CIRCULAR

Subject: Opinion on levy of Service Tax - reg.

The matter of applicability of Service Tax on development works of IWAI was consulted with our Tax Consultant, M/s Sandeep Ramniwas Gupta & Co., Ghaziabad. The opinion of Head Office, Service Tax Consultant is enclosed.

2. The same are requested to ensure for compliance.

3. This issues with the approval of Member (Finance).

Encl. As above.

To

1. Director (P&C), IWAI, Noida.
2. Director, IWAI, Patna.
3. Director, IWAI, Kolkata.
4. Director, IWAI, Kochi.
5. Dy. Director, IWAI, Guwahati.
INLAND WATERWAYS AUTHORITY OF INDIA: OUR OPINION ON LIABILITY OF SERVICE TAX ON BANDALLING, CHANNEL MARKING & NIGHT NAVIGATION

Q-1 Is Service Tax Liable to be charged on Bandalling, Channel marking & Night navigation?

It was provided in our opinion Dt 24/12/2014 that Service tax is not liable to be charged on Bandalling, Channel Marking & Night Navigation in relation to Government Authority under Mega Exemption Notification no. 25/2012- service tax dated 20.06.2012.

Under para 12 of the said Mega Exemption Notification, services provided to Government, a local authority or a “government authority” by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration. The Exemption was available for a civil structure or any original works meant “predominantly” for use other than for commerce, industry or any other business or profession. The significance of word “predominantly” is that the benefit of exemption will not be denied if the building is also incidentally used for some other purposes.

But the said exemption has been withdrawn w.e.f 01/04/2015 vide N.No. 06/2015-ST.

Accordingly the Service provided to Government, a Local authority or a “Government 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, is taxable w.e.f 01/04/2015.
Section 67 of the Act, read with Service Tax (Determination of Value of Services) Rules, 2006 ('Valuation Rules') & N.No. 26/2012-ST provide the general provisions for determining value of taxable service for the purpose of discharge of service tax liability.

In case of construction services, Where only labour is involved, service tax is to be discharged on the gross value charged by the service provider from the recipient of the service.

In case of works contract including those services of construction which amount to works contract service, the value of service is to be determined under the specific rule 2A of the valuation rules. The same is true for all types of Works Contracts.

Provisions in the Rule 2A have been discussed below:

A. Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Thus, \textbf{Value of service portion in the execution of a works contract} = \textbf{gross amount charged minus value of property in goods transferred}

\textbf{Gross amount charged} for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract.

\textbf{Value of property in goods transferred}: where value added tax (VAT) or sales tax (CST) has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

The Rule 2A further provides that the Value of works contract service shall include the following-
- labour charges for execution of the works;
- amount paid to a sub-contractor for labour and services;
- charges for planning, designing and architect's fees;
- charges for obtaining or hire or otherwise, machinery and tools used for the execution of the works contract;
- cost of consumables such as water, electricity, fuel used in the execution of the works contract;
- cost of establishment of the contractor relatable to supply of labour and services;
- other similar expenses relatable to supply of labour and services; and
- profit earned by the services provider relatable to supply of labour and services.
- With reference to the above method of valuation, it is important to ascertain the value of goods sold by paying VAT.

B. Where the value has not been determined by the above manner, the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:

(i) In case of works contracts entered into for execution of original works, service tax shall be payable on 40% of the total amount charged for the works contract; “Original works” means: (i) all new constructions; (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

(ii) In case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on 70% of the total amount charged for the works contract; applicable upto 30-09-2014

(iii) In case of other works contracts, not covered under above sub-clauses (i) and (ii), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on 60% of the total amount charged for the works contract; applicable upto 30-09-2014

(ii) In case of works contracts other than ‘original works’ including the contracts entered into for:

1. Maintenance or repair or reconditioning or restoration or servicing of any goods; or
2. Maintenance or repair or completion and finishing services such as glazing or plastering or floor or wall tiling or installation of electrical fittings of immovable,
   Service tax shall be payable on 70% of the total amount charged for the works contract – applicable from 01-10-2014

Note that the Notification No.11/2014-ST, dated 11-07-2014, merged the earlier two categories of works contract (other than ‘original works’) into single category for the purpose of defining value of taxable service in respect of those works contract. In this regard, CBEC Letter DOF.334/15/2014-TRU, dated 10-07-2014 clarifies that – “In Rule 2A of the service tax (Determination of Value Rules, 2006, category ‘B’ and ‘C’ of
works contracts are proposed to be merged into one single category, with percentage of service portion as 70%; this change will come into effect from 1st October, 2014. This rationalization by way of merger of categories has been made to avoid disputes of classification between these two categories."

Person liable to pay Service Tax

In the new regime, the liability to pay service tax has been fastened in a different manner with reference to the status of persons (i) by whom service is provided; (ii) to whom service is provided; and (iii) location of the provider or recipient of service in taxable or non-taxable territory. Following are the relevant positions-

(a) In case of a works contract service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to a business entity registered as body corporate in taxable territory,
   - 50% service tax payable by service provider
   - 50% service tax payable by service recipient [NN.30/2012-ST]
(b) In respect of works contract services provided by the government or local authority to business entity located in taxable territory, 100% service tax is payable by service recipient [NN.30/2012-ST]
(c) In relation to any taxable service provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory, 100% service tax is payable by the service recipient.
(d) In all other cases, 100% service tax is payable by the service provider, which would include-
   - Service provided by a company to any person.
   - Service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to a person other than business entity registered as body corporate in taxable territory.
   - Service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to any person in the non-taxable territory (unless it is non-taxable/exempt/export service).

Provisions applicable to IWAI (Government Authority) w.e.f 01/04/2015

the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

In case of works contracts entered into for execution of original works, service tax shall be payable on 40% of the total amount charged for the works contract.
"Original works" means- (i) all new constructions; (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

In case of works contracts other than ‘original works’ including the contracts entered into for-

(1) Maintenance or repair or reconditioning or restoration or servicing of any goods; or
(2) Maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable,

Service tax shall be payable on 70% of the total amount charged for the works contract – applicable from 01-10-2014

Person liable to pay Service Tax

100% service tax is payable by the service provider, which would include-

- Service provided by a company to any person i.e including IWAI.
- Service provided by an individual, HUF, proprietary firm, or partnership firm, or AOP to a person i.e including IWAI other than business entity registered as body corporate in taxable territory,

Example:

For Original Works (involving property in goods, materials) like of Bandallking, Channel Marking: Service Tax @ 14% on 40% of gross amount charged for works contract.

For Maintenance/Repairing Works like of Bandallking, Channel Marking: Service Tax @ 14% on 70% of gross amount charged for maintenance & Repairing Contracts.

For Night Navigation ie only Maintenance Contracts(not involving materials/goods): Service tax @ 14 % on gross amount charged

Note: Service Tax @ 14.50% is applicable w.e.f 15/11/2015

Place: Ghaziabad

For SANDEEP RAMNIWAS GUPTA & CO.
Chartered Accountants

(SANDEEP GUPTA) F.C.A., DISA
Partner