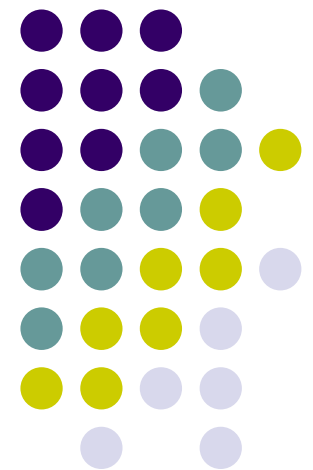


# Service Tax on Construction Linked Services

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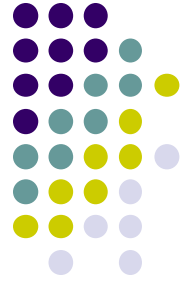
By  
CA. Atul Kumar Gupta





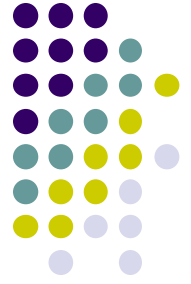
## Basic Division of Construction Activity

- Commercial Or Industrial Construction Services.
- Construction of Residential Complex Services.
- Preferential Location Services
- Maintenance, Maintenance and Repair Services.
- Services Performed under Works Contract.



# Progress Flow

- Commercial or Industrial Construction Services w.e.f 10.9.2004
- Construction of Residential Complex w.e.f. 16.6.2005
- Management Maintenance and Repair Service includes Immovable Property from 16.6.2005



# Progress Continue.....

- Works Contract prior to 1<sup>st</sup> June 2007
- Addition of Free Supply from 7<sup>th</sup> July 2009
- Explanation Added in Commercial Or Industrial Construction Services and Construction of Residential Complex Services from 1<sup>st</sup> July 2010 to Cover Builder Services.

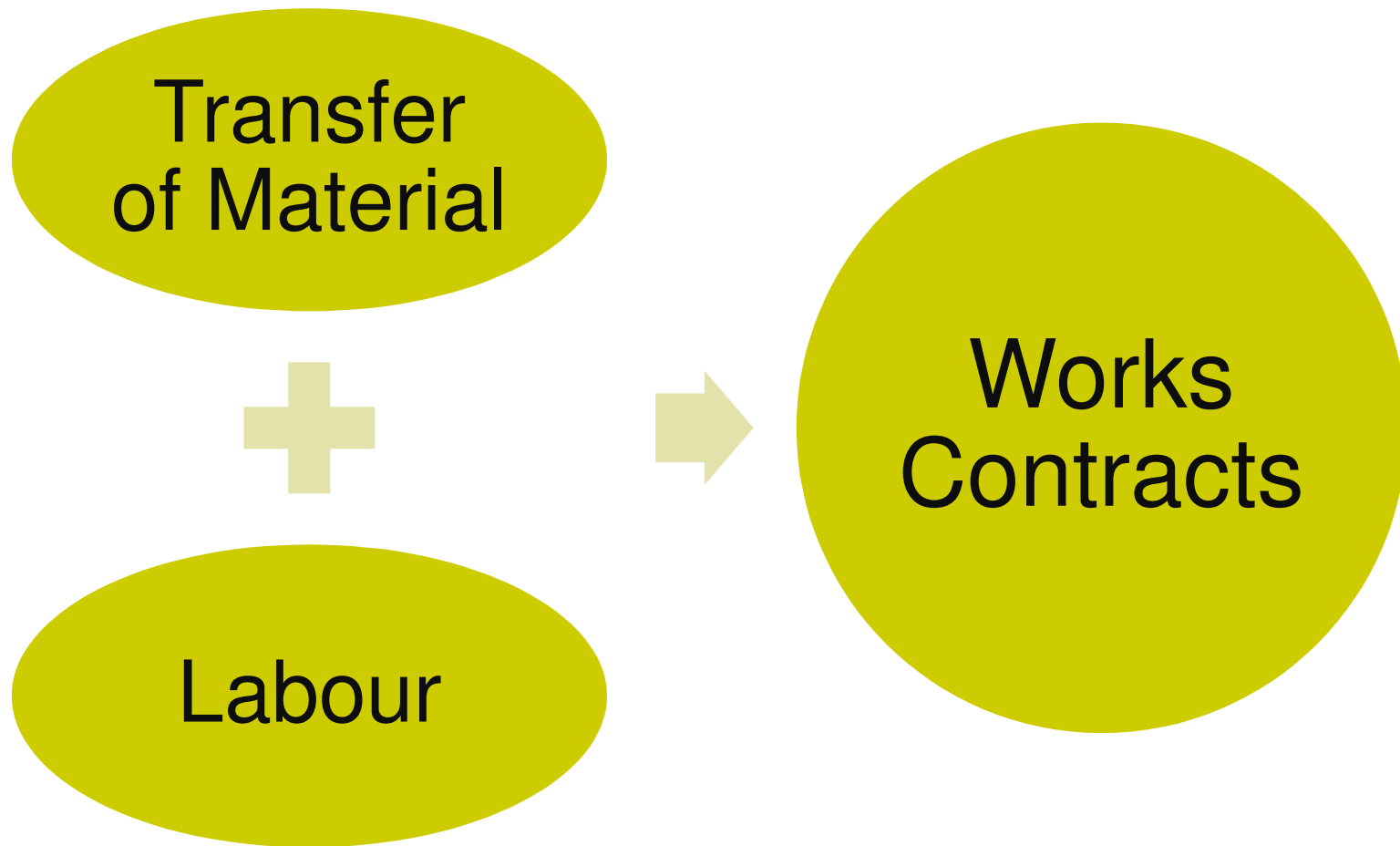
# Progress Resulted in division of Activity in two parts



Construction  
and Repair  
Services

Builders  
Activities

# Resulted Further..Construction Activity Divided Further into...





# Progress Continue

- Then added Preferential Location Services w.e.f 1<sup>st</sup> July, 2010
- Finally Negative List become applicable from 1<sup>st</sup> July 2012.

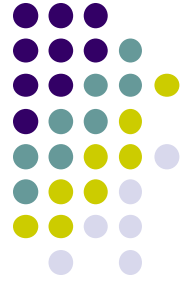


# Issues

1. Which of the Construction is not taxable?
2. Main-Contractor Vs. Sub Contractor
3. Whether CENVAT Credit is available with abatement.
4. Whether Abatement is available on PLC Charges after 1.7.2012
5. Development Rights Vs. Joint Venture



# Key Issue to Understand First issue...



- For Whom Contractor is Working
- What is Nature of Construction Activity Contractor is doing?
- What is the Project?

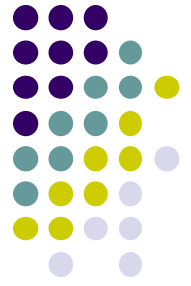
# Mega Exemptions...



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

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

# Mega Exemptions...



- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as an educational, a clinical, or an art or cultural establishment;

# Mega Exemptions...



- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for water supply, water treatment, or sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65 B of the said Act;

# Mega Exemptions...



13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—

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

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

# Mega Exemptions...



- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
- (e) a structure meant for funeral, burial or cremation of deceased;

# Mega Exemptions...



14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,—
- (a) an airport, port or railways, including monorail or metro;
  - (b) a single residential unit otherwise than as a part of a residential complex;
  - (c) 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 in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

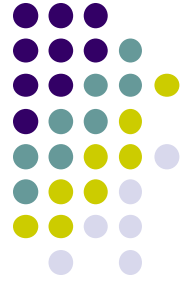
# Issue 2- Main Contractor Vs Sub Contractor



- Clause 29(h) of Mega Exemption..
- sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;



# Mega Exemptions...



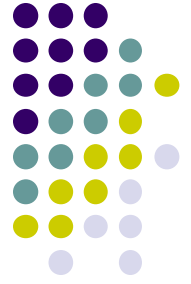
- (d) Post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

# Issue-3- Abatement and CENVAT Credit



- Notification 26/2012 allow from 1<sup>st</sup> July 2012.

# New Abatement & Valuation Scheme



	Old Abatement	New Abatement
• Commercial Construction	66/75	Nil
• Construction of Complex	66/75	Nil
• Erection, Commissioning & Installation	66	Nil
• Builder	75	75

**w.e.f. 1<sup>st</sup> March, 2013**

**Commercial: 70%**

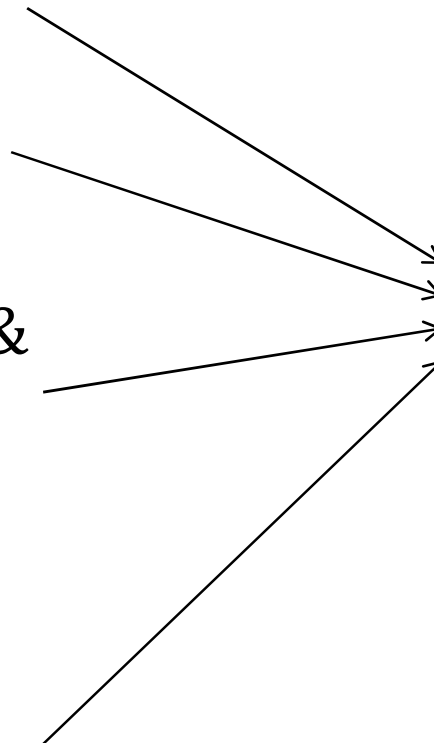
**Residential:**

**a) carpet area upto 2000 sq or amount is less than 1 Cr. 75%**

**a) Otherwise 70%**

# New Abatement & Valuation Scheme

- Commercial Construction
- Construction of Complex
- Erection, Commissioning & Installation
- +  
• Works Contract



Works  
Contract  
Service

**If material  
involved**



# New Abatement & Valuation Scheme



## Works Contract Service

Composition Scheme @ 4.8% + Cess on **full value...Now Deleted w.e.f 1.7.2012**

Value =  
Gross Amount  
less  
Sale of/  
Transfer in property

Exemption  
Original work 60%  
Completion work 40%

**No Credit of Inputs**

Movable property 30%

# Issue : 4- Taxability of Joint Venture

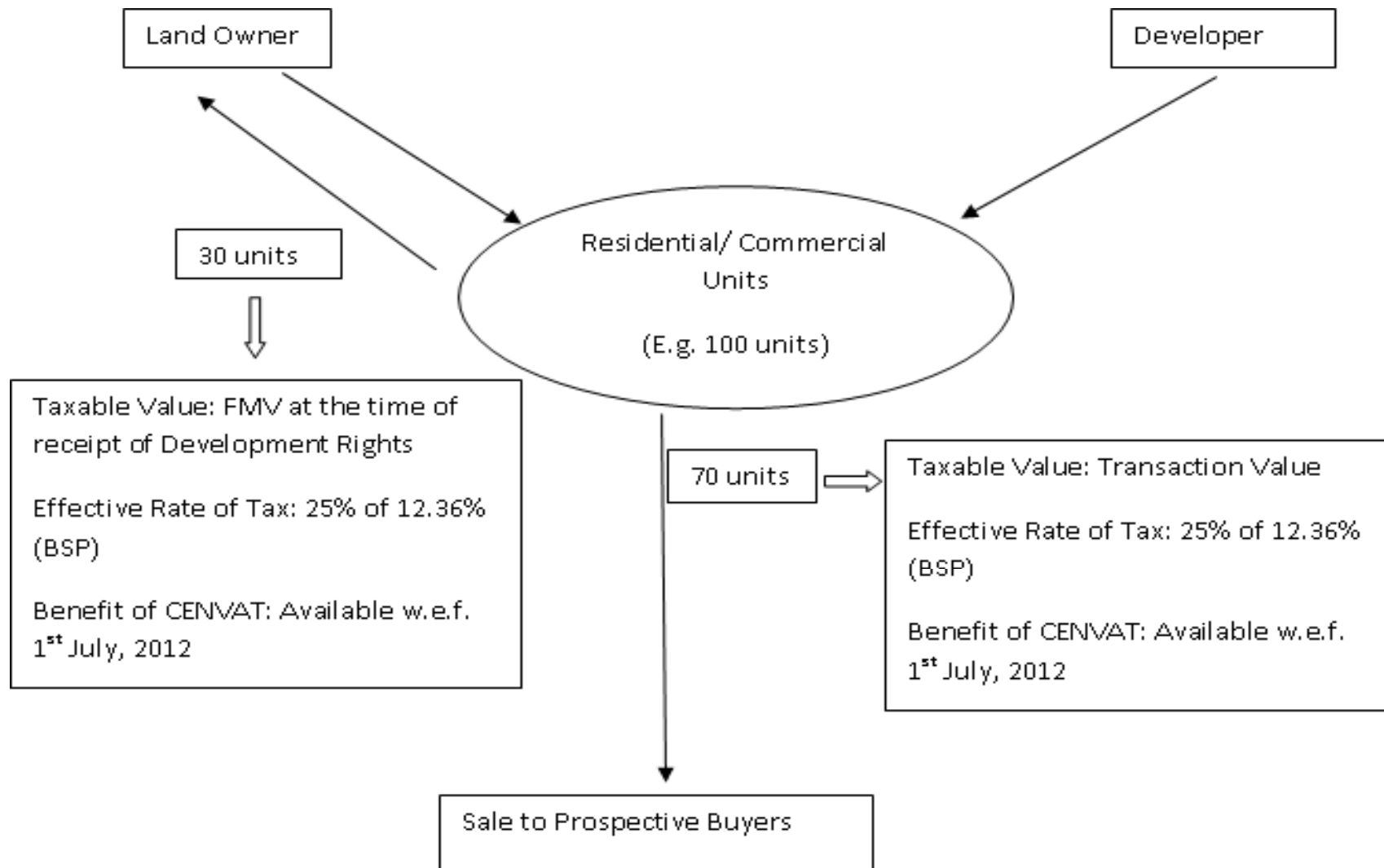


- FAQIR CHAND GULATI Versus UPPAL AGENCIES PVT. LTD. 2008 (12) S.T.R. 401 (S.C.)
- *The use of the words 'joint venture' or 'collaboration' in the title of an agreement or even in the body of the agreement will not make the transaction a joint venture, if there are no provisions for shared control of interest or enterprise and shared liability for losses. [para 21]*

# Issue : 4- Taxability of Joint Venture



- Circular 151/2012 dated 10.2.2012 deals with Joint Venture and Collaboration Agreements.



Note: w.e.f. 1<sup>st</sup> July, 2012; service tax would also apply on sale of allotted units by land owner to prospective buyers





# Taxability at a Glance

S. No	Activity	Applicability of Service Tax	Valuation
1.	Sale of Land/Development Rights	No, Sale of Immovable Property	NA
2.	Units allotted to land owner by the developer	Yes	FMV of units at the time receiving development rights
3.	Sale of such units by land owner to prospective buyers	Yes (w.e.f. 1 <sup>st</sup> July, 2012)	Transaction Value

## Issue :5 - Services of builder for providing preferential location or development of such complex

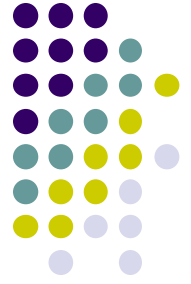


- Taxability of charges for other facilities as these charges do not form part of the taxable value for charging tax on construction like:
  - prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer
    - **(i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers);**
  - (b) internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc; (c) fire-fighting installation charges; and (d) power back up charges etc.



## Rate of Tax in case of PLC (Positive List)

- Honorable Bombay High Court in the case of **MAHARASHTRA CHAMBER OF HOUSING INDUSTRY vs UNION OF INDIA 2012(25) S.T.R.305 (Bom.)** “special value addition service includes the provision of a flat on a preferred floor to a prospective buyer, a flat facing a particular direction or a particular room in a particular direction. This involves a locational choice of a prospective buyer having an extra advantage for which additional payment is made by the buyer to the builder over and above the basic sale price. Since these charges are in the nature of service provided by the builder to the buyer over and above the construction service”



## Rate of Tax in case of PLC (Negative List)

- Naturally Bundled Service

Floor rise charges or charges where increase in cost of flat is linked with construction cost.

- PLC not bundled Service

(Mumbai Commissionerate vide ***F.No. V/ST-I/Tech-II/463/11 dated 31st August 2012***)



# Exclusion

- Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy
- Any service provided by Resident Welfare Associations or Cooperative Group Housing Societies consisting of residents/owners as their members would not be taxable under this service.

# Thank You

- CA. Atul Kumar Gupta

