

Recent Amendments in Service Tax for Builders



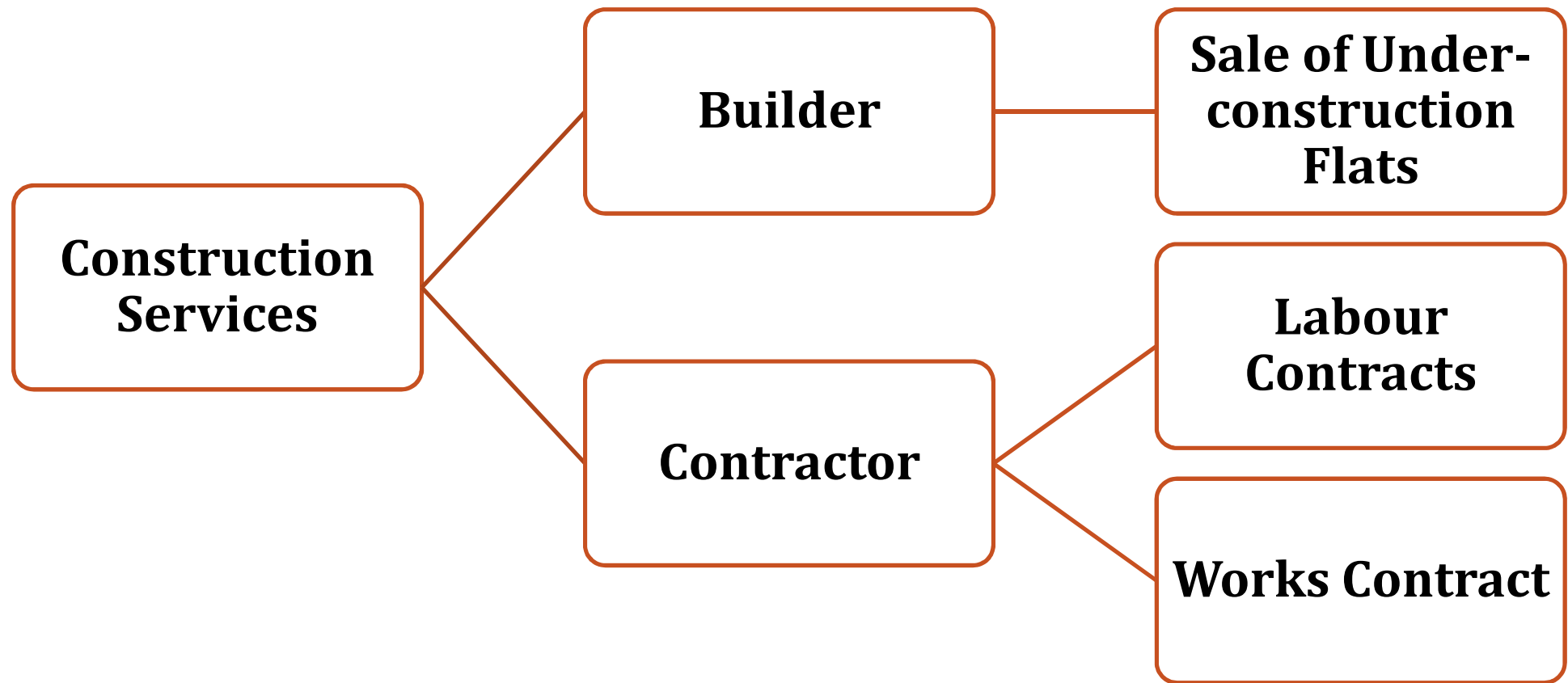
Scope of Discussions



- Background of Construction industry – Service Tax**
- Legal Challenge**
- Exemptions**
- Impact to Builders on Introduction of Krishi Kalyan Cess (KKC)**
- Amendment in Valuation Provisions**
- CENVAT Credit**

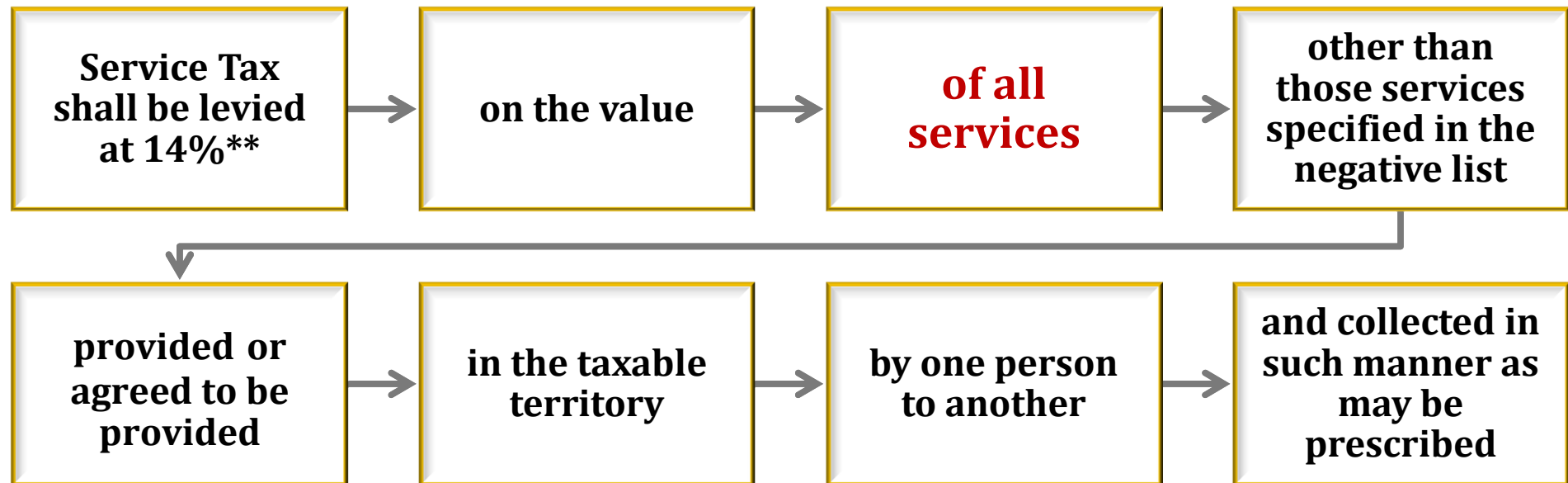
Background of Construction Industry – Service Tax

Service Tax purview



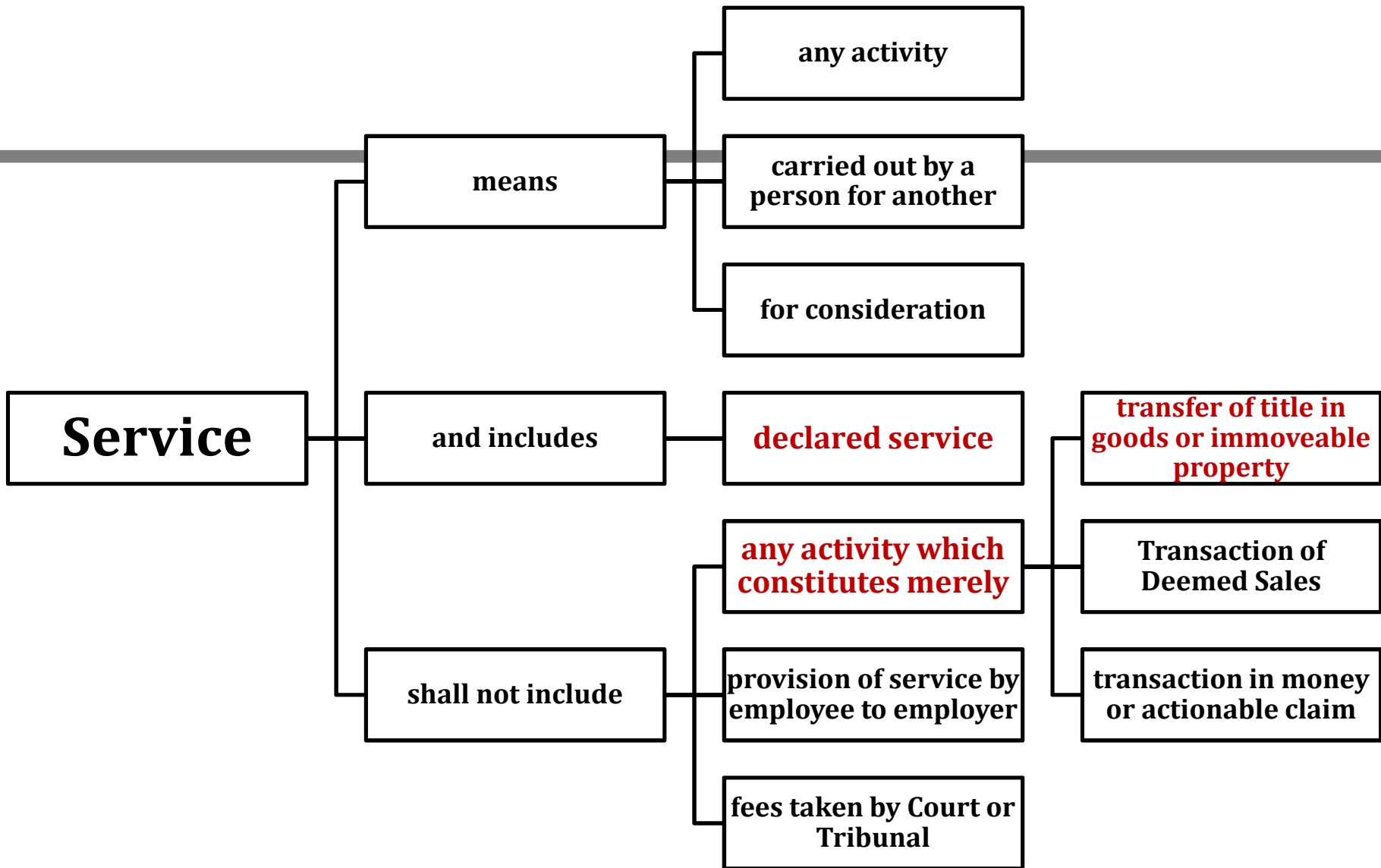
Framework

Dissecting the “CHARGE”



**** - 0.5% SBC w.e.f. 15.11.2015**

**** - 0.5% KKC w.e.f. 01.06.2016**



Declared Services...66E

66E – The following shall constitute declared services, namely :-

(a).....

(b) 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

(c).....

(d).....

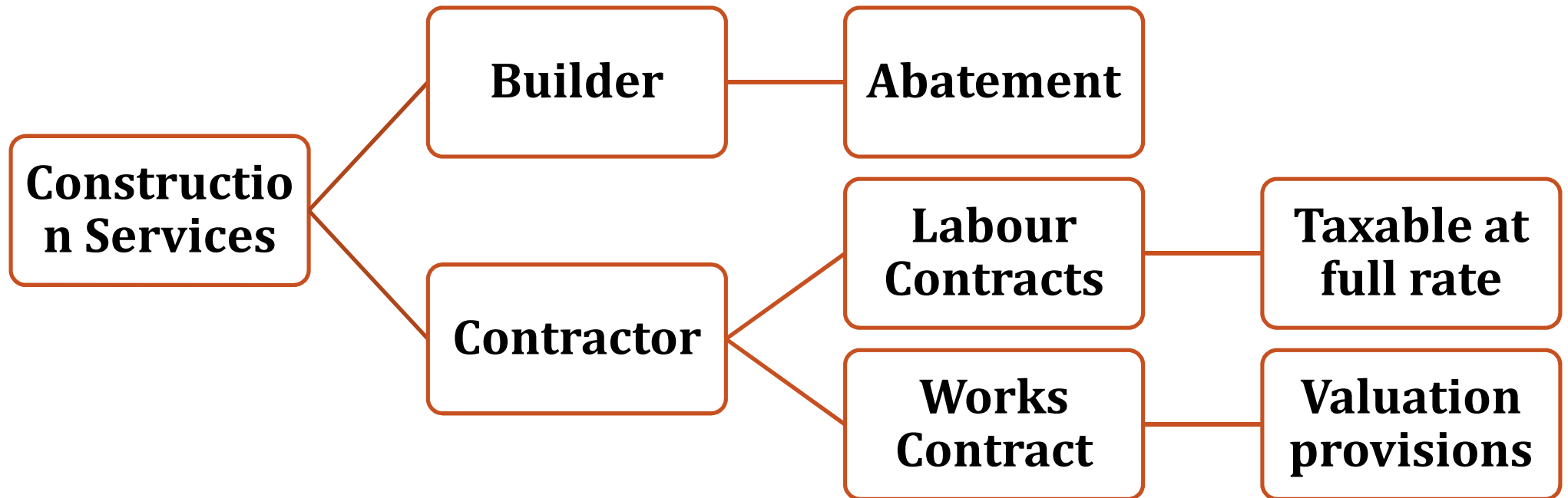
(h) service portion in the ***execution of a works contract***

Under Construction Flats

❑ **Larsen & Toubro & Anr. vs. State of Karnataka & Anr. TS-156-SC-2013-NT**

- ❑ upheld the levy of VAT on sale of under-construction flats on the grounds that it involves an element of works-contract.
- ❑ The developers had undertaken to build for the prospective purchaser. Such construction/development was to be on payment of a price in various installments set out in the agreement.
- ❑ work was undertaken by the developer for and on behalf of the purchaser, and not for himself and the owner of the land.
- ❑ Article 366 (29A) (b) covers all genre of works contract and is not limited to one specie of the contract.
- ❑ Dominant intention theory does not apply in case of works contract

Summarizing the provisions





Legal Challenge



Suresh Kumar Bansal v/s Union of India

Facts of the case -

- ❑ Petition filed by buyer of Flat
- ❑ Service Tax recovered by builder on sale of under-construction flats along with service tax on preferential location
- ❑ Challenge to treat the levy as per old provision (prior to introduction of negative list) as unconstitutional

Suresh Kumar Bansal v/s Union of India

Submission by Petitioner -

- ❑ Supreme Court in L&T and Anr Vs State of Karnataka and Anr 2013 – VIL – 03 – SC – LB has already stated that transaction is a specie of works contract
- ❑ Finance Act, has the power to levy tax only on the service component but has no machinery provision to exclude the land value and material value. Accordingly service tax on “under-construction” service should fail
- ❑ Preferential location – There is no service but merely a tax on location of immovable property
- ❑ Since provision of service requires, a service provider as well as service receiver, therefore, any construction done prior to booking of the flat, cannot be subjected to service tax.

Suresh Kumar Bansal v/s Union of India

Contention of Revenue-

- ❑ Abatement is already provided to identify the service value
- ❑ Bombay High Court in case of MCHI has already decided that the levy is constitutional (Maharashtra Chamber of Housing Industry and Anr Vs Union of India and Ors) 2012-VIL-15-BOM-ST

Suresh Kumar Bansal v/s Union of India

Observations of High Court -

- ❑ The parliament has adequate powers to bring within its purview taxability through deeming provisions
- ❑ The contract between a buyer and builder is a composite contract and not that of a service simplicitor. Rule 2A provides a mechanism for taxation of works contract involving goods and services but does not incorporate a transaction where land is also included
- ❑ The charging provision as well as machinery provision should be provided either in the Act or Rules. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of machinery provisions to ascertain the value of services involved in a composite contract

Suresh Kumar Bansal v/s Union of India

Observations of High Court -

- ❑ The taxability of preferential location was upheld by making the following observation:

“We are unable to accept that such charges relate solely to the location of land. Thus preferential location charges are charged by the builder based on the preference of its customers. They are in one sense a measure of additional value that a customer derives from acquiring a particular unit.....such charges cannot be traced directly to the value of any goods or value of land but are as a result of the development of the complex as a whole and the position of a particular unit in the context of the complex.”



Amendments in Exemptions



Services by Government 25/2012....entry 13(ba) & (bb)

- ❑ Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
 - ❑ *(ba) 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*
 - ❑ *(bb) 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*

Services by Government 25/2012....entry 14(ca)

- ❑ 14. Services by way of construction, erection, commissioning, or installation of original works pertaining to -
 - ❑ *low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority under:*
 - ❑ *The “Affordable Housing in Partnership” component of the Housing for All(Urban) Mission/Pradhan Mantri Awas Yojana*
 - ❑ *Any housing scheme of a State Government*

Exemptions to Sub-contractors...Entry 29(h)

29. Services by the following persons in respective capacities -

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) **sub-contractor** providing services **by way of works contract** to another contractor providing **works contract services which are exempt**;

Services by Government 25/2012....entry 39

- ❑ Services provided by Government except for the ones covered in the Negative list are subjected to tax
- ❑ Reverse Charge Mechanism is made applicable in such cases.
- ❑ Various approvals from Municipalities are required for Builders
- ❑ Exemption is provided for services provided by **government, local authority or a governmental authority** by way of an activity in relation to a function entrusted to a municipality under article 243W of the Constitution.

Impact of KKC



New Levy Vs Change of Rate

❑ Point of Taxation Rules, 2011

- ❑ Rule 4 – Determination of point of taxation in case of change in effective rate of tax
- ❑ Rule 5 – Payment of tax in case of new service

❑ Introduction of Krishi Kalyan Cess (KKC) – whether a change in rate of tax or taxation of new service?

Rule 5 of Point of Taxation Rules, 2011

- ❑ Where a service is taxed for the first time –
 - ❑ No tax shall be payable if invoice is raised and payment is received before such service becoming taxable
 - ❑ No tax shall be payable if payment is received before service becomes taxable and invoice has been issued within 14 days of service being taxes
- ❑ *Explanation 1 – This rule shall apply mutatis mutandis in case of new levy on services*
- ❑ *Explanation 2 – New levy of tax shall be payable on all the cases other than specified above*

Saving Grace.....

Notification 35/2016 – ST dated 23rd June 2016

Exempts taxable services from whole of KKC in case the following conditions are satisfied

Invoice is issued on or before 31st May 2016

Service is completed on or before 31st May 2016



Valuation



Abatement & Credits

12.	Nature of Service	Taxable Portion of Service	Conditions
	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,-	30	<p>(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004</p> <p>(ii) The value of land is included in the amount charged from the service receiver</p>



CENVAT Credit



Amendment in Rule 6 of CCR, 2004

- ❑ Rule 6 provides for non-eligibility of credits used in exempted goods/exempted services
- ❑ Explanation 3 states that “exempted services” shall include an activity which is not a service as defined in section 65B(44) of the Finance Act, 1994
- ❑ Explanation 4 provides that value of exempted service as per above shall be the invoice value/contract value/agreement value
 - ❑ Where value is not available, then value shall be determined based on reasonable means

Impact of Amendment in Rule 6

- ❑ Whether reversal of CENVAT Credit shall be required in respect of the following:
 - ❑ Flats/units which are sold after obtaining the Occupation Certificate/Completion Certificate
- ❑ Whether abated portion of service shall be treated as an exempted service
 - ❑ The law taxes only 30% of service value out of the entire agreement value



THANK YOU !

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