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# Government authority – “and” or “or” doesn’t make any difference



**Author: G. Natarajan**

Certain exemptions available under notification 25/2012 ST Dated 20.06.2012 are admissible, if the services are either provided to “Government authority” or received by a “Government authority”. The said exemptions are:

**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;

(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 (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; 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 65B of the said Act;

**25.** Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel or an aircraft;

**34.** Services received from a provider of service located in a non- taxable territory by -

(a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

(b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) a person located in a non-taxable territory;

**39.** Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

The term "Government authority" has been defined in the notification itself, as below:

"Governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government **and** set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.

The following clarification contained in the Education Guide is relevant.

**7.3.1 Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by special acts covered under the definition of 'governmental authority'?**

No. In terms of its definition in mega Notification 25/2012-S.T., following conditions should be satisfied for a board, body or an authority to be eligible for exemptions as a governmental authority :

- set up by an act of the Parliament or a State Legislature;
- established with 90% or more participation by way of equity or control by Government; and
- carries out any of the functions entrusted to a municipality under article 243W of the Constitution.

The definition of "Government authority" under the notification has been amended as below, vide Notification 2/2014 ST Dt. 30.01.2014.

"governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; **or**

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

A careful reading of the old definition and new definition brings out that setting up by an Act of Parliament / State legislature is an essential requirement under the old definition. So, a Government Company incorporated under the Companies Act, 1956 would not become a "government authority", as incorporation of a company under the Companies Act, would not amount to "set up by an Act of Parliament or State Legislature". In this connection, it is also relevant to refer to the following clarification, issued long back vide B1/6/2005 Dt.27.07.2005, in the context of club or association service.

*10.4 Legally, bodies which are established or constituted "under a statute" are different from bodies which are "formed and registered" under a statute. Companies and Societies registered under the respective Acts are merely bodies "formed and registered" under these Acts and cannot be treated as "established or constituted" under these Acts. Therefore companies or societies would fall outside the scope of clause (25a)(i) of Section 65 of Finance Act. In other words, any body formed and registered as a company or society which provides services, facilities or advantages for a subscription or any other amount to its members is liable to pay service tax under section 65(25a) of the Finance Act, 1994.*

It may be noted that the new definition of "Government authority" envisages two types.

(i) an authority or a board or any other body **set up by an Act of Parliament or a State Legislature**, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution; **or**

(ii) an authority or a board or any other body **established by Government**, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

The intention of the above amendment seems to be to enlarge the scope of the definition to cover those bodies which are not set up by Special Central Act or State Act, but are merely established by the Government. It appears the intention seems to be to cover Government Companies incorporated under the Companies Act also within the ambit of the definition of "Government authority".

But, the way in which the term "established" has been understood by the Board and clarified in its 2005 circular would certainly undo the intention.

Will the CBEC make the intention clear, by issuing a suitable circular?