



Construction Services – An Analysis

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-CA Keval S
CHK & Assoc
Chartered Acco

Coverage

- › **Background of Construction industry – Service Tax**
- › **Inclusions and Exclusions**
- › **Exemptions**
- › **Valuation and Abatements**



Construction Services

Service Tax purview

Inclusions and Exclusions

Framework

Dissecting the "CHARGE"

** - 0.5% SBC w.e.f. 15.11.2015

** - 0.5% KKC w.e.f. 01.06.2016



Declared Services...66E

(b) **construction of a complex**, building, civil structure or part thereof, including a complex or building **intended for sale to a buyer**, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority

(h) service portion in the **execution of a works contract**

Works Contract...Definition

65B(54) "**works contract**" means a contract wherein:

- **transfer of property in goods** involved in the execution of the contract is **leviable to tax as sale of goods** and
- **such contract** is for the purpose of **carrying out construction**, erection, commissioning, installation, completion, fitting, improvement, repair, renovation, alteration of
- Movable or Immovable property

Under Construction Flats

- › **Larsen & Toubro & Anr. vs. State of Karnataka Anr. [TS-156-SC-2013-NT]**
 - › upheld the levy of VAT on sale of under-construction flats on the grounds that it involves an element of works-contract.
 - › The developers had undertaken to build for the purchaser. Such construction/development was to be completed on payment of a price in various installments set out in the agreement.
 - › work was undertaken by the developer for and on behalf of the purchaser, and not for himself and the owner of the land.
 - › Article 366 (29A) (b) covers all genre of works contracts.

Relevant Exclusions

- › transfer of title in goods or immovable property, by sale, gift or in any other manner

'Title' is a broad expression in law, which need not be understood as akin to ownership. The said expression denotes different forms of a right to a property which can include the right to possess such property. In case of Rajendra Kumar v. Poosaiah, 1975 Mad. 379 the Hon'ble Madras HC has laid that 'Title' denotes a present right or interest in an immovable property capable of being contracted to convey and cannot be understood as synonymous with the process of making of title

Exemptions

Exemption Notification 25/2012....

12

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

- a) **Omitted**
- b) a historical monument, archaeological site or remains of importance, archaeological excavation, or antiquity under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- c) **Omitted**
- d) canal, dam or other irrigation works;

Exemption Notification 25/2012.... 12A..introduced from 01.03.2016

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

- a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or professional purpose
- b) a structure meant predominantly for use as (i) an educational institution, hospital, clinical, or (iii) an art or cultural establishment
- c) a residential complex predominantly meant for self-use or the use of the employees or other persons specified in the Explanation 1 to clause (a) of section 65B of the said Act

Under a contract which had been entered into prior to 14.12.2012

Cumulative reading of 12 & 12A

- Exemption applicable in cases where the contract was entered into before 01.03.2015, since there was no scope for factoring services
- Reimbursement of service tax in existing contracts was difficult and resulted in stoppage of contracts
- Contracts should be completed by 2020, failing which there will be liability for service tax from 01.04.2020
- Payments made in the intervening period are eligible for reimbursement

Exemption Notification 25/2012....

13

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

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

(b) a civil structure or any other original works pertaining to a scheme under Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(ba) a civil structure or any other original works pertaining to the "In – situ reha existing slum dwellers using land as a resource through private participation Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for ex dwellers

(bb) A civil structure or any other original works pertaining to the "Ber individual house construction / enhancement under the Housing for All (Urba

Exemption Notification 25/2012....

13..contd

Services provided **by way of** construction, erection, commi
installation, completion, fitting out, repair, maintenance, ren
or alteration of -

(c) a building owned by an entity registered under section
the Income tax Act, 1961(43 of 1961) and meant predomin
religious use by general public;

(d) a pollution control or effluent treatment plant, except lo
a part of a factory; or

Exemption Notification 25/2012....

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14. Services by way of construction, erection, commissioning or installation of original works pertaining to,-

- a) ~~an airport, port or railways, including~~ excluding monorail or metro;

Explanation – The services by way of construction, commissioning or installation of original works pertaining to monorail or metro, where contracts have been entered into before 15.03.2016, on which appropriate stamp duty was paid, shall be exempt

Exemption Notification 25/2012.... 14A..introduced from 01.03.2016

14A. Services by way of construction, erection, commissioning or installation of original works pertaining to an airport provided under a contract which had been entered into prior to 1st March 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date

Provided that Ministry of Civil Aviation or the Ministry of Shipping and the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March 2015

The exemption entry is valid only till 31st March 2020.

Exemption Notification 25/2012....

14..contd

14. Services by way of construction, erection, commissioning and installation of original works pertaining to,-

- a single residential unit otherwise than as a part of a residential complex;
- low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing Partnership' framed by the Ministry of Housing and Urban Affairs, Government of India;
- low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority under:

Exemption Notification 25/2012....

14..contd

14. Services by way of construction, erection, commissioning and installation of original works pertaining to,-

- post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff and alcoholic beverages

Exemptions to Sub-contractors.

29(h)

29. Services by the following persons in respective capacities

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) sub-contractor providing services by way of works of
to another contractor providing works contract service

Services by Government 25/2012....

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- Services provided by Government except for the ones covered by the Negative list are subjected to tax
- Reverse Charge Mechanism is made applicable in such cases
- Various approvals from Municipalities are required for Buildings
- Exemption is provided for services provided by a government authority by way of an activity in relation to a function entrusted to a municipality under article 243W of the Constitution.

Valuation & Abatement

Section 67 – Valuation of Tax Services

Section 67 – Valuation of Tax Services

Works Contract Services

Works Contract Services..cont

Nature of Works Contract	Presumptive Service Value
execution of original works	40% of the total amount charged
Other than Original Works	70% of the total amount charged

(b) "total amount" means the sum total of the gross amount charged for the execution of the works contract and the fair market value of all goods and services supplied or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

- (i) the amount charged for such goods or services, if any; and
- (ii) the value added tax or sales tax, if any, levied thereon :

Bhayana Builders (P) Ltd vs CST, Delhi, 2013-TIOL-1331-CESTAT-DELHI

Definition of Original Works

“original works” means-

- all new constructions;
- all types of additions and alterations to abandoned or c structures on land that are required to make them workab
- erection, commissioning or installation of plant, mach equipment or structures, whether pre-fabricated or otherw
- An explanation to declared service provides as under:

the expression “construction” includes additions, ²⁹ alt

Abatement & Credits

12. Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,-	Taxable Portion of Service	(i) CENVAT inputs providing service has taken provisions CENVAT 2004
(a) for a residential unit satisfying both the following conditions, namely :-	25/30**	(ii) The value included in charged service received
(i) the carpet area of the unit is less than 2000 square feet; and		
(ii) the amount charged for the unit is less than rupees one crore		
(b) for other than the (a) above.	30	

**** - 1st April 2016**

Judicial Precedents

Govind Saran Ganga Saran v. CST, 1985 Supp SCC 205

The components which enter into the concept of a tax are well known. The first is the character of the imposition known as the nature which prescribes the taxable event attracting the liability, the second is a clear indication of the person on whom the tax is imposed and who is obliged to pay the tax, the third is the territory in which the tax is imposed, and the fourth is the measure or standard to which the rate will be applied for computing the tax liability. If any of these components are not clearly and definitely ascertainable, it is not possible to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of these components is fatal to the validity of the tax.

Useful Reference

Notification 11/2012 – ST dated 17.03.2012

(a) in case of works contracts entered into for execution of works, service tax shall be payable on forty per cent. of amount charged for the works contract:

Provided that where the gross amount charged includes the land, in respect of the service provided by way of clause section 66E of the Act, service tax shall be payable on two per cent of the total amount including such gross amount;



THANK YOU !