

SEMINAR ON SERVICE TAX IN CONSTRUCTION INDUSTRY

RECENT AMENDMENTS IN SERVICE TAX RELATED TO CONTRACTORS: APPLICABILITY, VALUATION, POT, CENVAT & REFUNDS

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RECENT AMENDMENTS IN SERVICE TAX RELATED TO CONTRACTORS

I. APPLICABILITY OF SERVICE TAX ON CONTRACTORS:

1. Taxability under Works Contract Services

1.1. Section 66E of the Finance Act, 1994 provides for list of declared services wherein clause (h) provides that the **service portion** in the execution of a works contract shall be considered as a declared service.

1.2. Thus, services element in a works contract is a declared service and thus liable to tax.

2. Definition of “works contract”

2.1. Works contract has been defined under Section 65B(54) of the Finance Act, 1994 and it means a contract wherein -

- transfer of property in goods involved in the execution of such contract and
- such contract is leviable to tax as sale of goods and
- such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of
- any movable or immovable property or
- for carrying out any other similar activity or a part thereof
- in relation to such property.

3. Taxability under Construction Services

3.1. Section 66E of the Finance Act, 1994 provides for list of declared services wherein clause (b) provides that the following shall be considered as a declared service -

- construction of a complex, building, civil structure or a part thereof,
- including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

3.2. Further, Explanation II of the said clause provides that “construction” shall include additions, alterations, replacements or remodeling of any existing civil structure.

II. VALUATION:

4. Valuation of works contract services

4.1. Value of service portion in the execution of a works contract shall be -

- equivalent to gross amount charged for works contract
- less value of transfer of property in goods involved in execution of said works contract and
- less VAT/Sales Tax.

4.2. Value of works contract service shall include, -

- 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 on 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 relating to supply of labour and services;
- other similar expenses relating to supply of labour and services; and
- profit earned by the service provider relating to supply of labour and services

4.3. In case VAT or Sales Tax is paid on actual value of transfer of property in goods involved in execution of works contract, then such value adopted for payment of VAT to be taken as value of transfer of property for determining the value of works contract service as referred above.

4.4. If the value of service portion in the execution of a work contract has not been determined as above, then the person liable to pay service tax shall determine the service tax payable as under:

| <i>Works Contract</i> | <i>Service tax payable on</i> |
|--|---|
| Execution of original works _# | 40% of the total amount * charged for the works contract |
| Maintenance or repair or reconditioning or restoration or servicing of any goods | 70% of the total amount * charged for the works contract |
| Works contract, not covered above, including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property | 70% ₁ of the total amount * charged for the works contract |

1 Substituted for 60% w.e.f. 1st October 2014 by Notification No. 11/2014-ST dated 11th July, 2014.

“Original Works” means

- all new constructions;
- all types of additions and alterations to abandoned or damaged 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.

* “total amount” means

- the sum total of the gross amount charged for the works contract and
- the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract,
- after deducting-
 - ✓ the amount charged for such goods or services, if any; and
 - ✓ the value added tax or sales tax, if any, levied thereon:
- The service provider has to discharge service tax liability on fair market value for the works contract. If the amount of works contract is not at fair market value, then such fair market value has to be arrived at by generally accepted accounting principles.
- However, there are no accounting standards/ principle prescribed by ICAI to derive such fair market value.

- 4.5. CENVAT credit of duties or cess paid on any inputs shall not be taken, which are used in or in relation to the said works contract. However, CENVAT credit of duties or cess paid on Capital Goods and Input Service shall be available subject to the provisions of the Cenvat Credit Rules, 2004.

III. EXEMPTIONS & RECENT AMENDMENTS THEREIN:

5. In negative list regime most of the exemptions are part of one single mega exemption notification issued vide no. 25/2012–Service Tax, Dated 20th June, 2012. These

exemptions became effective from the 1st July 2012. Below are the exemptions available in respect of work contract services and/or construction services related to contractors:

5.1. Services of erection, construction, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation provided to government / Local authority/ governmental authority [S. No. 12].

5.1.1. Services provided to the Government or local authority or governmental authority by way of erection, construction, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –

- A. a civil structure or any other original work meant predominantly for a non-industrial or non-commercial use or any other business or profession²;
- B. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under 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 establishment³;
- 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 65 B of the said Finance Act⁴

Governmental authority⁵ means an authority or a board or any other body;

(i) Set up by an Act of Parliament or a State Legislature; or

² Omitted by Notification No. 6/2015-ST w.e.f. 1st April, 2015

³ Omitted by Notification No. 6/2015-ST w.e.f. 1st April, 2015

⁴ Omitted by Notification No. 6/2015-ST w.e.f. 1st April, 2015

⁵ Amended vide Notification 2/2014-ST dated 30-1-2014. Prior to that defined as “governmental authority” means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.

(ii) Established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

5.2. Services of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration w.r.t. certain services used by public at large [S. No. 13].

5.2.1. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

- A. road, bridge, tunnel, or terminal for road transportation for use by general public;
- B. a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana
- C. [a civil structure or any other original works pertaining to the ‘In-situ rehabilitation of existing slum dwellers using land as a resource through private participation’ under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers.
- D. a civil structure or any other original works pertaining to the Beneficiary-led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;]⁶
- E. building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- F. pollution control or effluent treatment plant, except located as a part of a factory; or
- G. a structure meant for funeral, burial or cremation of deceased

5.2.2. Remark

5.2.2.1. In case of Roads, earlier, construction of all roads was excluded till 30th June, 2012. However, the notification exempts services in respect of road used by general public only. Thus any of the aforesaid services in relation to road in a residential

6 Inserted w.e.f. 1st March 2016

complex or a factory, etc. will attract service tax.

5.2.2.2. Construction, repair, etc. of non-commercial building such as schools, colleges, hospitals, charitable clinics, etc. was not leviable to service tax till 30th June, 2012. The said exemption notification does not cover the said services.

5.3. Services of construction, erection, commissioning or installation w.r.t. certain specified purposes [S. No. 14].

5.3.1. Services by way of erection, construction, commissioning or installation of original works pertaining to,-

- A. [airport, port or]⁷ or railways [excluding]⁸ monorail or metro;
[Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.]⁹
- B. 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. [low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:
 - (i) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
 - (ii) any housing scheme of a State Government.]¹⁰
- E. post- harvest storage infrastructure for agricultural produce including cold storages for such purposes; or

⁷ Omitted by Notification No. 6/2015-ST w.e.f. 1st April, 2015

⁸ Substituted w.e.f. 1st March 2016

⁹ Inserted w.e.f. 1st March, 2016

¹⁰ Inserted w.e.f. 1st March 2016

F. mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

The term “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

5.3.2. Scenario prior to 1st July, 2012 in respect of aforesaid services

5.3.2.1. Services in respect of airport, port and railways were altogether excluded from the ambit of service tax by way of specific exclusion from the definition.

5.3.3. Remark

5.3.3.1. Till 30th June, 2012 services as specified in clause (a), constructions other than original work, repairs, alteration, restorations and maintenance was not leviable to tax. However under mega exemption notification the said services are taxable.

5.4. **Service provided by specified persons [S. No. 29(h)].**

5.4.1. Services by Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

6. **Special Provision for exemption and Refund in certain cases [Section 101, Section 102, Section 103]**

6.1. Services provided to a Governmental Authority relating to Construction of canal, dam, etc. [Section 101]:

6.1.1. Taxable Services provided to an specified authority board or any other body set up by an Act of Parliament or a State Legislature or established by the government by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works did not attract service tax for the period 1st July 2012 to 29th January 2014.

6.1.2. **Refund:** Where such tax has already been paid refund of such tax will be available provided such refund application is made within six months from the date on which the Finance Bill, 2016 received the assent of the President i.e. 14th May, 2016.

6.2. Services provided to Government, Local Authority or Governmental Authority

[Section 102 and Mega Exemption Notification No. 9/2016-ST dated 1st March 2016, Sr. No. 12A]

- 6.2.1. Services provided to the Government, local authority or governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation of
- a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - 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 65 B of the said Finance Act, 1994.
- were made taxable w.e.f 1st April, 2015.
- 6.2.2. However, there was a huge outcry in the construction industry as all the government contracts are inclusive of all taxes and cost of service tax was not included by bidders at the time of applying for such government tenders due to exemption available at that point of time.
- 6.2.3. Such contracts which have been entered into before 1st March 2015 on which appropriate stamp duty has been paid for the said services provided from 1st day of April 2015 to 29th February 2016 are now exempt.
- 6.2.4. Further, such exemption is being restored upto 31st March 2020 in respect of contracts which had been entered into prior to 1st March, 2015 and stamp duty was paid prior to 1st March 2015 by way of amendment in Mega Exemption Notification. In a nutshell, contracts for above work entered into and where stamp duty also paid prior to 1st March 2015 for above work shall remain exempted upto 31st March 2020.
- 6.2.5. **Refund:** Where such tax has already been paid refund of such tax will be available provided such refund application is made within six months from the date on which the Finance Bill, 2016 received the assent of the President i.e. 14th May, 2016.

6.3. Services of Construction, erection etc. of original works pertaining to Airport or Port [Section 103 and Mega Exemption Notification 9/2016-ST dated 1st March 2016, Sr. No. 14A]

- 6.3.1. Services of Construction erection, commissioning, installation of original works

pertaining to an airport or port were made taxable w.e.f. 1st April, 2015.

- 6.3.2. Such contracts which have been entered into before 1st day of March 2015 on which appropriate stamp duty has been paid for the said services provided from 1st day of April 2015 to 29th February 2016 are now exempt.

Further, such exemption is being restored upto 31st March 2020 in respect of contracts which had been entered into prior to 1st March, 2015 and stamp duty was paid prior to 1st March 2015 subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015. In a nutshell, contracts for above work entered into and where stamp duty also paid prior to 1st March 2015 for above work shall remain exempted upto 31st March 2020.

- 6.3.3. **Refund:** Where such tax has already been paid refund of such tax will be available provided such refund application is made within six months from the date on which the Finance Bill, 2016 received the assent of the President i.e. 14th May, 2016.

IV. REVERSE CHARGE MECHANISM (RCM):

7. Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of Service Tax Rules, 1994 provides for reverse charge mechanism i.e. service tax to be paid by the person other than service provider. Notification No. 30/2012 – ST, dated 20/06/2012, as amended from time to time, is issued to provide that in case of certain types of services, the recipient is liable to tax and in other cases, both the provider of service and person other than provider of service are liable to pay tax on percentage basis. Service tax is required to be paid by both the service provider and service receiver in case of works contract services, subject to the conditions as provided.

- 7.1. RCM in case of service portion in the execution of works contract:

| ST payable by | If the person is | %age payable |
|------------------|---|--------------|
| Service provider | Any individual, Hindu Undivided Family or partnership firm whether registered or not, including association of persons, LLP located in taxable territory. | 50 % |

| | | |
|------------------|---|------|
| Service Receiver | Business Entity registered as Body Corporate, located in the taxable territory. | 50 % |
|------------------|---|------|

Notes:

- It is preferable for the service provider to mention on the invoice that he has paid his part of tax and the balance Tax on 50% is payable by the recipient.
- The service recipient may adopt valuation method as per Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

V. POINT OF TAXATION RULES, 2011 & RECENT AMENDMENTS THEREIN:**8. Introduction to Point of Taxation**

- 8.1. Section 68(1) of the Finance Act, 1994 read with earlier Rule 6(1) of the Service Tax Rules, 1994 (STR) provided that the service tax shall be paid to the credit of the Central Government by the 5th / 6th of the following month immediately following the calendar month in which there is receipt of payment of the value of taxable services.
- 8.2. Prior to introduction of Point of Taxation Rules, 2011, the liability of service tax was on account of rendering of service and the rate of tax that was applicable was as on the date on which the services were actually rendered.
- 8.3. The aforesaid was also ruled in the case of **Reliance Industries Ltd. Vs. Commissioner of Central Excise, Rajkot [2008 (10) STR 243 (Tri. – Ahmd.)]** which was approved by the **Hon'ble Gujarat High Court [2010 (19) S.T.R. 807 (Guj.)]**.
- 8.4. The POT has been introduced vide Notification No. 18/2011 – ST dated 1st March, 2011. The said rule has been issued:
 - For the purpose of collection of Service Tax; and
 - Determination of rate of Service Tax
 Point of Taxation, as defined in rule 2(e), means the point in time when service shall be deemed to have been provided.

9. General Point of Taxation [Rule 3]

- 9.1. General rule: Earlier the payment of service tax was only when there was receipt of payments. W.e.f. 1st April, 2011 or 1st July, 2011, as the case may be, point of taxation shall be:
 - A. Where the invoice for the service provided or agreed to be provided is issued

within 30/45¹¹ days of the date of completion of provision of services the Point of Taxation shall be earliest of the following dates:

- (i) Date of issue of invoice
- (ii) Date of receipt of payment

B. Where the invoice for the service provided or agreed to be provided is not issued within 30/45¹ days of the date of completion of provision of services the Point of Taxation shall be earliest of the following dates:

- (i) Date of completion of provision of services
- (ii) Date of receipt of payment.

9.2. Completion of service: Clarification¹² on ‘completion of service’ is issued clarifying that completion of service would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing, etc. which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

9.3. Continuous Supply Of Services: A ‘continuous supply of service’ has been defined to mean – [Rule 2(c)]

- any service provided or to be provided continuously or on recurrent basis by a service provider under a contract for a period of more than 3 months; or
- such services which the Central Government prescribes by a notification to be in the nature of continuous supply of services.

Note: Services on recurrent basis would mean services which are provided on recurring basis and are not continuous in nature. Services provided by a Courier Agency would be considered as provided on recurrent basis wherein the said courier

11 Effective from 1st April, 2012 in respect of Banking and other Financial Company invoice to be issued within 45 days; in case of other assessee 30 days. Prior to 1st April 2012, invoices were required to be issued within 14 days for all assessee.

12 Circular No. 144/13/2011 – ST dated 18th July, 2011

agency collects the courier at regular intervals from their clients.

9.4. *Specified services under continuous supply*: the provision of following taxable services shall be treated as continuous supply of service irrespective of the period of service provision contract i.e. even if the contract for service provision is less than 3 months then also following services were considered as continuous supply of service till 30th June, 2012:

- Commercial or Industrial Construction [Sec 65(105)(zzq)]
- Residential Complex Construction Services [Sec 65(105)(zzzh)]
- Telecommunication Services [Sec 65(105)(zzzx)]
- Internet Telecommunication Services [Sec 65(105)(zzzu)]
- Works Contract Services [Sec 65(105)(zzzza)].

W.e.f. 1st July, 2012 following services are considered as continuous supply of service:

- Telecommunication Services, and
- Service portion in execution of Work Contract.

However, in case of 'continuous supply of service' the general rule would be applicable subject to the following modifications:

- where in terms of the contract the provision of the whole or part of the service is determined periodically on the completion of an event; and
 - Such event obligates payment by the service receiver,
- the date of completion of each such event shall be the ***date of completion of provision of services***.

10. Point of Taxation in case of change in effective rate of tax [Rule 4]

10.1. Rule 4 of the PoT Rules provides when a service is deemed to have been provided in cases where there is a 'change of effective rate of tax' which would also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard. The TRU Circular clarifies as follows:

"change in the effective rate of tax shall also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard. It may be noted that an exemption has been granted in value for various services vide Notification No. 1/2006-ST dated 01.03.2006 which has the effect of payment of tax only on a part of the value. Similarly either the values or the rates

at which tax is payable are provided under rule 6(7, 7A, 7B or 7C) of the Service Tax Rules, 1994 as well as the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Thus, whenever these values or the composition rates are changed, it would have the same effect as the change in the rate of duty. It is hereby further clarified that the rate of tax shall also include any other notification which is issued, rescinded or amended and has the effect of altering the taxability of any service.”

10.2. The rate applicable for payment of Service Tax in case of change in rate of Service Tax is tabulated as under:

| Provision Of Service | Issue Of Invoice | Receipt Of Payment | Applicable Rate |
|-----------------------------|-------------------------|---------------------------|---|
| Before | After | After | Date of Invoice or Receipt of Payment, whichever is earlier – New Rate |
| Before | Before | After | Date of Issue of Invoice – Old Rate |
| Before | After | Before | Date of Receipt of Payment - Old Rate |
| After | Before | Before | Date of Invoice or Receipt of Payment, whichever is earlier - Old Rate |
| After | Before | After | Date of Receipt of Payment - New Rate |
| After | After | Before | Date of Issue of Invoice - New Rate |

10.3. Point of Taxation in respect of certain transaction of Work Contract, Circular No. 162/2012 ST dated 6th July, 2012 clarified that -

“(b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

3.1 However the position has undergone a change at the time of transition towards the Negative List and the introduction of other accompanying changes in Service Tax (Determination of Value) Rules, 2006 and partial reverse charge. At the said time rule 6 stood omitted and the point of taxation was required to be determined

ordinarily in such cases under the main rule i.e. rule 3. This rule is, however, overridden by rule 4 when there is a change in effective rate of tax. The "change in effective rate of tax" has been defined in clause (ba) of rule 2 to include a change in the portion of value on which tax is payable.

3.2 To illustrate, the following would be changes in effective rate of tax:-

(i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).

(ii) exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.

(iii) taxability of certain works contracts which were hitherto exempted.

(iv) change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

3.3 However, the following will not be a change in effective rate of tax:-

(i) works contracts earlier paying service tax @ 4.8% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again at 4.8% (as only the manner of expression has been altered).

(ii) works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)

3.4 Thus the point of taxation for services provided in respect of taxable works contracts in progress on 01.07.2012 would need to be determined under rule 4 of the Point of Taxation Rules unless there is no change in effective rate of tax."

11. Point of taxation in case of new levy on services

11.1. Recently w.e.f. 15th November, 2015, there was a levy of Swachh Bharat Cess on taxable services. A problem was faced as to which rule of point of taxation will apply. Also, a new levy "Krishi Kalyan Cess" has been introduced w.e.f. 1st June 2016.

11.2. The Government has inserted explanation 1 and explanation 2 to Rule 5 of Point of Taxation Rules, 2011 stating that for any new levy on services, point of taxation will be as per Rule 5.

11.3. Presently Rule 5 of Point of Taxation Rules provides that when a service is taxed for the first time, then No tax shall be payable:

- If the Invoice has already been issued and the payment has already been received against such service, or
- If the payment is already made and invoice is issued within fourteen days of the date when the service became taxable for the first time.

11.4. However, Central Government by way of Notification No. 35/2016-ST dated 23rd June, 2016 has exempted taxable services with respect to which the invoice for the service has been issued on or before the 31st May, 2016, from the whole of Krishi Kalyan Cess leviable thereon, subject to condition that the provision of service has been completed on or before the 31st May, 2016.

11.5. In view of the exemption notification issued by Central Government, no KKC shall be applicable on -

- Service completed on or before the 31st May, 2016, AND
- Invoices for such service issued on or before the 31st May, 2016.

11.6. Applicability of KKC on services in various possible scenarios are summarized as under:

| <i>Service Provided</i> | <i>Invoice Issued</i> | <i>Payment Received</i> | <i>KKC</i> |
|-------------------------|------------------------------------|-------------------------|-------------|
| Before 01.06.16 | Before 01.06.16 | Before 01.06.16 | No [Rule 5] |
| Before 01.06.16 | After 01.06.16 but before 14.06.16 | Before 01.06.16 | No [Rule 5] |
| Before 01.06.16 | After 14.06.16 | Before 01.06.16 | Yes |
| Before 01.06.16 | Before 01.06.16 | After 01.06.16 | No [Exempt] |
| Before 01.06.16 | After 01.06.16 | After 01.06.16 | Yes |
| After 01.06.16 | Before 01.06.16 | Before 01.06.16 | No [Rule 5] |

| <i>Service Provided</i> | <i>Invoice Issued</i> | <i>Payment Received</i> | <i>KKC</i> |
|-------------------------|------------------------------------|-------------------------|-------------|
| After 01.06.16 | After 01.06.16 but before 14.06.16 | Before 01.06.16 | No [Rule 5] |
| After 01.06.16 | After 14.06.16 | Before 01.06.16 | Yes |
| After 01.06.16 | Before 01.06.16 | After 01.06.16 | Yes |
| After 01.06.16 | After 01.06.16 | After 01.06.16 | Yes |

12. Point of taxation in case of specified services or persons

12.1. Rule 7 of Point of Taxation Rules, 2011 has been amended to additionally provide that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

12.2. For example, the onus of payment of service tax has shifted from service recipient to service provider in case of service provided by Mutual Fund Agent to Mutual Fund or Asset Management Company (AMC). Hence in case where mutual fund agent has provided services for the period ending 31st March 2016 and also raised the invoice on or before 31st March 2016 and payment has not been made by the Mutual Fund or AMC upto 31st March, 2016, then by virtue of this proviso, the Mutual Fund or AMC shall be liable to pay service tax as service recipient on the date of issuance of invoice.

VI. RECENT AMENDMENTS IN CENVAT CREDIT RULES, 2004:

13. Obligation of provider of output service [Rule 6]

13.1. Provisions of Rule 6 have undergone major change w.e.f. 1st April, 2016, keeping in view certain judgments passed in Chennai jurisdiction and Stay Order granted by Mumbai CESTAT. The major change is pertaining to determination of value of exempted service and pro-rata reversal of only Common Cenvat Credit, with the methodology of computation of reversal ratio procedures for intimation to be filed

have more or less remained the same. The relevant provisions are explained in the following paragraphs.

- 13.2. **Rule 6(1)** provides that the CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be.

Provided that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory.

Explanation 2.- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under.

Explanation 3. – For the purposes of this rule, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a ‘service’ as defined in section 65B(44) of the Finance Act, 1994.

Explanation 4. – Value of such an activity as specified above in Explanation 3, shall be the invoice/agreement/contract value and where such value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder.

- 13.3. Exclusive Exempted Manufacture / exempted service [**Rule 6(2)**] – A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services shall pay the whole amount of credit of input and input services and shall, in effect, not be eligible for credit of any inputs and input services.

13.4. Rule 6(3) provides that – When a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely,

- non-exempted goods
- exempted goods

or when a provider of output services provides two classes of services, namely,

- non-exempted services
- exempted services

then the manufacturer or the provider of the output service shall exercise one of the two options, namely,

- (a) pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services, subject to a maximum of the total credit taken or
- (b) pay an amount as determined under sub-rule (3A).

The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed opening balance of the credit of input and input services available at the beginning of the period and the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit.

13.5. Rule 6(3A) is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid / reversed, for each month.

13.6. The features of the said sub-rule are explained in the flow-chart as under:

* Common credit shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non-exempted goods and exempted and non-exempted services in the previous financial year;

The conditions and procedure to be followed, if the second option (as mentioned above) is exercised, are as follows [**Rule 6(3A)**] - The manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely:-

- (i) name, address and registration no. of the manufacturer of goods or provider of

- output service;
- (ii) date from which the option under this clause is exercised or proposed to be exercised;
 - (iii) description of dutiable goods or output services;
 - (iv) description of exempted goods or exempted services;
 - (v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

13.7. There are 4 steps in Rule 6(3A) which are later discussed in detail;

- Intimate details as discussed above [Rule 6(3A)(a)]
- Compute provisional ratio of CENVAT credit attributable to exempted service provided based on taxable and exempted turnover during previous Financial Year [Rule 6(3A)(b)]
- Compute final ratio of CENVAT credit attributable to exempted service provided based on actual turnover of Current Financial Year [Rule 6(3A)(c)]
- Pay / Adjust the difference of CENVAT between provisional ratio and Final ratio [Rule 6(3A)(d) & 6(3A)(f)]

13.8. **Computation of Provisional Ratio** – Rule 6(3A)(b) deals with computation of provisional ratio, **we call it Ratio 1** for the sake of simplicity, it is explained with the help of the following formula

$$\text{Ratio} = \frac{\text{Total Value of Exempted Service of Previous F.Y.} \times 100}{\text{Total Value of Service of Previous F.Y.}}$$

Amount payable = Ratio x Amount of CENVAT of each month

- a) Hence every month, while taking CENVAT credit, it is required to pay vide Cash or CENVAT such an amount as computed above for each month
- b) However, it is required to first find out the following two values before computation of provisional ratio namely
 1. Total Value of Exempted service, and
 2. Total Value of Service.

13.9. **Computation of Final Ratio** – Rule 6(3A)(c) deals with computation of final ratio. The computation of final ratio is exactly similar to computation of provisional ratio

except to the fact that figures of current financial year are used instead of figures of previous financial year and let such final ratio be known as **Ratio 2**

13.10. Payment of Final Amount in case where Ratio 2 exceeds Ratio 1 [Rule 6(3A)(d)]

a) To summarise, the assessee shall be required to pay on or before 30th June of next financial year the following amount;

CENVAT of whole year x (Ratio 2 – Ratio 1)

b) In case of default in payment by 30th June, interest @ 24% p.a. [**Rule 6(3A)(e)**]

13.11. Adjustment of CENVAT Amount in case where Ratio 1 exceeds Ratio 2 [Rule 6(3A)(f)]

a) To summarise, the assessee may take credit of following amount;
CENVAT of whole year x (Ratio 1 – Ratio 2)

Thereafter, final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule, with only change in interest rate from 24% p.a. to 15% p.a.

13.12. A new sub-rule (3AA) is being inserted to provide that a manufacturer or a provider of output service, who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed alongwith interest at the rate of 15% per annum. This proviso is specifically inserted to avoid litigations as the officers were not allowing the options to assesseees once they failed to opt for a particular option by way of intimation to department.

13.13. A new sub-rule (3AB) is being inserted as transitional provision to provide that the existing Rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

13.14. “Value” for the purpose of Rules 6(3) and 6(3A) is as follows [Explanation I to Rule 6(3D)] –

The term ‘value’ for the limited purpose of Rule 6(3) and 6(3A) shall be the following:

13.14.1. Value determined under Section 67 of the Act.

- 13.14.2. In case of trading, value shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or 10% of the cost of goods sold, whichever is more.
- 13.15. **Rule 6(4)** is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no Cenvat credit shall be allowed on such capital goods. It further provides that if the capital goods are installed after the date of commencement of commercial production or provision of service then the two years period shall be computed from the date of such installation of capital goods.
- 13.16. The provisions of sub-rules (1) to (4) of Rule 6 shall not be applicable in case the taxable services are provided, without payment of service tax, to a unit / developer in / of a SEZ for their authorized operations or when a service is exported [or when a service is provided or agreed to be provided by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India] **[Rule 6(7)]**.
- 13.17. For the purpose of Rule 6, a service provided or agreed to be provided shall not be an exempted service when **[Rule 6(8)]** -
- 13.17.1. the service satisfies the conditions specified for export of services vide Rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign currency, and
- 13.17.2. such payment has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.



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