

Hit on construction sector

(G. Natarajan, Advocate, Swamy Associates)

By withdrawal of certain important exemptions available for the construction sector, this sector has been hit hard. The exemptions, which are marked in red below are being withdrawn with effect from 01.04.2015.

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;

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;

As a result of these withdrawals, construction of any buildings for Government, like office buildings, etc. would become liable to service tax, which was never taxable before. Construction of school, college, hospital for Government would also be liable. Construction of staff quarters for Government servants would also be liable to service tax. Construction work relating to port and airport, which was hitherto exempted, irrespective of the status of the service recipient, would be leviable to service tax.

In this connection, it is relevant to refer to Rule 4 of the Point of Taxation Rules, 2011, dealing with Determination of Point of Taxation in case of change in effective rate of tax.

As per this rule, in cases of services provided upto 31.03.2005 the service tax liability would be as below.

- (i) if the invoice is raised and the payment is received on or after 01.04.2015, service tax is payable.
- (ii) if the invoice has been raised prior to 01.04.2015, no service tax is payable, even if the payment is received on or after 01.04.2015.
- (iii) if the payment has been received prior to 01.04.2015, no service tax is payable, even if the invoice is raised on or after 01.04.2015.

For the services provided on or after 01.04.2015, the service tax liability would be as below.

- (i) If the payment is received on or after 01.04.2015, service tax is payable, even though the invoice has been raised before 01.04.2015.
- (ii) If the invoice has been raised and the payment has been received before 01.04.2015, no service tax is payable.
- (iii) If the payment has been received before 01.04.2015 but invoice has been raised on or after 01.04.2015, service tax is payable.