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Treading the GST Path – XXXIII

Works Contracts – Rate changes

Author: G. Natarajan

The following construction related exemptions were available under Notification 25/2012 ST Dt. 20.06.2012, under the Service Tax regime.

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;

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;

(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

a structure meant for funeral, burial or cremation of deceased;

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;

(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

29. Services by the following persons in respective capacities -

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

Out of the above, the items marked in red were omitted with effect from 01.04.2015, vide Notification 6/2015 ST DT. 01.03.2015 and hence these works became taxable from 01.04.2015.

This sudden withdrawal of exemption has led to serious problems as far as the ongoing contracts are concerned.

Hence, the following exemptions have been introduced vide Notification 9/2016 ST Dt. 01.03.2016.

12A. 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) 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;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date.

Provided that nothing contained in this entry shall apply on or after the 1st April, 2020;"

14A. Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port 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 in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015 :

Provided further that nothing contained in this entry shall apply on or after the 1st April, 2020.

It may be observed from the above that the exemption withdrawn from 01.04.2015 have been restored from 01.03.2016, only in respect of ongoing contracts, i.e. contracts awarded before 01.03.2015. Further this exemption would be available only upto 31.03.2020 and not thereafter.

(Simultaneously, the exemption available for monorail and metro rail projects was also withdrawn from 01.04.2016, but the said exemption would continue for the contracts awarded prior to 01.03.2016)

For the period from 01.04.2015 to 29.02.2016, exemption has been provided for with retrospective effect for those ongoing contracts, by enacting the following sections to the Finance Act, 1994 vide Finance Act, 2016.

159. Insertion of new sections 101, 102 and 103. — *In the 1994 Act, after section 100, the following sections shall be inserted, namely :—*

102. Special provision for exemption in certain cases relating to construction of Government buildings. — *(1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 structure meant predominantly for use as —
 - (i) an educational establishment;
 - (ii) a clinical establishment; or
 - (iii) an art or cultural establishment;
- (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

103. Special provision for exemption in certain cases relating to construction of airport or port. — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.”.

From the above, it may be observed that the following works, which were awarded before 01.03.2015 would continue to be exempted under Service tax upto 31.03.2020.

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

- a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

- 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;

Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port.

GST Scenario.

With the advent of GST, none of the above exemptions continued and all the above work attracted 18 % GST from 01.07.2017. Curiously, the exemption to certain ongoing works, which was promised to be continued upto 31.03.2020 has also been breached.

But, for the following works, the rate of CGST has been reduced to 6 % vide Notification 20/2017 Central Taxes (Rates) Dated 22.08.2017 (With corresponding reduction in SGST rates, the total GST payable for the following works contracts would be 12 %).

(3)	(4)	(5)
"(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied 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 historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	6	-
(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and	6	-

<p>Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <ul style="list-style-type: none"> (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; (c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers; (d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e) a pollution control or effluent treatment plant, except located as a part of a factory; or (f) a structure meant for funeral, burial or cremation of deceased. 		
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<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p> <ul style="list-style-type: none"> (a) railways, excluding monorail and 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; (d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved 	6	-
<p>by the competent authority under-</p> <ul style="list-style-type: none"> (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages. 		
<p>(vi) Construction services other than (i), (ii), (iii), (iv) and (v) above.</p>	9	-";

It may be observed that all contracts, which were totally exempted upto 30.06.2017, would now attract 12 %.

Sub contractors.

Out of the above, the entry at (iii) requires that the services mentioned therein, should be provided to Government or Local authority or Government authority so as to claim 12 % GST rate. When the said works were awarded by the Government or Local authority or Government authority to a main contractor, the main contractor can pay GST @ 12 %. But, if the main contractor sub contracts the same work, either partially or fully, the sub contractor cannot pay @ 12 %, as he is supplying his services only to the main contractor and not to the Government or Local authority or Government authority. The main contractor can claim ITC of 18 % GST paid by the sub contractors and pay 12 % on their supply of service to Government or Local authority or Government authority. The ITC accumulation, if any, could be utilised by the main contractor to pay any of his other GST liabilities, or be claimed as refund, under Section 54 (3) of the GST Act.

Is 12 % rate retrospective from 01.07.2017?

Notification 20/2017 Central Taxes (Rates) Dated 22.08.2017 , by which the rate of CGST for the above works contracts has been reduced from 9 % to 6 % has not mentioned the date from which this notification shall take effect. i.e. from 22.08.2017 only or from 01.07.2017.

Normally notifications are effective only from the date of their publication in the official gazette. Sometimes, the Courts have given retrospective effect to certain Notifications.

In the case of Govt. of India Vs Indian Tobacco Association – 2005 (187) ELT 162 SC, the Hon'ble Supreme Court has observed,

The Union of India while making a subordinate legislation had advisedly used the word "substitution" in place of the word "addition". The object and purport of the subsequent notification issued by the Union of India was, thus, to grant the same benefit which had been granted to the exporters who were registered at the other seaports, airports or inland container depots as specified in the notification dated 7-4-1997 but also to those exporters, who had been exporting from such seaports or inland depots as specified in the amended notification dated 27-11-1997.

23. *If the Central Government intended to extend the benefit to the members of the Respondent-Association only with prospective effect, it could have said so explicitly. Such a benefit could also have been extended by taking recourse to the proviso appended to sub-clause (iv) of clause (2) of the notification dated 7-4-1997. It may, therefore, be safely concluded that by reason of the amended notification, the Central Government only intended to rectify a mistake and, thus, the same will have retrospective effect and retroactive operation.*

The above decision has been followed by the Hon'ble High Court of Karnataka in the case of 2015 (318) ELT 240 Kar.

But a reading of the above decisions would show that the amendments involved therein are more in the nature of clarification or to rectify a mistake, whereas in the instant case, the reduction of rate from 18 % to 12 % cannot be considered as clarificatory or by way of rectification of any mistake. Hence, it would not be possible to argue that the rate reduction would have effect from 01.07.2017, but it would have effect only from 22.08.2017.

Further, though the Notification issued by the Central Government did not indicate its date of effect, the corollary notification issued by the Tamil Nadu Government makes it clear that the notification is effective from 22.08.2017 thereby setting at rest any speculation in this regard (Other State notifications may also be referred to by the readers).

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