

Flash on Clarification regarding Service Tax on Construction Works contract by Sub-contractors



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The Central board of Excise and Customs ("CBEC") has come out with Service Tax Circular No. 147/16/2011 on October 21, 2011 to clarify applicability of Service Tax on services provided by the subcontractors / consultants and other service providers to the Works Contract (WC) Service provider in respect of construction of Dams, Tunnels, Road, Bridges etc.

The Works Contract ("WC") Services are chargeable to service Tax as per section 65(105)(zzzza) of The Finance Act 1994 with a specific exemption to the services provided in relation to roads, airports, railways, transport terminals, bridges, tunnels and dams.

As an industry practice, the WC services provider splits the work and assigns the same to sub-contractors/consultants and other service providers. There were concerns as to the availability of above exemption to sub-contractor/consultants providing services to WC service provider.

In response to the representations from industry, CBEC has clarified that in case the services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure projects mentioned above.

Previously, CBEC issued a clarification on the matter on May 6, 2011 through Service Tax Circular No. 138/07/2011 to clarify that the services provided by the subcontractors / consultants and other service providers are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act, 1944 and chargeable to service tax accordingly.

Conclusion

Subject to the condition that the services provided by sub-contractors/consultants fall under the category of WC service as per the provision of The Finance Act, 1994, this clarification bring some relief to WC service providers who were bearing this as an additional cost due to non-availability of input credit as for them the output services were exempt.

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