prior to "payment of service tax" and not the last date of payment of ST as provided under the Finance Act.

10.1 In the case of WC, real problem arises when advance is received prior to commencement of execution of the contract. Since the amount of advance received will attract payment of ST, option will be required to be exercised even before the WC has commenced. Does it mean that payment of tax on advance received can be postponed till the first payment under the normal course is received? Of course here the question of payment of interest for late payment of tax on advance received will arise.

Basic exemption of Rs. 8.00 lacs

11.0 Under CS, unit of assessment is each WC and not the total amount of services rendered. Therefore, a question may arise particularly in the case of a new business whether the basic exemption limit will be available or not. It should be noted that under CS there is no computation of value of taxable services rendered. Sub-rule 3(1) suppresses the provisions of s. 67 and Rule 2A and permit the assessee to discharge the tax liability on an ad hoc basis. Since there is no computation of value of services rendered, the question of applying its value for computation of the basic exemption limit will not arise. Does it mean that the assessee can keep taxable value of services under various contracts under Rs. 8.00 lacs and opt for CS for other contracts? There do not appear to be any provisions, which prohibit the assessee to have mixture of both the options and derive maximum benefits.

11.1 Consider the case of an assessee who has started the business in the year and opts for CS. What will be the amount of taxable services for the purpose of computing threshold limit? Whether the gross amount charged for WC under CS can be considered for the said purpose? No. Since the quantum of services rendered has not been determined at all, gross amount charged for WC under CS cannot be considered for this purpose.

Applicability to the Entire WC

12.0 The option exercised under the CS is applicable to the entire WC. A WC can be consisting of various small jobs clearly identifiable. As long as they remain part of the single WC, the option of CS will be applicable to the entire WC. Therefore, it will be in the interest of the contractor to work out the business plan accordingly particularly keeping in mind element of goods and service involved therein. This can help in minimizing the tax liability to a great extent.

Timeframe of WC

13.0 The option for CS once exercised is final and is not permitted to be withdrawn until the completion of the said WC. It may so happen that the assessee, during the course of execution of WC, may not find the option of CS cost efficient. However, having opted for it once, there is no choice. It is for these reasons to go slowly and take into consideration various aspects involved in execution of WC.

13.1 It should also be kept in mind that the option is available in respect of each WC and therefore, having opted for CS for a particular contract, the assessee need not follow the same for the remaining contracts or future contracts. Discretion for future WC is with the assessee.

Input Credit for CS paid under VAT and ST – a comparison

14.0 Under the CS of VAT of state laws since the dealer is permitted to pay tax at lower rate, the tax so paid is not permitted to be charged separately in the invoice raised. It means the dealer is required to bear the same. Secondly, the contractee dealer is not permitted to take input credit for the amount of tax paid by the contractor. This is for the reason that the contractor has paid the VAT at substantially lower rate and the VAT paid is not shown in the invoice separately. However, CS under ST differs from CS under VAT substantially. As we have already seen input credit is permitted in respect of tax paid for input services and capital goods.

Input Credit for Service Receiver

15.0 Apart from that under VAT the buyer is not permitted to take credit for VAT paid under CS. However, there are no such provisions under the ST. Therefore, service receiver can claim the amount of CS paid as input credit. If structured efficiently, this can help in keeping the ST liability at the lowest.

Records to be maintained

16.0 CS gives relief with reference to computation of value of services and payment of tax on an ad hoc rate. However, there is no reference to maintenance of records as required under Rule 5 of Service Tax Rules. Therefore, the assessee will have to maintain all the records as required under Rule 5.

Arithmetic of CS

17.0 What is the cut-off rate of element of services for determining cost benefit under CS? Following table will give some idea about it.

Element of Goods	Element of Service	ST Liability u/s 67	ST liability under CS	Difference
60	40	4.80	2.00	2.80
65	35	4.20	2.00	2.20
70	30	3.60	2.00	1.60
80	20	2.40	2.00	0.40
84	16	1.92	2.00	-0.08

85	15	1.80	2.00	-0.20
90	10	1.20	2.00	-0.80

17.1 As can be seen from the table, the cut-off rate will be between 15 to 20% of services involved in the WC. Roughly, one can say that if the element of service is more than 20.00% in WC, it will be cost beneficial to opt for CS. However, as explained above the assessee will have to take into account various factors involved.

17.2 For the purpose of detailed cost benefit analysis, the assessee should also consider input credit available under both the options and a comparative analysis be made. Since it varies from case to case it has not be included in the above table. But it will be an important factor to take not of.

CS under VAT and /or ST

18.0 As seen above the assessee is having the option of having CS under VAT and / or under ST. The table below will give an idea about the options available.

	Options under VAT		Options under ST	
	Actual value of goods	CS	Actual value of services	CS
Option A	XX	Yes	XX	Yes
Option B	XX	Yes	Yes	XX
Option C	Yes	XX	Yes	XX
Option D	Yes	XX	XX	Yes

Conclusion:

19.0 Taxation of WC has always posed problems for both, the taxpayers and the administration. CS is the best compromise to the vexed issues involved therein. The state governments have imposed various conditions for availing benefit under CS under VAT. As can be seen, the provisions of CS under ST are one step ahead. It provides various options to the assessee making it possible to keep the tax liability at the lowest level. Perhaps it may become a point of envy for service providers for various other services. If structured methodically, there is no reason why it cannot be a boon for the works contractor.

[This article appeared in "Taxmann's Service Tax Today" Vol. 10 dt. 12-10-2007]

Determining Value of Service under Works Contract: A Labyrinth

By CA. Pradip R Shah
e-mail: pradip_shah@vsnl.com

Introduction

1.1 With the introduction of Service Tax (ST) on service element of Works Contract (WC), a new dimension has been added to an already complex issue of taxation of services and WC. Circular no. B1/16/2007/TRU while explaining the provisions of S. 65(105)(zzzza) relating to the taxing of service element of WC, refers to Article 366(29A)(b) of the Constitution of India, vivisecting of the contract, identifying service element, determining its value via identifying value of goods and methodology to be adopted for charging tax thereon. A comprehensive reading of S. 65(105)(zzzza), Notification No. 29/2007, Rule 2A of Service Tax (Determination of Value) Rules and Circular No. B1/16/2007/TRU, reminds one of the early days of life while playing with kaleidoscope showing enchanting colours and designs. Combination of these four items will certainly provide different designs and colours as in kaleidoscope to the same taxpayer at different point of times - sans joy derived from it.

1.2 Although the Finance Act was already levying ST under various heads of services in relation to construction activities, a strategic move seems to have been made by the Government to rope in or expand the base by charging tax on service element of WC. Perhaps, the time is not far away when large number of services other than related to construction etc. will also be covered. The thinking appears to be if the state Government can levy VAT on value of property passing in the goods in respect of varities of cases, there is no reason why service element in respect of all the types of WC should not be covered under ST net.

1.3 In view of ST being already applicable to the WC covered u/s 65(105)(zzh), 65(105)(zzq) and 65(105)(zzd), the question of classification is bound to arise. In view of clear wordings of S. 65(105((zzzza) there is less ambiguity (See "Works Contract under Service Tax- How to make it work?" **"Service Tax Today"** Vol. No. 8 Part 8). However, valuation aspect is going to be more difficult one. An attempt has been made herein below to vivisect all the four items as mentioned above individually and holistically. Of the four items each one has its size, shape and colour. However, when all of them put together provides new design, shape, size and colour. At the end, one should not be surprised to find oneself like what happened to Abhimanyu in Mahabharata, who could not get out of labyrinth he has entered into.

Nature of WC

2.1 Primarily WC consists of two elements viz. goods and services. There is no defined proportion of element of goods and services to be present in WC. It varies from case to case. Apart from that it should also be appreciated that WC can be with respect to both the types of properties i.e. immovable and movable. In the case of immovable it is relating to construction, repairs etc. In the case of movable properties, it relates to vehicles, plant and machineries, textile fabrics etc. The basic principles of charging tax in respect of both the types remain the same under VAT laws. However, element of goods and services differ substantially. As far as ST is concerned, as of today, it is levied only in respect of WC related to immovable properties.

2.2 WCs are tailor-made contracts. There is no standard format. The contractor and the contractee determine its nature based on specific requirements. For example, the contract may not refer to the goods and service element at all. It may contain the type of work to be executed and some method by which its quantification can be made. In such a case methodology for charging can be lump sum or with reference to quantification of work done. In another scenario, the contract may provide for certain type of goods to be used and rate thereof. In such a case the rate of charging for goods will be based on consumption of material and ad hoc amount in respect of services. In the case of contract where service element is predominant, there will be reference to various services to be performed. In view of element of goods being low, services to be performed will be laid down in detail and charged accordingly.

2.3 As can be seen, it may or may not be possible to arrive at the value of goods and services from the contract or any document. The problem becomes more complex when element of profit has to be allocated between the two components viz. goods and services.

Connectivity between ST and VAT laws

3.1 Both ST and VAT are levied by the Central and State Governments respy. in terms of the powers conferred under different articles of the Constitution of India. Statutes enacted under the said articles are independent of each one. However, in the case of WC, the same transaction happens to be taxable under two different statutes, the connectivity is required to be established. If not done so, taxable value may turn out to be more than value of the transaction. Since this cannot be permitted, either of the statute has to take the other statute as a starting point for determining value. As WCs are already taxable under VAT laws, method for determining value of element of goods involved therein has already been developed. It is for these reasons that one finds reference to VAT laws extensively under ST. Some of the important references of VAT under the statue, rule, notifications and circulars are as follow.

Finance Act:

S. 65(105) "taxable service" means any service provided or to be provided,—

(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding….

Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of ***such contract is leviable to tax as sale of goods***

Service Tax (Determination of Value) Rules, 2006

Rule 2A (1)(ii)

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

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9.3 Wherever VAT/ sales tax on transfer of property in goods involved in the execution of works contract is paid on actual value, the same value is also taken for the purpose of determining the value of works contract service.

9.10 Contracts which are treated as works contract for the purpose of levy of VAT / sales tax shall also be treated as works contract for the purpose of levy of service tax. This is clear from the definition under section 65(105) (zzzza).

This reflects importance of knowledge of VAT laws *per se* and its applicability to a particular transaction of WC.

Vivisecting the contract

4.1 Since WC consists of two elements viz. property in goods and services, it will have to be vivisected. Clause 9.1 of the Circular dt. 22-5-2007 refers to vivisecting the contract. This process is required to be carried out to determine:

- the value of passing of property in goods
- profit element in the value of passing of property in goods
- the value of services provided
- profit element in value of services provided

Determining quantum of passing of property in goods

5.1 Under the VAT laws, tax is levied on the property in goods passing to the contractee. The Supreme Court has in the case of Gannon Dunkerley (88 STC 204) laid down that it is ***not the cost of goods (or the cost of acquisition)*** the property of which is taxable. The tax is to be levied on the value of the goods ***at the time of incorporation in the works***. Therefore, it involves two steps viz. determining the quantum of goods used for the works and its value at the time of incorporation in works. Essentially, it means profit element in respect of such goods also will have to be taken into account while arriving at the value.

Determining Value of Goods

6.1 The Supreme Court has, in the case of Gannon Dunkerley, laid down the methodology for arriving at the value of the goods as well. It is provided that value of goods can be arrived at by taking into account the value of the entire WC and deducting there from the charges towards labour and services viz. amount paid to sub-contractor, charges for planning, designing etc. Here, it should be noted that the method applied is indirect. It is not the summation of value of property in goods which is passing. This may be perhaps due to presumption that element of service may be low as compared to quantum and value of goods.

<u>Determining quantum of service element</u>

7.1 Since ST on WC is on service element of WC, same principles as laid by the Supreme Court in respect of goods should also prevail. It means that tax has to be paid on the quantum of service rendered in respect of WC and value thereof. Does it mean that value of services can be derived by deducting value of goods from the total value of contract? It is at this stage the question of connectivity between ST and VAT laws comes into picture.

<u>Priorities in determination of value</u>

8.1 Should one determine value of services first and pay VAT on the balance amount treating as value of goods for VAT purposes? Or should one determine value of goods under VAT and pay ST on the balance amount of the contract? ST is required to be paid before 5th of the next month / quarter and generally VAT is required to be paid in the third / fourth week of the next month / quarter. Therefore, operationally one may be tempted to go for determining value of services for ST. However, the provisions with respect to ST are deviating in this respect. Rule 2A (1)(i) requires the assessee to deduct the value of goods as determined under VAT laws from the total value of contract to arrive at the value of services. Thus, under the ST, the priority is required to be assigned to determining the value of goods and not services.

<u>Gross amount Charged</u>

9.1 Sub-clause (i) of Rule 2A(1) lays down following formula for arriving at the value of service.

Value of WC Service = gross amount charged for WC ***less*** value of transfer of property in goods involved in the said WC.

Rule 2 A does not contain any definition for the term "gross amount charged". It may be noted that the above formula is to be applied only when the gross amount charged is inclusive of VAT or sales tax. See also para 9.4 of the Circular No. F. No. B1/16/2007-TRU

<u>Value of transfer of property in goods involved in the execution of WC</u>

10.1 Rule 2A(1)(i) requires the assessee to deduct value of transfer of property in goods in the execution of the WC. It should be noted that there is ***<u>no reference to value of transfer of property in goods as per the provisions of VAT laws.</u>*** It means the assessee can determine the value of goods independently. However, clause (ii) provides that if the assessee has paid VAT on the basis of actual value of transfer of property then such value has to be considered for the purposes of clause (i). Here, the Rule is silent about the scenario wherein the assessee has not paid VAT on actual basis. A glance at the provisions of VAT laws of any state Government will show that all of them provides for an alternative in the form of deduction in respect of service element on an ad hoc basis. This is for the reason that, in large number of cases, it is not possible to maintain detailed records for each contract independently. Therefore, VAT Act / Rules provide for ad hoc deduction for value of labour / services on the basis of nature of WC. VAT is required to be paid on the balance amount, as it is the amount of value of transfer of property in goods, which is being passed.

10.2 A question that may arise here is what will happen if the dealer has not paid VAT on actual value of transfer of property in goods involved. Does it mean that clause 2A(1)(i) will not be applicable? If so, how to determine the value in such cases? A close reading of clause (ii) will reveal that the assessee is required to use the value as per VAT ***only if tax under VAT has been paid on actual value*** of property passing. Both the clause i.e. (i) and (ii) are independent. Therefore, if clause (ii) cannot operate, clause (i) can operate on its own. It means that the assessee can determine the value of transfer of property in goods for ST purposes independently of VAT computation. Putting it differently, it means that it is ***only*** in the case of VAT being paid on actual basis, the value is required to be used for valuation under ST purposes. There do not appear to be anything in the rule which prohibits the assessee in determining the value of goods independently for ST purposes, if the VAT has not been paid on actual value of transfer of property.

10.3 While sub-clause (i) gives an option to compute value of goods there is no reference to the methodology adopted for the same. For example, value of goods should be inclusive of VAT paid thereon or not. How much profit element should be assigned to such value of goods?

Significance of clause (ii)

11.1 What is the significance of sub-clause (ii)? A plain reading will reveal that it takes care of a scenario wherein the value of transfer of property has already been determined. If the said happening has not taken place then the clause will become in-operative. In consequence thereof, clause (i) will operate independently without taking cognizance of clause (ii). There are two scenarios under VAT laws wherein it can happen i.e. value of property in goods is determined on an ad hoc basis or option is exercised for Composition Scheme (CS) under VAT. This may look too complex to follow. However, the following table will clarify the position:

	Value of property	Value of property	Applicable ST Rule

	transferred in Goods under VAT	transferred in Goods under ST	
Option A	Actual basis	Actual as under VAT	Rule 2A(1)(i)
			Rule 2A(1)(ii)
			Explanation (b)
Option B	Ad hoc basis	Actual as under ST	Rule 2A(1)(i)
			Explanation (b)
Option C	Under CS	Actual as under ST	Rule 2A(1)(i)
			Explanation (b)

All the above are valid propositions. Refer to first para of 9.3 of Circular B1/16/2007 TRU dt. 22-5-2007 which reads as follow:

> "Wherever VAT / sales tax on transfer of property in goods involved in the execution of works contract is paid on actual value, the same value is also taken for the purpose of determining the value of works contract service. ***In other cases, value of works contract service shall be determined based on the actuals.***

CS under VAT

12.1 An interesting issue will arise here. What will happen if the assessee has opted for CS under VAT and has paid VAT at lump sum rate? It should be noted that there is no necessity that the dealer opting for CS under VAT should also opt for CS under ST. It is entirely at the option of the assessee to follow the option as he may deem fit. Look at the options available to the assessee from the following table:

	CS under VAT	CS under ST	
Option A	Yes	Yes	Permitted
Option B	No	Yes	Permitted
Option C	No	No	Permitted
Option D	Yes	No	Permitted

12.2 As we know, under the CS, WC is not required to be vivisected and value of goods and services are not required to be determined independently. VAT under CS is being paid on an ad hoc basis on total value of WC. Since, in such cases, the assessee has not paid VAT on the basis of actual value, the question of deducting it from gross value charged, as laid down under Rule 2A(ii), does not arise. Can the assessee, for the purpose of ST, compute the value of goods and deduct it as laid down under rule 2A(1)(i)?

Should the value of goods and services remain the same under VAT and ST?

13.1 An interesting situation will arise here. Is it necessary that value of goods and services on which VAT and ST is being paid should remain the same both under VAT and ST? There is no provision under the VAT laws or the Rules for Determining Value of Services under ST to do so.

Pitfall of applying provisions of rule 2A(1)(i)

14.1 What will happen if the goods are used in the execution of WC but property therein does not get transferred to the contractee? In the case of WC, number of items of goods is being consumed but all of them do not necessarily remain in existence when the WC is completed. Property in such cases does not get transferred. It is a matter of detailed examination in each case as to proportion of such material. But, it is a fact that in majority of the WCs, there is existence of such goods. In the case of VAT, tax is not levied on such goods i.e. property wherein is not being passed. Various courts have accepted this principle and all the State Governments are following the same. Provisions of 2A(1)(i) refers to *"less the value of transfer of property in goods involved in the execution of the said WC"*. Thus, here also the principles to be followed will be as in the case of VAT. Therefore, if due care is not taken, this will lead to payment of ST on goods as well. This will be clear from the following example.

		Case I	Case II
A	Gross amount charged for WC	10,000	10,000
	Less:		
B	Value of property in goods involved in execution of WC	(3,000)	(3,000)
C	Value of property ***not transferred*** in goods involved in execution of WC	---	(1,000)
D	Value of property transferred (B +C)	3,000	4,000
E	Value of services rendered	7,000	6,000
E	Value of Taxable services for ST purposes (A-B)	7,000	7,000

As can be seen from above, in Case-II since the value of property not transferred is not deducted, ST will be on higher side.

Applicability of provisions of Central Excise

15.1 ST is being paid on the value of services rendered. Therefore, value of goods should not be subject to verification of ST department. However, if the value of service is dependent on value of goods then value of goods will be subject to scrutiny of the ST Department. Therefore, if the value of transfer of property in goods involved is not as per VAT laws as provided under rule 2(1)(ii) then the value of goods can be subject to scrutiny of ST Department. To what extent the provisions of Central Excise Act will be applicable in such cases is a matter to be examined.

Explaining the "Explanation"

16.1 Apparently, the provisions of clause 2A(1)(i) should have served the purpose. However, Explanation (b) is the real villain, extending the scenario to its further height. The said clause innocently provides that total value WC service shall include various eight items mentioned therein. Although not said so specifically, is it not requiring the assessee to carry out valuation of service element involved independently? If that is so, one would have expected such clause as a part of the main clause (i) itself and laying down that the value of service shall be higher of either of the two. However, such a condition has been inserted through an

"Explanation". It is a fact that in many cases value of service to be determined as provided under clause (i) cannot match with that of the value as derived under clause (b) of Explanation. If so, the proper course would have been to do so in the clause (i) itself. Is it not the case of extending the enacting part through the Explanation?

16.2 The AP High Court has observed in the case of H V Jagdeesh (AIR 1966 AP 35) that proper function of an explanation is to make plain or elucidate what is enacted and not to add or subtract from it. An Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the provision that it is supposed to explain.

<u>Components of services and its valuation</u>

17.1 Explanation (b) of Rule 2A(1)(i) reads as follow:

(b) value of works contract service shall include,-

(i) labour charges for execution of the works;
(ii) amount paid to a sub-contractor for labour and services;
(iii) charges for planning, designing and architect's fees;
(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
(v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
(vi) cost of establishment of the contractor relatable to supply of labour and services;
(vii) other similar expenses relatable to supply of labour and services; and
(viii) profit earned by the service provider relatable to supply of labour and services;

What is the significance of this clause? Is it an additional condition to be satisfied? Does it mean that the assessee should also carry out independent exercise and to ensure that value of services as determined as per the formula given in 2A(1)(i) is not less than sum of items as enumerated in (i) to (viii)? Provisions of clause (b) are perplexing for various reasons. Firstly, the entire provisions of Rule 2A nowhere it is stated that the assessee has two options for computing value of services i. e. 2A(1)(i) and as per Explanation (b). Secondly, it is also not laid down that value of services will be higher of value arrived at under 2A(1)(i) or under Explanation (b).

17.2 A glance at the structuring of the rule 2A may help in understanding the provision in a better way. There is only one formula to be applied for determining value of services i.e. as laid down under 2A(1)(i). Before applying the provision of 2A(1)(i) the assessee has to find out the value of material applied under VAT laws. If it is on actual basis then the said value has to be applied for deducting from gross amount charged for WC. Having arrived at the value of WC service, in terms of clause (b) it has to be ensured that such value is not less than summation of eight items mentioned therein.

17.3 Why should one also carry out another exercise? Things which appear simple at this stage are not so. It may so happen that the value of goods might have been arrived at a higher rate resulting into lower value of services. In that case, tax on service element will be lower. In order to safeguard against such contingencies “Explanation” can help checking in leakages. This has wide implications.

17.4 Firstly, it is a point to be examined whether the “Explanation” can redefine the main operative part under which it is appearing. While clause (i) defines the method by which value of service should be determined, “Explanation” prescribes the other method below which the value of service should not be. Although it is not specifically stated so, a reading of the wordings *“value of works contract shall include”* implies that value as derived under clause (i) cannot be less than summation of eight items mentioned under clause (i) to (viii) as appearing under sub-clause(b) of the “Explanation”.

17.5 Secondly, although not specifically stated under sub-clause (i), the assessee is required to make two separate calculations viz. one as per the method prescribed under rule 2A(1)(i) and, secondly, as mentioned under Explanation (b) to rule 2A(1)(i). In fact the assessee will have to make the computation as follow.

Rule 2A(1)(i)			Explanation (b) to rule 2A(1)(i)	
1	2	3	4	5
	Rs.	Rs.		Rs.
Gross amount charged for WC	xxx		(a) labour and service charges for the execution of the works	x
Less: Value Added Tax or Sales Tax paid	xx		(b) amounts paid to a sub-contractor for labour and services	x
Gross amount charged excluding VAT or Sales Tax		xxx	(c) charges for planning, designing and architect’s fees;	x
Less: Value of Transfer of property in goods involved in the execution of WC		xx	(d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;	x
			(e) cost of consumables such as water, electricity, fuel used in the execution of works contract	x
			(f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;	x
			(g) other similar expenses relatable to the said supply of labour and services	x
			(h) profit earned by the service provider relatable to supply of labour and services:	x
Value of services		xxx	Total Value of services	xxx

17.6 Three scenarios will emerge from above.

a) In the first case, value of service as computed under col. 3 is equal to that of under column 5. No issues will arise as amount appearing under column 5 can be said to be included under column 3.

b) Under the second scenario, amount computed under column 3 is more than that of column 5. Here also there will not be any issue as the amount as appearing under column 5 is less than column 3, it can be said that value as appearing under column 3 are inclusive of the amount in column 5. (Here, a question may arise as to whether service tax is charged in respect of value of goods i.e. (3 -5). However, it is a different issue). See the example below.

Rule 2A(1)(i)			Explanation (b) to rule 2A(1)(i)	
1	2	3	4	5
	Rs.	Rs.		Rs.
Gross amount charged for WC	104		(a) labour and service charges for the execution of the works	3
Less: Value Added Tax or Sales Tax paid	4		(b) amounts paid to a sub-contractor for labour and services	3
Gross amount charged excluding VAT or Sales Tax		100	(c) charges for planning, designing and architect's fees;	3
Less: Value of Transfer of property in goods involved in the execution of WC		70	(d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;	4
			(e) cost of consumables such as water, electricity, fuel used in the execution of works contract	3
			(f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;	2
			(g) other similar expenses relatable to the said supply of labour and services	2
			(h) profit earned by the service provider relatable to supply of labour and services:	5
Value of services		30	Value of services	25

17.7 Here, since the amount under column 5 is less than column 3, it can be said that value of services as computed under rule 2A(1) are inclusive of various items as laid down under clause (b) to the Explanation.

c) Under the third scenario, amount arrived under column 5 is more than the amount under column 1. It is in this case that clause (b) of the Explanation will operate. Here, to the extent of the difference between column 5 and 3, it can be said that value as arrived at under rule 2A(1) does not include certain amount of services. This can be clear from the following example.

Rule 2A(1)(i)			Explanation (b) to rule 2A(1)(i)	
1	2	3	4	5
	Rs.	Rs.		Rs.
Gross amount charged for WC	104		(a) labour and service charges for the execution of the works	5
Less: Value Added Tax or Sales Tax	4		(b) amounts paid to a sub-contractor for labour and services	5
Gross amount charged excluding VAT or Sales Tax		100	(c) charges for planning, designing and architect's fees;	5
Less: Value of Transfer of property in goods involved in the execution of WC		70	(d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;	4
			(e) cost of consumables such as water, electricity, fuel used in the execution of works contract	3
			(f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;	5
			(g) other similar expenses relatable to the said supply of labour and services	2
			(h) profit earned by the service provider relatable to supply of labour and services:	5
Value of services		30	Total Value of services	34

17.8 As can be seen from above, amount under column 5 is Rs. 34 and that of column 3 is Rs. 30.Therefore, to the extent of Rs. 4 (i.e. 34 – 30), the condition as laid down under clause (b) to the Explanation is not satisfied. Hence, service tax will have to be paid on Rs. 34 **and not** on Rs. 30 as arrived at under Rule 2A(1).

17.9 The objective of making such provision here appears to ensure that there is no leakage of revenue under service tax which may arise as a result of pegging the value of goods artificially under the VAT laws or actual value as determined by the assessee. In fact, the same thing could have been achieved by making specific provisions in this respect rather than going the round about way. In the ultimate analysis, a jungle has been created within a jungle itself.

Labyrinth within the labyrinth

18.1 If the first layer of labyrinth is the Rule 2A, clause 2A(1)(i) is the second one. The third one is Explanation (a) to Rule 2A(1)(i). The fourth layer of the labyrinth can be found in clause (b) of the Explanation. However, a glance at eight clauses thereof will make one feel the fourth layer as labyrinth itself. Each of the eight clauses is having its own layers. However, let us have a look at it in general.

18.2 In view of space constraint, it may not be possible to discuss each of the eight item in detail herein. All these eight items can be found referred to in the classic judgment of the Supreme Court in the case of Builders Association. If all the State Governments and the Central Government had followed it exactly in the manner as directed by the Supreme Court, there would not have been any problem. Not only have the State Governments deviated from it while implementing tax on WC under Sales Tax / VAT laws, the Central Government have deviated as well. Since computation of service element is made dependent on value as arrived under VAT, one would have expected some commonality between the two. To the extent different yardsticks are followed, picture arising will be incoherent. Let us have a look at the provisions of Rule 58(1) of Maharashtra VA Rules vis-à-vis clause (b) of the explanation.

Clause (b) of Explanation to Rule 2A(1)(i) of ST Rules	Maharashtra VAT - Rule 58(1)
(a) labour and service charges for the execution of the works	(a) labour and service charges for the execution of the works ***where the labour and service done in relation to the goods is subsequent to the said transfer of property;***
(b) amounts paid to a sub-contractor for labour and services	(b) amounts paid by way of price for sub-contract, if any, to subcontractors;
(c) charges for planning, designing and architect’s fees;	(c) charges for planning, designing and architect’s fees;
(d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;	(d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;
(e) cost of consumables such as water, electricity, fuel used in the execution of works contract	(e) cost of consumables such as water, electricity, fuel used in the execution of works contract, ***the property in which is not transferred in the course of execution of the works contract;***
(f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;	(f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;
(g) other similar expenses relatable to the said supply of labour and services	(g) other similar expenses relatable to the said supply of labour and services, ***where the labour and services are subsequent to the said transfer of property;***
(h) profit earned by the service provider relatable to supply of labour and services:	(h) profit earned by the contractor to the extent it is relatable to the supply of said labour and services:

18.3 As can be seen from the words highlighted there are differences between both the provisions. All the State Governments have provided for more or less on the line as above as under Rule 58 of Maharashtra VAT Rules with variations. Thus, the provisions of VAT laws and that of ST are not at common level. If that is the case, how can it be said that by adopting the value of goods under VAT laws the assessee will get the correct value of services? What is the assurance that by adopting such methodology ST will not be paid on the value of property transferred in the goods?

Profit earned by the service provider:

19.1 In view of the tangible nature of goods it may be possible to identify them and assign the cost associated with it. However, the problem is how to determine its value? As we know the contract includes the element of profit as well. Since there are two components of the WC, there will be two elements of profit i.e. profit on goods and on services. A question arises as to how to bifurcate the profit element of the contract between the two i.e. goods and services?

As per the practice followed under VAT, adhoc rate of gross profit is applied to the value of goods to arrive at the value of goods transferred. However, the Institute of CA of India has in its publication *"State – Level VAT in India –A Study"*, page no. 130 has recommended the following method.

		Rs.
1	Total Contract Value	
2	less: Eligible deductions of charges towards labour and services & Consumables	
3	Taxable Turnover of Sales [1- 2]	
4	Cost of Goods Consumed (as arrived at on actual basis)	
5	Value Addition (%) i.e. (3)/(4)	
4	Cost of Goods (as in 4 above)	
5	add: Value Addition @ as in 5 above	
6	Selling Price liable for VAT [4 + 5]	
7	VAT @ 4.00% / 12.50% on (6) above	

Here, Value Addition is based in the proportion of total cost of goods and sales price. This is in sharp contrast to the practice followed under VAT.

Charging for works contract

20.1 There is a wide difference between the invoicing process of WC, on one hand, and sale of goods and other services. In the case of WC for construction services, bills submitted are subject to certification by architect / engineers and other agencies. Deductions are made there from for various reasons. Clients make the payment thereafter and that too, in installments. Moreover, as per the terms of the contract, certain percentage of the amount billed is held as security deposit as performance guarantee. Secondly, in the case of VAT, liability is computed on mercantile basis i.e. the amount billed. However, in the case of ST, liability for payment of tax arises on receipt of contract money only. As can be seen, there is a wide gap between methodology to be adopted for computation of tax liability under VAT and ST.

20.2 Since Explanation (a) to sub-clause (i) provides for the computation under VAT as the base for computation under ST, it can function only if the basic foundation in both the cases is the same. To the extent of divergence between the two, conflicts are bound to arise. To that extent operation of clause (a) to Explanation will raise number of issues.

<u>Advance received</u>

21.1 In the case of WC, at times, advance payment is being made by the contractee. This may not raise any issue under the VAT. However, in terms of provisions of S. 65(105), and *Explanation 3* to section 67, ST is required to be paid thereon. At the time of receipt of advance, there is no certainty as to in which month billing for the work done will take place. Apart from that, in the case of large contracts, billing takes place periodically, resulting into more than one bill depending upon progress of the work done. In such cases, the assessee will have no option but to keep track of ST paid in advance and make adjustments of it against the liability arising in future. This will be a complex process and there are bound to be mistakes. Apart from that problems will arise at the time of filing of half-yearly returns i.e. ST-3.

Consider the sequence of events of a routine type of contract.

	Date	Description of event	
1	1-7-2007	Signing of the Contract for Rs. 1.00 cr.	
2	5-7-2007	Advance payment received of Rs. 30.00 lacs	
3	31-7-2007	Bill raised for work done to the extent of Rs. 10.00 lacs.	
4	4-8-2007	Bill approved for Rs. 9.00 lacs	
5	7-8-2007	Contractee released the payment of Rs. 7.86 lacs as follow:	
			Rs. (lacs)
		Amount of the bill as approved	9.00
		Less Retention money as per the contract @ 10.00%	.90
		Balance amount to be paid	8.10
		Less: adjustment @ 30.00% against advance as per the contract	2.43
6	16-8-2007	Cheque received for work done during July 2007	5.67

21.2 Events listed above are of quite routine nature for such type of business. No complex issues have been involved. However, let us apply the provisions of ST Rules and see the issues arising there from.

1) The contractor has been paid advance of Rs. 30.00 lacs as on 5-7-2007. This will be consisting of payment towards goods and services. In terms of provisions of S. 65 and 67 as referred to above ST is required to be paid on advance amount received. Since a part of the advance received will be towards goods the question of ST being paid thereon does not arise. There is no clarity in this respect. Since the WC has not been executed in any respect, the question of applying rules for determination of value does not arise. Therefore, one will have to make apportionment on estimated basis between component of goods and services and pay ST on service component on an

adhoc basis. Let us say, in this case, component of service is Rs. 40.00 lacs. Therefore, the contractor will have to pay ST on 5th August, 2007 on Rs. 12.00 lacs (40.00% of Rs. 30.00 lacs).

2) Bill submitted for work done in July, 2007 has been approved on 4th Aug. 2007. Therefore, taxable service can be said to have been provided on the said date. Final value of work done will be Rs. 9.00 lacs as approved. Assuming that service component thereof is 40.00%, ST liability will arise on Rs. 3.60 lacs. Therefore, liability for ST can rise when payment against bill for Rs. 3.60 lacs is received. Here, two issues will arise. Firstly, whether the Contractor can adjust this liability against ST paid in advance on 5-7-2007? Secondly, if so, to what extent? As far as the adjustment is concerned there can be no doubt that since tax has already been paid in advance, ST paid on advance received can be adjusted. However, to what extent? Can it be to the full extent of ST liability i.e. Rs. 28,032 (i.e. 12.36% of Rs. 2,26,800 lacs [40.00% of Rs. 5.67 lacs]) or Rs. 8,410 (i.e. 30.00% of Rs. 28,032 tax liability)?

   As per the contract, the contractee has deducted advance to the extent of 30.00%. The Contractor has paid ST on the said amount. Should adjustment in ST also be restricted to the terms of the contract or can it be made to the full extent of ST liability arising i.e. Rs. 28,032? A glance at the provisions of S. 65, 67 and Rule 6 will make clear that there is nothing therein requiring the assessee to make adjustment in ST as per the terms of the contract.

3) **Retention Money:**
   What treatment should be given to Rs 90,000 which has been kept as security deposit? It should be noted that the same is part of taxable services but payment in respect of the same has been withheld as per the terms of the contract. Since liability to pay ST arises only when amount towards taxable services are realised, there will not be liability to pay ST on Rs. 90,000 in September, 2007.

4) Rule 4A requires the assessee to issue a bill / invoice / challan etc. from the date of completion of service or receipt of any payment toward the value of taxable service, whichever is earlier. As long as the assessee is providing services only there may not be any problem in issuing such bills / invoice etc. However, when it involves supply of goods, VAT laws all the State Governments provide for strict rules and regulations for timing, format etc. Chances of such provisions being in conflict cannot be ruled out.

Security deposit not realized

22.1 A typical character of WC for construction services is keeping certain amount of the contract as retention money. It is received after certain period of time as laid down under the contract or even may not be received at all. It may be noted that the amount in this respect has already been charged in the bill for VAT purposes and tax thereon has already been paid. However, since ST is required to be paid on receipt basis, liability for the payment of ST will arise only if the said amount is received. This will pose the problem while computing taxable value of services under Explanation (a) to clause 2A(1)(i) as the amount charged will be consisting of something which may not be realized at all.

Deduction of VAT paid

23.1 Explanation (a) to the sub-clause (i) provides that the gross amount charged shall not include VAT or ST paid. Therefore, if VAT is not shown separately in the bill then the quantum of VAT will have to be deducted from it. For example as per the terms of the agreement between the contractor and the contractee, the contractor might have agreed to borne the VAT. The contractee, therefore, might not have charged it in his bill separately. Secondly, in the above case, the dealer might have reduced the amount of value of contract by value of VAT. Thus, total amount charged from the contractee remains as agreed upon. Thirdly, the contractee might have opted for composition scheme under VAT laws and VAT laws may not be permitting to charge the tax separately in the invoice raised.

What will happen in above scenarios?

24.1 It should be noted that in the first and third case though VAT is not charged in the invoice raised, tax liability in respect thereof is being discharged by the dealer. Theoretically, ST cannot be charged on VAT element of the WC. If, therefore, VAT not charged but paid, is not deducted the question of ST being paid on VAT will arise. This will be clear from the following example.

Case A			Case B		
		Rs.			Rs.
Value of WC		100	Value of WC		104
VAT Charged		4	VAT charged		--
Gross amount charged		104	Gross Amount charged		104
Computation of Value of Service under ST Rules					
1	2	3	1	2	3
	Rs.	Rs.		Rs.	Rs.
Gross amount charged for WC	104		Gross amount charged for WC	104	
Less: Value Added Tax or Sales Tax paid	4		Less: Value Added Tax or Sales Tax paid	--	
Gross amount charged excluding VAT or Sales Tax		100	Gross amount charged excluding VAT or Sales Tax		104
Less: Value of Transfer of property in goods involved in the execution of WC		80	Less: Value of Transfer of property in goods involved in the execution of WC		80
Value of services		20	Value of services		24

As can be seen from above in Case A, value of service works out to Rs. 20 as against Rs. 24 in Case B. The difference of Rs. 4 is due to VAT paid of Rs. 4. It means that ST will have to be paid on Rs. 24 and not Rs. 20. Thus, if VAT paid is not deducted there will be additional payment of ST to the extent of VAT element involved.

VAT Input Credit

25.1 The Rule provides for deduction of the amount of VAT paid. As we know, under the VAT laws the dealer is permitted input credit from the gross amount of tax liability. Therefore, the actual amount of VAT paid will be less than the gross amount. Which amount should be considered – the gross amount of VAT liability or the actual amount of VAT paid? If, in such a case, the actual amount of VAT paid is considered then there will be ST liability on input credit availed under VAT laws. This can be seen from the following example.

<table>
<tr><td colspan="4">Case A</td><td colspan="4">Case B</td></tr>
<tr><td colspan="3"></td><td>Rs.</td><td colspan="3"></td><td>Rs.</td></tr>
<tr><td colspan="3">Value of WC</td><td>100</td><td colspan="3">Value of WC</td><td>104</td></tr>
<tr><td colspan="3">VAT Charged</td><td>4</td><td colspan="3">VAT charged</td><td>--</td></tr>
<tr><td colspan="3">Gross amount charged</td><td>104</td><td colspan="3">Gross amount charged</td><td>104</td></tr>
<tr><td colspan="8">Computation of Value of Service under ST Rules</td></tr>
<tr><td colspan="2">1</td><td>2</td><td>3</td><td colspan="2">1</td><td>2</td><td>3</td></tr>
<tr><td></td><td>Rs.</td><td>Rs.</td><td>Rs.</td><td></td><td>Rs.</td><td>Rs.</td><td>Rs.</td></tr>
<tr><td colspan="2">Gross amount charged for WC</td><td>104</td><td></td><td colspan="2">Gross amount charged for WC</td><td>104</td><td></td></tr>
<tr><td>Less: Value Added Tax or Sales Tax paid</td><td>4</td><td></td><td></td><td>Less: Value Added Tax or Sales Tax paid</td><td>4</td><td></td><td></td></tr>
<tr><td>Less: Input Credit under VAT</td><td>1</td><td></td><td></td><td>Less: Input Credit under VAT</td><td>1</td><td></td><td></td></tr>
<tr><td colspan="2">Net amount of VAT payable</td><td>3</td><td></td><td colspan="2">Net amount of VAT payable</td><td>3</td><td></td></tr>
<tr><td colspan="3">Gross amount charged excluding VAT or Sales Tax (104 – 4)</td><td>100</td><td colspan="3">Gross amount charged excluding VAT or Sales Tax</td><td>101</td></tr>
<tr><td colspan="3">Less: Value of Transfer of property in goods involved in the execution of WC</td><td>80</td><td colspan="3">Less: Value of Transfer of property in goods involved in the execution of WC</td><td>80</td></tr>
<tr><td colspan="3">Value of services</td><td>20</td><td colspan="3">Value of services</td><td>21</td></tr>
</table>

As can be seen in the Case A value of ST works out to Rs. 20 as against Rs. 21 in Case B. This is due to VAT Input Credit of Rs. 1. Thus, in Case B, ST liability will be more as compared to Case A.

No separate tax paid for each contract

26.1 As in the case of ST, under the VAT also computation of taxable value of the transaction is made separately for each contract. Rate of tax is applied on the total value of the taxable transactions. Entitlement for input credit is deducted there from. Thus, net amount of tax paid will be a consolidated figure. Identification of payment for a particular contract is not possible. There is no requirement to do so for each contract nor, it is feasible as well. Therefore, to prove that VAT has been paid for each contract is going to be a tough condition. The only alternative to prove payment of VAT for a particular contract is to provide entire computation of VAT liability, input credit and payment of tax. Thus, VAT computation will come under the scrutiny of ST department. To what extent this is feasible, and legal, is a point to be seen.

Synchronisation of payment of VAT and Determination of value of services

27.1 Generally, VAT is required to be paid in the third week of next month or the quarter while payment of ST is required to be made by 5th of the next month / quarter. For the purpose of determining value of services the assessee is required to deduct amount paid as VAT. This can happen only if the assessee makes payment of VAT on or before 4th of the next month. Thus, relief given under VAT laws gets diluted through the provisions of ST. The only alternative left open for the assessee is to delay the determination the value of services till VAT computation is made. This will defer the payment of ST, of course with interest thereon.

27.2 At times, under the VAT laws small dealers are permitted to compute and make payment on quarterly basis. Visualise a case wherein VAT is required to be paid on quarterly basis and ST is required to be paid on monthly basis. In such a case, the dealer might not have even made computation for the first two months at all for VAT purposes. Therefore, there will not be any alternative for the assessee to pay ST with interest only.

27.3 The whole issue arises for the reason that there is no synchronization of various events involved. This may not be possible for the reason that VAT laws come under state jurisdiction and there is no uniformity therein. Ultimately, in the process, the life of tax payers becomes pathetic. Despite the fact of having ready to pay the tax, such provisions compel him to pay interest. Isn't it another form of taxation in disguise?

Seventh Layer of Labyrinth

28.1 Abhimanyu got trapped in the seventh layer and found it impossible to get out of it. Having tried to appreciate the provisions of valuing services in WC so far, the reader must be having the same kind of feeling. How to determine value? Should one start from VAT laws and apply the provisions of ST? What will happen if VAT laws are not applicable fully? What will happen if the VAT laws are applicable partially? What will happen if the assessee is under CS under VAT laws? And there may be many more questions. An attempt has been made here under to guide step by step in determining the tax liability.

Step	
A	**Computation of value under Rule 2A(i) and (ii)**
A1	Ascertain whether VAT laws are applicable to WC. If yes, it will attract the provisions of S. 65(105)(zzzza).
A2	Determine rate of profit in WC and appropriate rate as applicable to element of goods and services involved therein.

A3	Determine the gross amount charged for WC. If it is ***inclusive*** of VAT paid then the same has to be deducted from gross amount charged. If gross amount charged is ***not inclusive*** of VAT then the value exclusive of VAT will be considered.	
	Rule 2A(1)(i)	Rule 2A(1)(ii)
A4	In case, if the value of material has not been determined under VAT then compute quantum of transfer of property in goods for ST purposes.	
A5	Apply the rate of profit as determined under step No. A2 to A1.	
A6	Add the quantum of profit to the cost of goods i.e. A4 + A5. This will give value of transfer of property in goods.	If the value of goods has been determined under VAT, clause 2A(1)(ii) will operate. Value as determined under VAT will be considered for ST purposes.
A7	Taxable value of service will be the amount as arrived at in A3 *less* A6	
B	**Computation of Value of services under Explanation (b)**	
B1	Identify various services rendered under the WC. Explanation to Rule 2A(1)(i) lists seven different types of services.	
B2	Determine the value of various services as identified above	
B3	Determine total element of services involved in the WC.	
B4	Apply the rate of profit as arrived at in A2 to value of services rendered.	
B5	Total B3 and B4 to get total value of service.	
	SUMMARY	
C1	If the amount as arrived at in no. A7 and B5 are equal then the said value will be taxable value of services under WC. If the value as arrived at in A7 is less than value under B5 then value as arrived at under No. B5 will be considered as taxable value of services under WC. If the value as arrived at in No. A7 is more than value under B5, the Act, Rules, Circular and Notifications are silent about it. While the ST Department would like to ignore it, having undertaken the exercise of determining the value of services rendered as required under Explanation (b), there is no reason why tax be paid on higher amount.	
C2	Apply the rate of tax on the amount as arrived at under Step no. C1	
C3	Deduct value of Input Services from the amount as arrived at under Step No. C3. This will give the net amount of tax to be paid.	
	An alternative	
D1	If you find the above steps too cumbersome, opt for composition scheme and pay the ST @ 2.00% of the amount as arrived at in No. A7	
D2	Deduct amount of tax paid on Input Services paid from the tax determined payable under D2. This will give the net amount of tax payable.	

<u>Conclusion:</u>

29.1 Certainly, the task of determining value of services, and paying tax thereon, is more daunting and exhausting than executing the works contract itself.