

**WESTERN INDIA REGIONAL COUNCIL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

Welcome members and participants

Subject : Intricacies of Composite Transactions in Construction activities (Valuation, Reverse Charge, CENVAT etc.)" to be held on 27.04.2013

Day & Date : Saturday, 27th April, 2013.

Venue : ICAI Bhawan, Cuffe Parade, Colaba, Mumbai – 400 005

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PREAMBLE

- Abbreviations:
 - The Act – Finance Act, 1994 (Service tax legislation)–amended till date
 - The Rules – Service Tax Rules, 1994 – amended till date
 - CCR – Cenvat Credit Rules, 2004 – amended till date
 - Valuation Rules – Service Tax (Determination of Value) Rules, 2004
- Scope of presentation is restricted to real estate and construction sector :
- Discussion restricted to issues pertaining to following subject:
 - Valuation
 - Reverse Charge Mechanism
 - Abatement
 - Cenvat
- Presentation covers position after 01.07.2012.

WORKS CONTRACT
w.e.f. 01.07.2012

WORKS CONTRACT

- Works contract is defined U/s 65B(54) to mean:
 - Contract involving transfer of goods in execution of such contract
 - such transfer of goods is leviable to tax as sale of goods; and
 - such contract is for carrying out:

Construction	Erection	Commissioning	Installation
Completion	Fitting out	Repair	Maintenance
Renovation	Alteration	Other similar activity	

or a part thereof in relation to **movable** or **immovable property**

- Prior to 01/07/2012, works contract meant works contract in respect of immovable property
- Post 01.07.2012, it includes works contract in respect of goods / movable property also

WORKS CONTRACT - w.e.f. 01.07.2012

- “Original work” means [Rule 2A(ii)(A)] of Valuation Rules :
 - all new constructions
 - all types of additions and alteration to abandoned / damage structures on land that are required to make them workable
 - Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise
- “Other works” means [Rule 2A(ii)(C)] of Valuation Rules :
 - other than original works covered in Rule 2A(ii)(A)
 - other than work contract relating to maintenance, repair, reconditioning, restoration, servicing of any goods covered in Rule 2A(ii)(B)

WORKS CONTRACT - w.e.f. 01.07.2012

- including maintenance, repairs and completion and finishing services in respect of immovable property such as:
 - glazing
 - plastering
 - floor and wall tiling
 - installation and electrical fittings
- Service provider is entitled to Cenvat of input services and capital goods irrespective of valuation method / scheme adopted.
- Service provider is not entitled to Cenvat of inputs.

WORKS CONTRACT - w.e.f. 01.07.2012

- Pre 01.07.2012, Assessee had a choice of working out specific value of Services under Rule 2A of Valuation Rules or under Composition Scheme
- The composition scheme is withdrawn w.e.f. 01.07.2012 and Rule 2A has been revised
- Revised Rule 2A of Valuation Rules :
 - Value of service portion shall be gross amount of works contract less value of goods (material) transferred in execution of contract.
 - VAT / Sales Tax to be excluded from gross amount of works contract.
 - Where vat/sales tax has been paid or payable on actual value of goods transferred in execution of contract, such value should be taken for determining value of service portion.

Gross Contract Value	A
(less) VAT / Sales tax	B
(less) value of goods	C
Taxable Value	$D = (A - B - C)$
Tax payable would be 12.36% of D	

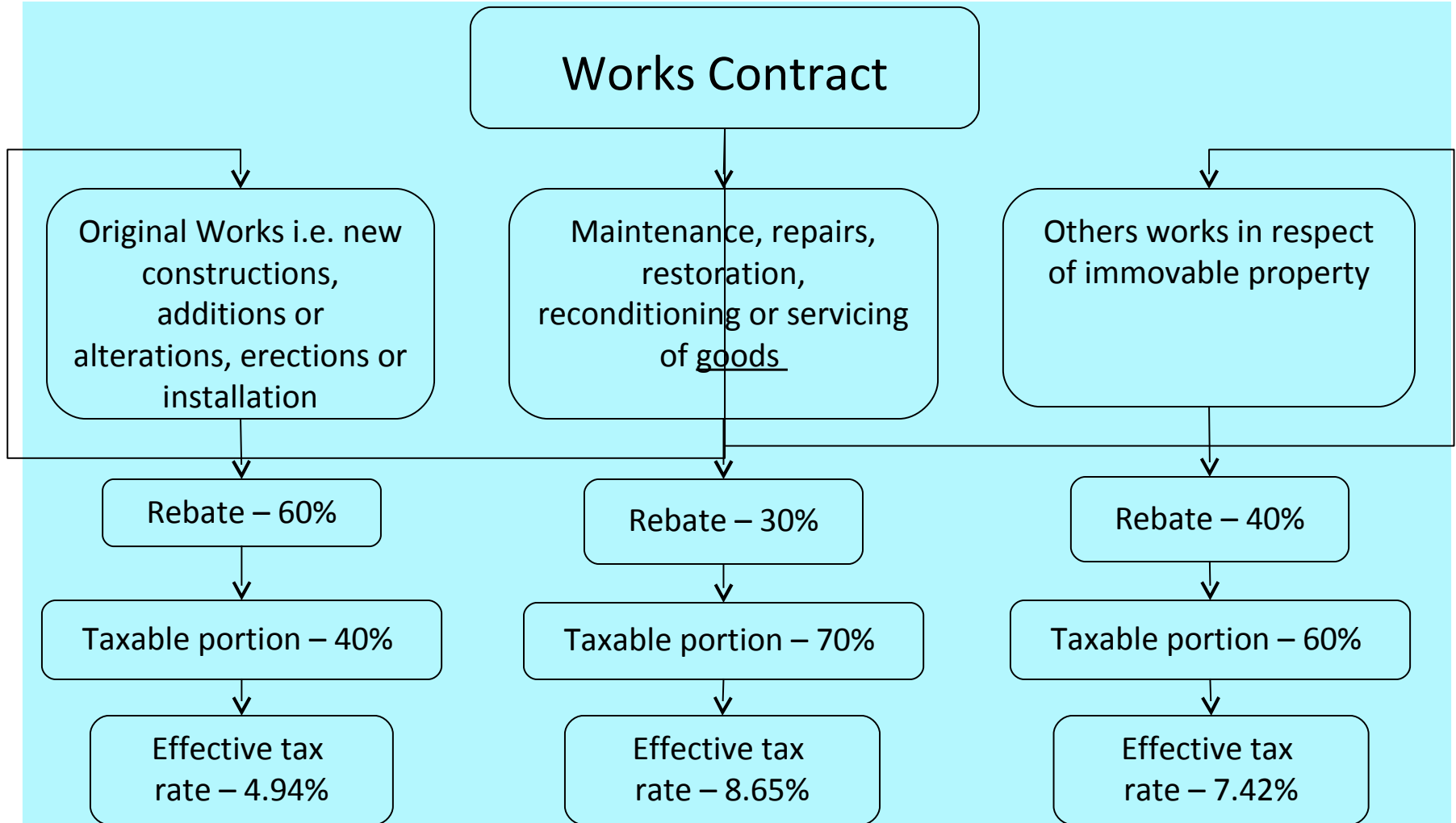
WORKS CONTRACT - w.e.f. 01.07.2012

- Value of service should include following specified overheads :

Labour / service charges paid	Sub-contractor charges
Planning, designing, architect fees	Tools / machinery hire charges
Water, electricity, fuel, consumables	Establishment cost
Expenses relatable to services	Profit relatable to services

- Where value of service is not determined as above, value of the service would be specified percentage of contract value (presumptive Scheme) [Refer Slide No.9]
- Even for presumptive scheme, the vat or sales tax to be excluded from gross contract value.

WORKS CONTRACT – PRESUMPTIVE VALUATION w.e.f. 01.07.2012



*Service provider is entitled to Cenvat of Input services and capital goods

WORKS CONTRACT – SOME ISSUES

- Whether the works contractor has an option of paying service tax on a gross contract value or he has to go only by following two options given in Rule 2A of Valuation Rules :
 - specific valuation method [as prescribed U/R 2A(i)]
 - presumptive valuation [as prescribed U/R 2A(ii)]
- If option of paying full tax on gross contract value is permissible, whether service provider can claim Cenvat of inputs?
- Whether in above case, service recipient can claim full Cenvat of input service tax paid to works contractor?
- In case where contractor has paid vat on actual basis, whether he is entitled to presumptive valuation for service tax?
- In case where contractor pays VAT under composition scheme (Where value of material is not declared for VAT purpose), whether contractor is obliged to follow presumptive scheme of valuation or he can follow specific valuation?

WORKS CONTRACT – SOME ISSUES

- What will be the applicable rate of Service tax in respect of following finishing and completion contracts for new construction:

Plastering	Tiling	Painting
Electrical	Plumbing	Carpentry

- Whether site formation and clearance contractor can charge Service tax claiming rebate for new constructions?
- Whether free material supplied by client or material supplied at concessional value is to be included in value of works contract services
- If value of such free material is includible, whether VAT component paid by client on purchase of said goods is also to be included in the value of works contract service?

**REVERSE CHARGE MECHANISM AS
APPLICABLE TO BUILDER / CONTRACTOR
w.e.f. 01.07.2012**

SUMMARIZED POSITION – w.e.f. 01.07.2012 except stated otherwise

Nature of Service	Service provider	Service recipient	Liability of Service Provider	Liability of Service Receiver
GTA services	Goods transport agent	Specified persons paying freight or liable to pay the freight	Nil	100% (3.09%)
Sponsorship Services	Any person	Any body corporate or partnership firm located in taxable territory	Nil	100% (12.36%)
Arbitration services	Arbitral tribunal	Business entity located in taxable territory	Nil	100% (12.36%)
Legal services	Individual advocate/firm of advocates	Business entity located in taxable territory	Nil	100% (12.36%)

SUMMARIZED POSITION – w.e.f. 01.07.2012 except stated otherwise

Nature of Service	Service provider	Service recipient	Liability of Service Provider	Liability of Service Receiver
Specified support services	Government or local authority	Business entity located in taxable territory	Nil	100% (12.36%)
Director's services	Director of a company	Company	Nil	100% (12.36%)
Rent-a-cab (abatement availed)	Non-corporate entity	Business entity (regtd as a body corporate) in taxable territory	Nil	100% (4.94%)
Rent-a-cab (abatement not availed)	Non-corporate entity	Business entity (regtd as a body corporate) in taxable territory	60% (7.42%)	40% (4.94%)
Supply of manpower or security services	Non-corporate entity	Business entity (regtd as a body corporate) in taxable territory	25% (3.09%)	75% (9.27%)

SUMMARIZED POSITION – w.e.f. 01.07.2012 except stated otherwise

Nature of Service	Service provider	Service recipient	Liability of Service Provider	Liability of Service Receiver
Works Contract	Non-corporate entity	Business entity registered as body corporate located in taxable territory	50%	50%
Original Work			(2.47%)	(2.47%)
Repair / AMC of goods			(4.33%)	(4.33%)
Other Work			(3.71%)	(3.71%)
Any service (also known - Import of service)	Person in non-taxable territory	Person in taxable territory	Nil	100%

- Following services are effective from **07.08.2012**:
 - Director's services
 - Security services
- Non-corporate entity means any Individual, HUF or partnership firm (including LLP), whether registered or not, including association of persons

FAQ RELATING TO REVERSE CHARGE FOR COMPOSITE CONTRACT

- Whether builder (service recipient) is obliged to pay Service tax under Reverse Charge mechanism in respect of Invoice issued by contractor (service provider) before 30.06.2012 charging Service tax?
- Whether builder (service recipient) can choose valuation method (especially in case of works contract service) different than that of contractor (service provider)?
- Whether builder (service recipient) can discharge Service tax liability under Reverse charge mechanism from accumulated Cenvat balance?
- Whether contractor (service provider discharging partial liability) entitled to claim full Cenvat?
- Whether contractor (service provider) is entitled to refund of Cenvat balance?

**BUILDERS / DEVELOPERS – Issues relating to
Composite Contracts**

ON OR AFTER 1ST JULY, 2012

BUILDERS / DEVELOPERS – SOME ISSUES

- Whether the sale of under construction flat / unit is a composite contract?
- Whether amount charged for preferential location, floor rise or development charges of complex etc is a part of composite contract and what will be the applicable rate of tax i.e. 12.36% or 3.09% ?
- Whether amount charged by builder for advance maintenance, society formation charges, legal charges, electricity and water deposit etc are part of composite contract liable to service tax at abated rate?
- Is sale of under construction flat / unit is a “works contract” within the meaning of service tax legislation?
- If yes, whether reverse charge mechanism triggers when a corporate buys an under construction office / flat from non-corporate builder?

BUILDERS / DEVELOPERS – SOME ISSUES

- Whether the builder is entitled to full Cenvat credit of input service tax paid by him or can claim Cenvat to the extent of taxable portion of sale value? This issue becomes relevant as the abatement is a partial exemption under the law?
- Whether builder needs to reverse proportionate Cenvat relating to sale of completed flats on which no Service tax is payable? If yes, how to do the proportionate reversal each month as required U/R 6(3A) of Cenvat Credit Rules, 2004 ?
- What will be abatement available to builder on or after 1st March, 2013 in following cases (refer Notification No.2/2013-ST dated 01.03.2013 amending original abatement Notification No.26/2012-ST dated 20.06.2012):
 - Sale of commercial unit of 750 sq. ft. for Rs.75,00,000/-
 - Sale of commercial unit of 750 sq. ft. for Rs.1,50,00,000/-

BUILDERS / DEVELOPERS – SOME ISSUES

- Sale of commercial unit of 2500 sq. ft. for Rs.90,00,000/-
 - Sale of commercial unit of 2500 sq. ft. for Rs.5,00,00,000/-
 - Sale of residential flat of 750 sq. ft. for Rs.75,00,000/-
 - Sale of residential flat of 750 sq. ft. for Rs.1,50,00,000/-
 - Sale of residential flat of 2500 sq. ft. for Rs.90,00,000/-
 - Sale of residential flat of 2500 sq. ft. for Rs.5,00,00,000/-
- Builder gives 10 flats to land owner in lieu of acquisition of development rights in the land. The builder is convinced that he has to discharge service tax liability on the flats given to the landlord. How to work out the value for the purpose of discharging service tax liability?

Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of law
- Application/implications of various provisions will vary on facts of the case and law prevailing on relevant time
- Contents of this presentation should not be construed as legal or professional advice
- This is an educational meeting arranged with clear understanding that neither Faculty nor WIRC will be responsible for any error, omission, commission and result of any action taken by participant or anyone on the basis of this presentation

THANK YOU