

WESTERN INDIA REGIONAL COUNCIL

SEMINAR ON SERVICE TAX ON CONSTRUCTION INDUSTRY

Paper : **Reverse Charge Mechanism and Cenvat**

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Preamble

WIRC has organized this seminar for participants having reasonable or expert knowledge of Service tax. The purpose of this seminar is to discuss and deliberate on real estate sector specific issues likely to emanate in negative list based era of service taxation. The topic allotted for this session is “Reverse Charge and CENVAT - Construction Industry”. Keeping in view the purpose of seminar and profile of learned participants, faculty will refrain from elementary discussion on CENVAT and Reverse Charge provisions.

It is thought fit to discuss the issues in the form of case studies. The paper consists of issues/ case studies on brewing controversies on CENVAT and reverse charge mechanism. These issues/ controversies might come up for testing by judicial forums at later date. There could be several dimensions to the issues raised and there could be many view points on such issues.

Faculty candidly admits that he is learning this complicated and ever evolving taxation law. The faculty would present his views on case studies/ issues to be best of his ability, knowledge and experience. The service tax authorities and/or Judiciary may or may not concur with faculty’s views on the issues to be discussed.

The case studies/ issues are now put up for consideration and discussion.

Cenvat issues

Case Study 1:

Facts & Back ground:

Builder acquired a plot in **July, 2012** for construction of commercial complex. The Construction started in **June 2014**. Builder intends to sell all units during construction period. He intends to start booking in **December, 2014**. Builder will take Service tax registration in December, 2014 when his liability to pay service tax commences.

Issues for deliberation:

- a) Whether builder is entitled to Cenvat of service tax on project related and administrative expenses incurred by him during:
- Period July 2012 to May 2014 – i.e. Pre construction commencement period
 - Period June 2014 to December 2014 – i.e. after commencement of construction but before sale of under construction flats.
 - Period prior to service tax Registration
- b) If answer to above questions is Yes, whether builder can avail Cenvat credit even when same is not claimed in ST – 3 return filed till 31.03.2014 and also when such Cenvat receivable is not accounted as such in audited financial statements till 31.03.2014

Case Study 2

Facts & Background:

Builder acquired a plot in **June, 2009** for construction of residential complex of 50 units. The construction started in **July, 2012** and completed in **May, 2014**. The builder has sold all flats during the period **June, 2013 to May, 2014**.

Builder has incurred huge expenses on labour charges, Architect fees, security services, site formation etc. during the period **June, 2009 to June, 2012** (before commencement of construction) and has paid substantial service tax on such services availed by him.

Issues Under Deliberation:

Whether builder is entitled to Cenvat of service tax on services availed by him during the period:

- June, 2009 to June, 2010 – where sale of under construction flats was not liable to service tax
- July, 2010 to June, 2012 – where builder has paid service tax on abated value of sale of under construction flats.
- July 2012 onwards

CASE STUDY 3

Facts & Back ground:

A developer has constructed 80 flats in a building during the period July, 2012 to May,2014. The building completion certificate (“BCC”) was received on 20th June,2014. The builder was able to sell 70 flats till date of receipt of BCC. The remaining 10 flats would be sold as completed flats.

Issue under deliberation:

- a) Whether a developer is entitled to full Cenvat of service tax paid on all project related expenses and also administrative expenses ?
- b) If one takes a view that the developer is not entitled to Cenvat attributable to completed flat, how to knock off/ reverse such Cenvat?

CASE STUDY 4

Facts/ Back ground:

Builder acquired and installed 5 lifts in the complex constructed by him where he has sold all units during the construction.

Issues under deliberation:

- a) Whether lift is:
 - Input; or
 - Capital goods; or
 - Input Services.
- b) If it is input services, whether it is excluded from definition of “Input services” as defined u/s 2(l) of Cenvat Credit Rules, 2004 (“CCR”) ?
- c) Whether builder is entitled to Cenvat of Excise duty/ CVD paid on such lift and also Service tax paid installation of such lift?
- d) If it is Capital goods, whether Cenvat availed is required to be reversed at any stage?

CASE STUDY 5

Facts & Background:

It is standard trade practice in real estate sector to retain retention money from contractor’s bills. The retention money is paid to contractor after stipulated period. Such retention money may be forfeited fully or partially for non satisfactory workmanship.

Issues under deliberation:

- a) Whether builder/ principal is entitled to Cenvat of:
 - Full amount of service tax charged by contractor; or
 - Amount of service tax pertaining net payment (after deduction of retention money) made to contractor; or

- Not entitled to any Cenvat as full amount of the bill (including service tax thereon) is not paid within 90 days from the date of bill.
- b) If view is taken that principal is entitled to full Cenvat, What will be the cenvat implications forfeiture of retention money?

CASE STUDY 6

Facts & Background:

A builder has started project in July 2012 and completed it in June, 2014. He sold all units during construction period fetching total revenue of Rs. 100 crores. He has discharged service tax liability on sales revenue after claiming abatement of 70% and Cenvat of Rs.2 crore on input services.

Issues under deliberation:

Whether builder is obliged to reverse cenvat to the extent of Rs.70 crores i.e. exempt portion of sales value of units sold.

Reverse Charge Issues

CASE STUDY 7

Whether following can be regarded as “Works Contract Service” liable to service tax under Reverse charge mechanism:

- Labour job for completion and finishing contract.
- Furniture making.
- Comprehensive AMC of equipments / Machinery.
- Printing or Photocopying.

CASE STUDY 8

Facts & Background:

M/s City lifts, partnership firm, is a lift manufacturer. A limited has awarded a contract to city lifts for supply and installation of 4 lifts in its corporate building. The contract is a single contract. However, price of lift and installation charges are clearly bifurcated in the contract.

M/s City lifts issues separate invoices for sale of lifts (charging excise duty and VAT) and for installation services (charging service tax).

A limited deducts TDS under income tax and also under VAT law on entire contract value on the grounds that:

- Supply and installation is intrinsically linked to each other.
- Supply and installation contracts are co – terminus with each other.
- Consolidated payment is made on milestone basis.

Issues Under Deliberation

- a) Whether A limited is liable to discharge service tax liability under Reverse charge on total value for supply and erection of lifts?
- b) Whether A Ltd can legally avoid liability under Reverse charge mechanism?

CASE STUDY 9

Facts & Background:

A company has awarded a turnkey contract to a non-corporate entity for construction and setting of a plant. As per terms of contract, company will supply steel free of cost to the contractor.

Issue under deliberation:

Whether a company is liable to pay service tax on value of steel under reverse charge mechanism?

CASE STUDY 10

Facts/ Back ground:

A builder (corporate entity) awarded following contract (with material) to different contractors for its new buildings:

- Plastering contract
- Tiling contract
- Electrical contract
- Plumbing contract
- Glass cladding contract

Issue under deliberation

Whether all above contracts are “Original works” to be valued @ 40% (effective tax rate 4.944%) or “Other works” to be valued @ 60% (effective Tax rate 7.416%) for discharging service tax liability under Reverse charge?

CASE STUDY 11

Facts & Back ground:

Advanced Limited (AL) is setting up a plant in SEZ. It has awarded a turnkey contract of Rs. 100 crore to M/s Sincere LLP for erection of this plant.

Issues under Deliberation:

Whether AL is liable to discharge service tax liability under reverse charge mechanism?

CASE STUDY 12

Facts & Background

Conscious Limited awarded a construction contract to Mr. perfect for Rs. 50 crore (Inclusive of VAT and Service tax)

Issue under deliberation

- a) Whether Conscious Limited is liable to discharge Service tax liability under Reverse charge mechanism on above referred contract?
- b) If answer to above is yes, How to compute such liability?