

## Western India Regional Council of ICAI

Subject : Service Tax in Real Estate and Construction Sector

Workshop : Indirect Tax in Real Estate and Construction Sector (Jugalbandi)

Day & Date : Saturday, 16<sup>th</sup> July, 2016

Venue : ICAI Tower, Plot No. C-40, G Block  
Near Standard Chartered Bank,  
BKC, Mumbai – 400051

Faculty : CA. Naresh K. Sheth

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## Preamble

- Abbreviations:
  - The Act – Finance Act, 1994 (Service tax legislation)
  - STR – Service Tax Rules, 1994
  - CCR – Cenvat Credit Rules, 2004
  - POTR – Point of Taxation Rules, 2011
  - Valuation Rules – Service Tax ( Determination of Value) Rules, 2006
- Purpose of presentation is to enlighten participants about service tax implications of :
  - Real Estate sector
  - Construction activities
- Presentation deals with present position only

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## Relevant Definitions

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## Meaning of term "Service"

➤ Service means [Section 65B(44) of the Act]:

- Any activity
- Carried out by a person for another
- For consideration

➤ It includes **declared service** (Section 66E of the Act)

➤ It does not include:

- An activity which constitutes merely, a **transfer of title in** goods or **immovable property**, by way of sale, gift or in any other manner
- Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause ( 29A) of the article 366 of the Constitution.

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## Meaning of term “Declared Service”

➤ **Declared service means** (Section 66E of the Act) :

- 66E (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
- 66E (h) :
  - Service portion in execution of works contract
- 66 E (e):
  - Agreeing to the obligation :
    - To refrain from an act; or
    - To tolerate an act or a situation; or
    - To do an Act

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## Meaning of term “Works Contract”

➤ Service portion in works contract is declared as service u/s 66E(h) of the Act

➤ Works contract service means [ Section 65B (54) ] :

- 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:

<b>Construction</b>	Erection	Commissioning	Installation
<b>Completion</b>	Fitting out	Repair	Maintenance
Alteration	Renovation	Other similar activity	

of / in respect of movable or immovable property

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## Sale of under construction flats – taxability on or after 01.07.2012

- Honorable Bombay High Court in the case of **MCHI vs UOI & Others [2012-TIOL-78-HC-MUM-ST]** has upheld the validity of service tax levy on sale of under construction flats
- Above decision pertains to period prior to 01.07.2012 (pre-negative list based period)
- SLP is pending before Honorable Supreme Court against aforesaid decision of Bombay High Court
- **Position on or after 01.07.2012:**
  - Sale of under construction flats/units is a **declared Service U/s 66E(b)** of the Act
  - Post 01.07.2012, Service portion in Works contract is also a **declared service U/s 66E(h)** of the Act
  - Definition of Service u/s 65B(44) specifically **excludes** transfer of title in immovable property
- Strong legal view is prevalent that sale of completed flat is not a “service” on or after 01.07.2012 and hence not taxable
- Old issue still remains, whether builder is:
  - Seller of property; or
  - Provider of service

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## Classification of Service

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## Builders / Developers & Construction contractors - Classification of Service

- Advance Authority Ruling in the case of **Harekrishna Developers [2008(10) STR 341 (AAR)]** was of the view that construction of Residential complex service being more specific, impugned construction classifiable under such and not under works contract service.
- Section 66E(b) provides that sale of under construction flats is “Construction service”
- Section 66E(h) provides that “service portion in execution of works contract” is a service
- Honorable Supreme Court in the case of **L&T Ltd vs State of Karnataka [2013-TIOL-46-SC-CT-LB]** held that sale of under construction flats/ units is a “works contract”.
- **Service tax to be paid by treating it as ‘works contract’ or ‘construction service’?**
- Difference in tax implications:

Category	Effective tax rate	Cenvat eligibility
Works Contract	6% of Consideration (whether to include land value or not?)	Input services & capital goods – available Inputs – not available
Construction	4.50% of consideration (including value of land)	Same as above

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## Builders and Developers & Construction contracts - Classification of Service

- Settled jurisprudence that when there are two beneficial provisions, it is the option of the assessee to choose the option that is more beneficial to him
- Specific classification prevails over general classification [section 66F(2) of the Act]

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# Valuation

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## Valuation – Section 67

- Service provider is obliged to pay service tax **on value of the services (u/s 66B)**
- Value of the services to be determined U/s 67 of the Act read with Valuation Rules
- Gist of Valuation provisions [Section 67(1)] :

Section	Consideration	Value
67(1)(i)	Received in money	Gross amount charged by service provider for such service
67(1)(ii)	Fully or partly in kind - <b>Where value of consideration is ascertainable</b>	Monetary value of such consideration
67(1)(iii)	Fully or partly in kind - <b>Where value of consideration is not ascertainable</b>	Prescribed manner i.e. as per Rule 3 of Valuations Rules (a) Gross amount charged by service provider for providing similar service in ordinary course of trade (b) Where value is not determinable as per (a), service provider to determine monetary value of consideration * *(which should not be less than cost of providing such service)

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## Valuation – Section 67

- Term ‘consideration’ is defined under Explanation (a) to section 67 of the Act (w.e.f. 14.05.2015) “to include:
- i. Any amount that is payable for the taxable services provided or to be provided
  - ii. Any reimbursable expenditure or cost incurred by the service provider and charged, in course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
  - iii. ....”

## Abatement – Builders and Developers

- Notification No. 26/2012-ST dated 20.06.2012 provides partial exemption (abatement) of 70% in respect of sale of under construction flats/units taxable subject to following conditions:

- No cenvat on inputs
- Value of land to be included in the amount charged from the service receiver

- Effective Tax rate on or after 01.07.2012:

Particulars	01.07.2012 to 31.05.2015	01.06.2015 to 14.09.2015	15.09.2015 to 31.03.2016	01.04.2016 to 31.05.2016	On or after 01.06.2016
Premium Flats/ commercial units	3.708% (12.36% of 30%)	4.20% (14% of 30%)	4.35% (14.50% of 30%)	4.35% (14.50% of 30%)	4.50% (15% of 30%)
Non-Premium flats	3.09% (12.36% of 25%)	3.50% (14% of 25%)	3.625% (14.50% of 25%)		

- Issue – whether abatement can be regarded as valuation provision? Delhi High Court in the case of **Suresh Kumar Bansal Vs UOI & Ors and Anuj Goyal & Ors vs UOI [2016-TIOL-1077-HC-Del-ST]** held that in absence of valuation mechanism, charge on sale of under construction flats/units fails

## Valuation - Works Contract

- Two methods of valuation of works contract service prescribed U/R 2A of Valuation Rules
- **Specific valuation [Rule 2A(i)]:**
  - Value of service portion shall be gross amount of works contract less value of goods (material) transferred in execution of contract.
  - Where VAT has been paid on actual value of material, same value should be taken for computing the value of service portion in the contract
  - VAT / Sales Tax to be excluded from gross amount of works contract

Gross Contract Value	A
(less) VAT / Sales tax	B
(less) value of goods	C
<b>Taxable Value of service</b>	$D = (A - B - C)$
Tax payable would be 15% of D	

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## Valuation - Works Contract

- **Value of service worked out above should be equal to or exceed:**

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

- **Presumptive valuation [Rule 2A(ii)]:**
  - Where value of service is not determined under specific valuation method, value of the service would be specified percentage of contract value
  - In case of an "Original works", 40% of contract value is presumed to be value of service portion **[Rule 2A(ii) (A)]**
  - For Works contract 'other than original works', 70% of contract value is presumed to be value of service portion **[Rule 2A(ii)(B)]**
  - Under presumptive scheme, the vat or sales tax to be excluded from gross contract value
  - **Whether land value can be excluded from total consideration for working out the value of the works contract?**

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## Valuation - Works Contract

- “Original work” means [Explanation 1 to Rule 2A (ii)]:
  - 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
- “work other than original work” means [U/R 2A(ii)(B)]:
  - works contract, not covered under sub clause (A)
  - including works contract entered for:
    - Maintenance or repair or reconditioning or restoration or servicing of any goods; or
    - Maintenance or repair or completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of immovable property

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## Valuation - Works Contract (Free supply of materials)

- “Total amount” for presumptive taxation [Explanation 1(b) to Rule 2A of Valuation Rules]:

Gross Amount Charged for Works Contract	A
Add : Fair Market Value* of All Goods Supplied in or in relation to execution of works contract (Under same contract or separate contract)	B
Add : Fair Market Value* of All Services Supplied in or in relation to execution of works contract (Under same contract or separate contract)	C
Less: Amount Charged for above goods / services	D
Less: VAT / Sales Tax levied thereon	E
Total Amount on which tax to be worked out (A+B+C-D-E)	F
Tax at presumptive rate on F	

\*Fair Market Value of Goods and services so supplied may be determined in accordance with Normally accepted accounting principles

- Controversy as to inclusion of free material supplied by client or material supplied at concessional value – Impact of decision of larger bench of **Delhi tribunal in case of Bhayana Builders (P) Ltd [2013-TIOL-1331]**

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## Works Contract - Effective Tax Rate under presumptive scheme

- Effective tax rate on or after 01.07.2012 applicable to works contract service pertaining to **immovable property**:

Particulars	01.07.2012 to 30.09.2014	01.10.2014 to 31.05.2015	01.06.2015 to 14.09.2015	15.09.2015 to 31.05.2016	On or after 01.06.2016
Original works	4.944% (12.36% of 40% of contract value)	4.944% (12.36% of 40% of contract value)	5.60% (14.00% of 40% of contract value)	5.80% (14.50% of 40% of contract value)	6.00% (15.00% of 40% of contract value)
Other works	7.416% (12.36% of 60% of contract value)	8.652% (12.36% of 70% of contract value)	9.80% (14.00% of 70% of contract value)	10.15% (14.50% of 70% of contract value)	10.50% (15.00% of 70% of contract value)

Notes:

- i. Works contractor eligible for Cenvat of input services and capital goods
- ii. Works contractor **not eligible** for Cenvat of inputs
- iii. Till 30.09.2014, other works was divided into two categories, one related to immovable property (service portion 60% of contract value) and other related to movable property (service portion 70% of contract value)

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## Works Contract – Option Combination under VAT and Service Tax

VAT	Service Tax
Tax payment on actual value of material	Tax at full rate on value worked out by reducing value of material adopted for VAT from contract receipts (exclusive of VAT)
Tax payment on actual value of material	Tax under composition scheme as prescribed U/R 2A(ii)(B) of Valuation Rules, 2006
Tax payment under composition scheme prescribed by VAT Rules of respective state	Tax at full rate on service value worked out by reducing value of material ensuring that value of services should include all cost and expenses listed in Slide No. 16
Tax payment under composition scheme prescribed by VAT Rules of respective state	Tax under composition scheme as prescribed U/R 2A(ii)(B) of Valuation Rules, 2006

- Option under service tax is qua-contract

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## Place of Provision of Service

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## Place of Provision of Service ('POPS')

- POPS is effective from **01.07.2012**
- POPS prescribes the place where services are deemed to have been provided
- "Taxable territory" means whole of India except Jammu & Kashmir [65B(52)]
- "Non-taxable territory" means a territory other than taxable territory [65B(35)]
- Service provided in taxable territory is taxable
- Service provided in non-taxable territory is not taxable

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## POPS – Rule 5 (Property related services)

Nature / Service Description	Probable coverage	Place of Provision
Services <u>directly</u> in relation to immovable property <b>Immovable property U/s 3(26) of General Clauses Act includes:</b> Land Benefits arising out of land Anything attached to the earth or Permanently fasten to the earth	<b>Specifically included in Rule:</b> Real Estate Agent, Hotel Accommodation, Renting / Leasing, Works Contract, Construction, Architect Interior decorator <b>Others by Implication:</b> Repair, Maintenance and Management of property, Engineering service Surveying	Location of immovable property - Subject to applicability of Rule 7 &8

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## POPS – Rule 8 (Both parties are located in taxable territory)

Nature / Service Description	Probable coverage	Place of Provision
When Service Provider and Service Receiver are located in taxable territory	<b>Due to Rule 14, this will override:</b> Rule 3, Rule 4, Rule 5, Rule 6, Rule 7 <b>This rule will <u>not</u> override:</b> Rule 9, Rule 10, Rule 11, Rule 12	Location of service receiver

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## Point of Taxation

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## Point of taxation

- “Point of Taxation” (‘POT’) means the point of time when service shall be deemed to have been provided **[Rule 2(e) of POTR]**
- It signifies date of occurrence of taxable event
- Service tax liability accrues on POT date
- Continuous supply of service would mean **[Rule 2(c) of POTR]**:
  - Services provided/agreed to be provided continuously, or recurrent basis,
    - Under a contract
    - for a period exceeding 3 months
    - With the obligation for payment periodically or from time to time
  - Any service **notified** as continuous supply of service
- Construction service and works contract service is a “continuous supply of service” for POTR

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## Point of taxation

- POT U/R 3 would be earlier of:
  - Invoice date where invoice issued within 30 days of completion of service; or  
Date of completion of service where invoice is not issued within 30 days of date of completion of service
  - Date of receipt of payment
  - Where advance is received towards provision of taxable service, the POT shall be date of receipt of such advance
- Date of completion for continuous supply of service shall be:
  - Date of completion of an event
  - Requiring service receiver to make payment to service provider as per contract

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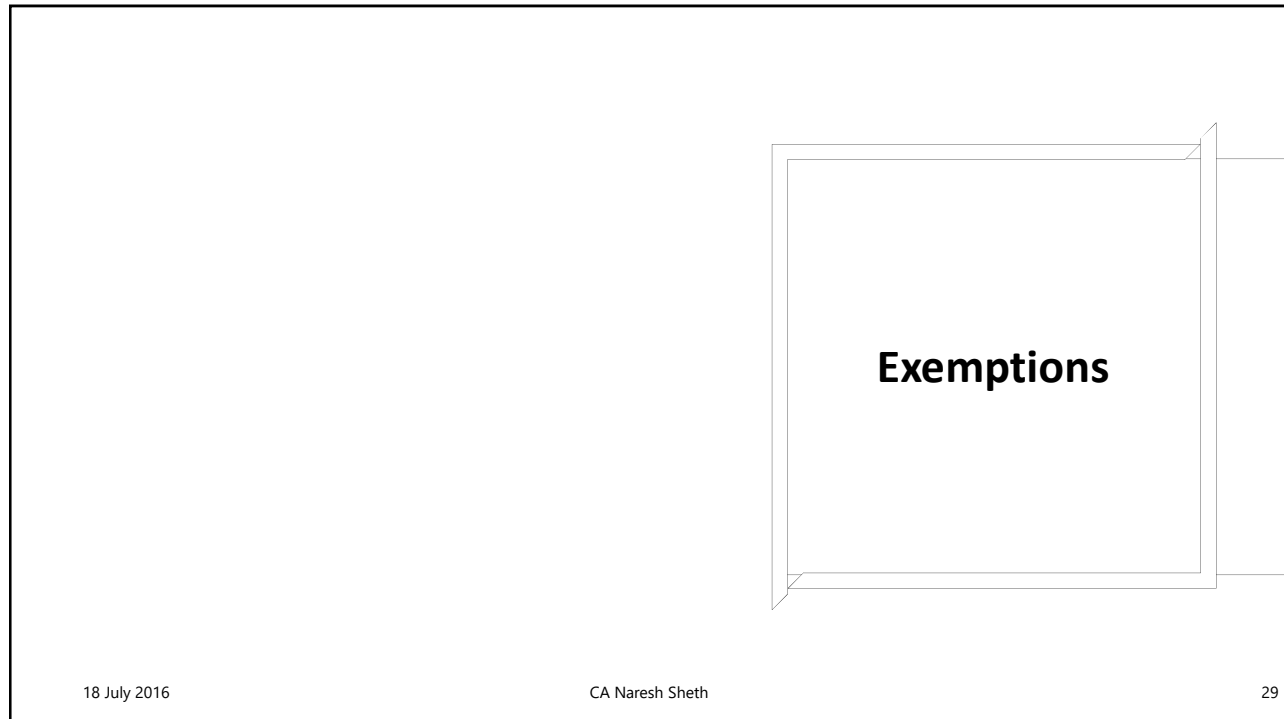
## Point of taxation – Reverse Charge (Rule 7)

- POT in respect of services where service recipient is liable to pay service tax is the **date on which payment is made**.
- If said payment not made within 3 months then POT shall be the date immediately following the said period of 3 months
- **POT in case of Government service [Fourth Proviso to Rule 7]:**  
Point of Taxation in such case **will be earlier of:**
  - Due date for payment as specified in the invoice, bill, challan or any other document issued by Government or local authority demanding such payment; **OR**
  - Date of payment for such services

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## Relevant entries in Mega Exemption Notification on or after 01.04.2016

Entry No.	Description of Service
12	<p>Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services to <b>Government, local authority or governmental authority in respect of:</b></p> <ul style="list-style-type: none"> <li>• a historical monument, archaeological site or remains of national importance, etc</li> <li>• Canal, dam or other irrigation works</li> <li>• Pipeline, conduit or plant for (i) water supply (ii) water treatment (iii) sewerage treatment or disposal</li> </ul>
13 (a), (b) and (c)	<p>Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services in respect of:</p> <ul style="list-style-type: none"> <li>• Road, bridge, tunnel, or terminal for road transportation for use by general public</li> <li>• A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana</li> <li>• A building owned by an entity registered u/s 12AA of Income Tax Act, 1961 meant predominantly for religious use by general public</li> </ul>

## Relevant entries in Mega Exemption Notification

Entry No.	Description of Service
13 (ba) and (bb)	<p>A civil structure or any other original works pertaining to the ‘</p> <ul style="list-style-type: none"> <li>• In-situ rehabilitation of existing slum dwellers using land as a resource through private participation” under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana, only for existing slum dwellers</li> <li>• “Beneficiary-led individual house construction / enhancement” under Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana”</li> </ul>
14 (a), (b), (d), (e)	<p>Construction, erection, etc of original works pertaining to:</p> <ul style="list-style-type: none"> <li>• Railways excluding monorail or metro</li> <li>• Single residential unit otherwise than as a part of residential complex</li> <li>• post-harvest storage infrastructure for agricultural produce including a cold storage</li> <li>• Mechanised food grain handling system, machinery or equipment for units processing agriculture produce as food stuff excluding alcoholic beverages</li> </ul>

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## Relevant entries in Mega Exemption Notification

Entry No.	Description of Service
14 (c) and (ca)	<ul style="list-style-type: none"> <li>• Low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under: <ul style="list-style-type: none"> <li>○ Scheme of ‘Affordable Housing in Partnership” framed by Ministry of Housing and Urban Poverty Allevation, GOI</li> <li>○ The ‘Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana</li> <li>○ Any housing scheme of state government</li> </ul> </li> </ul>

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## Exemptions restored and withdrawn

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## Entry 12A - Specified Services provided to Government, Local Authority, etc

### ➤ Entry 12A of Mega Exemption Notification r.w. Section 102 of the Act:

Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services to **Government, local authority or governmental authority in respect of :**

Specified Service relating to	01.04.2015 to 29.02.2016	Contracts executed prior to 01.03.2015	Contracts executed on or after 01.03.2015
a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession	Exemption Restored	<ul style="list-style-type: none"> <li>Exempt subject to following conditions:               <ul style="list-style-type: none"> <li>- Contracts entered prior to 01.03.2015</li> <li>- stamp duty paid prior to such date</li> </ul> </li> <li>Exemption available till <b>31.03.2020</b></li> </ul>	Taxable
a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;	Exemption Restored		
a residential complex predominantly meant for self-use or the use of their employees or person specified in Explanation 1 to section 65B(44)	Exemption Restored		

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## Entry 12A - Specified Services provided to Government, Local Authority, etc

- All above-referred services were exempt under Entry 12 till 31.03.2015
- Exemption was withdrawn w.e.f. 01.04.2015 including for ongoing projects
- Service provider is entitled to refund of service tax paid on above referred services provided during the period 01.04.2015 to 29.02.2016
- An application for such refund is to be made within **6 months** from 14.05.2016, subject to condition of unjust enrichment

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## Specified Construction, Erection, Commissioning or Installation Services

- **Entry 14A of Mega Exemption Notification r.w. Section 103 of the Act :**

Construction, erection, commissioning or installation of Original Works pertaining to :

Pertaining to	01.04.2015 to 29.02.2016	Contracts executed prior to 01.03.2015	Contracts executed on or after 01.03.2015
<ul style="list-style-type: none"> <li>• <b>Airport</b></li> <li>• <b>Port</b></li> </ul>	Exemption Restored	<ul style="list-style-type: none"> <li>• Exempt subject to following conditions:               <ul style="list-style-type: none"> <li>- Contracts entered prior to 01.03.2015</li> <li>- Stamp duty on such contract paid prior to such date</li> <li>- Facts as to execution of contract to be certified by Ministry of Civil Aviation or Ministry of Shipping</li> </ul> </li> <li>• Exemption available till <b>31.03.2020</b></li> </ul>	Taxable

- Service provider is entitled to refund of service tax paid on above referred services provided during the period 01.04.2015 to 29.02.2016
- An application for such refund is to be made within **6 months** from 14.05.2016, subject to condition of unjust enrichment

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## Construction, Erection, Commissioning or Installation Services – Monorail or Metro

- Exemption in respect of monorail & metro services is withdrawn **w.e.f. 01.03.2016**
- However, exemption in respect of above work for which contracts were entered into before 01.03.2016 (on which appropriate stamp duty is paid) **shall continue**
- Taxability summarized as under:

Specified services pertaining to	Up to 29.02.2016	On or after 01.03.2016
Railway	Exempt	Exempt
Monorail, Metro ( <b>contracts entered before 01.03.2016</b> )	Exempt	Exempt
Monorail, Metro ( <b>contracts entered on or after 01.03.2016</b> )	N.A.	<b>Taxable</b>

## Reverse Charge Mechanism

## Reverse Charge – Summarized Position (Relevant services) on or after 01.06.2016

Nature of Service	Service provider	Service recipient	Liability of Service Provider	Liability of Service Receiver
Aggregator Services (01.03.2015)	Service providers providing services under the brand name of aggregator	Aggregator; or Representative of aggregator; or Agent of aggregator	Nil	100% (15%)
Director's services (07.08.2012)	Director of a company	Company	Nil	100% (15%)
Rent-a-cab (abatement availed)	Non-corporate entity* not engaged in same business	Business entity (registered as a body corporate) in taxable territory	Nil	100% (6.00%)
Rent-a-cab (abatement not availed)	Non-corporate entity* <u>not engaged in same business</u>	Business entity (registered as a body corporate) in taxable territory	50% (7.50%)	50% (7.50%)

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## Reverse Charge – Summarized Position (Relevant services) on or after 01.06.2016

Nature of Service	Service provider	Service recipient	Liability of Service Provider	Liability of Service Receiver
Specified government services	Government or local authority	Business entity located in taxable territory	Nil	100% (15%)
Supply of manpower or security services (07.08.2012)	Non-corporate entity*	Business entity (registered as a body corporate) in taxable territory	Nil	100% (15%)
Works Contract	Non-corporate entity*	Business entity registered as body corporate located in taxable territory	50%	50%
- Original Works			(3.00%)	(3.00%)
- Other Works			(05.25%)	(05.25%)

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## Reverse Charge – Summarized Position (Relevant services)

Nature of Service	Service provider	Service recipient	Liability of Service Provider	Liability of Service Receiver
Service availed from person located outside India (Import of service) (18.04.2006)	Person in non-taxable territory	Person in taxable territory (other than Government, specified charitable trust and individual for non-business purpose)	Nil	100% (15%)

\*Non – Corporate Entity – Individual, HUF, Partnership firm, LLP and AOP

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Government Services  
Taxable w.e.f 01.04.2016

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## Whether following are service liable to tax under RCM?

Description of service	Taxability
Statutory payments to the Government	Yes. It is clarified vide Circular No. 192/02/2016-ST dated 13.04.2016 ('ST Circular') that any activity undertaken by government or a local authority against a consideration constitutes service and is liable to service tax. It is immaterial whether such activities are undertaken as statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in statute or not
Taxes, duties, cesses	No. It is clarified vide ST Circular that taxes, cesses or duties are not consideration for any particular service as such and hence not liable to service tax. It includes Excise duty, service tax, custom duty, income tax, wealth tax, property tax, stamp duty, octroi, profession tax, octroi, entertainment tax.
Fines, Penalty for infringement of law, Contractual penalties	No. It is clarified vide ST Circular that Fines and Penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are <b>not liable to Service Tax</b> Contractual penalties payable to government or local authority are exempted vide insertion of Entry 57 in Mega Exemption Notification
Compounding fees, late fees, condonation fees etc. paid	View may be taken that compounding fees, late fees or condonation fees are usually for regularizing any violation or breach of rules or regulation of statute and hence should be treated at par with penalty for infringement of law. It is may be disputed by department.

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## Whether following are service liable to tax under RCM?

Description of service	Taxability
Fees to Ministry of Corporate Affairs for uploading returns / forms	Taxable if such charges exceed Rs.5000/- and Reverse charge applies
Fees paid to Registrar of Firms	Services by way of registration required under any law is exempt vide Entry 58 of Mega Exemption Notification. If fees paid are for registration then same is exempt.
License fees for RMC plant, permit fees for RMC plant	Taxable if such charges exceed Rs.5000/- and Reverse charge applies
Advertisement hoardings permission fees	Fees charged by MCGM for grant of hoarding approval. Payment made for permissions or licenses granted by local authority are liable to service tax. It is liable to RCM if such charges exceed Rs.5000/-
Estate department fee for renewal of Advertisement hoardings	Taxable if such charges exceed Rs.5000/- and Reverse charge applies

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## Whether following are service liable to tax under RCM?

Description of service	Taxability
Shop and establishment license fees to Corporation	If treated as registration, it is exempted vide entry 58 of Mega exemption notification. Hence such fees paid to corporation are exempt. If treated as license, it might be taxable provided it exceeds Rs. 5000/-
Registration charges for property/ Stamp duty	Taxes, Duties or Cesses are not consideration for any service. It is not liable to service tax.
Plan approval fees, regularization premium, scrutiny fees, development charges paid to Corporation	Services by government or local authority or governmental authority in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt vide Entry 39 of Mega Exemption Notification. Such functions include Regulation of land use, Construction of buildings, Slum Improvement and Rehabilitation, Water Supply and other services listed in Twelfth Schedule to the Constitution Hence, said fees are exempt vide Entry 39.
Appeal fees paid to Tribunal/ taxation authorities, Court fees	Excluded from the definition of service u/s 65B (44) of the Act and hence not taxable.

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## Whether following are service liable to tax under RCM?

Description of service	Taxability
Consultancy fees for carrying out level survey by auto level	Taxable if such charges exceed Rs.5000/- and Reverse charge applies
Land premium	If it is a payment for acquiring development right in the Government land, it can be regarded as transfer of title in immovable property not liable to service tax. If it is other premium, it is advisable to take conservative view and discharge service tax liability under RCM
Scrutiny/Revalidation fees paid to MCGM	Exempted under Entry 39 of Mega Exemption Notification
Extra Water & Sewerage charges paid to MCGM	Exempted under Entry 39 of Mega Exemption Notification
Capitation fee for CFO NOC paid to MCGM	Exempted under Entry 39 of Mega Exemption Notification
Development Charges, Infrastructure charges	Exempted under Entry 39 of Mega Exemption Notification

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## Cenvat Credit

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## Cenvat Credit - Some Basics

- Builder / Developer availing abatement or works contractor are eligible to take cenvat credit of only:
  - input services; and
  - capital goods
- Cenvat credit not allowed in respect of 'inputs'
- No Cenvat in respect of Swachh Bharat Cess (SBC)
- **Cenvat credit of Krishi Kalyan Cess (KKC):**
  - KKC is cenvatable
  - KKC Cenvat can be utilized only for the payment of KKC [Rule 3(7)(d) of CCR].
  - Cenvat of Excise duty, service tax, etc cannot be utilized for payment of KKC [tenth proviso to Rule 3(4) of CCR]

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## Cenvat Credit – Input Services

- **Time limit for availment of cenvat credit [5<sup>th</sup> proviso to Rule 4(7) of CCR]**
  - **Within one year** of the date of issue of any of the documents specified in Rule 9(1) of CCR
  - Aforesaid time limit does not apply to services provided by government or local authority any other person by way assignment of right to use any natural resource
- **Point of availment:**
  - On or after the day on which invoice / bill / challan for input service is received (w.e.f. 01.04.2011)
  - If payment not made within 3 months from the date of such invoice / bill / challan, the Cenvat is to be reversed
  - Such reversed Cenvat can be re-claimed on the date of payment of such invoice / bill / challan
  - For service tax paid under reverse charge mechanism, Cenvat can be claimed on or after the day on which service tax is paid.

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## 'Exempted Service' for the purpose of Rule 6 of CCR

- **Explanation 3 and 4 to Rule 6(1) of CCR [w.e.f 01.04.2016] :**
  - **For the purpose of Rule 6 CCR**, term 'exempted service' will include **services excluded from the definition of 'service' u/s 65B(44) of Finance Act**
  - Value of such exempt service shall be:

Where value is available	Invoice / agreement/ contract value
Where value is not available	Value to be determined by using:  Reasonable means consistent with the principles of valuation contained in the Act and Rules made there under

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## 'Exempted Service' for the purpose of Rule 6(1) of CCR

- For the purpose of Rule 6(1) 'exempted service' would also include following activities which are excluded from definition of 'service' u/s 65B(44):
  - Transfer of title in goods or immovable property by way of sale, gift or in any other manner
  - Deemed sales as defined as defined under article 366(29A) of the Constitution:
    - Material component in Works Contracts
    - Transfer of rights to use goods (hire or lease liable to VAT)
    - Food / beverages component is restaurant sales or outdoor catering.
  - Transaction in money or actionable claim
  - Service by employee to employer in course of employment
  - Court/Tribunal fees
- **Whether Cenvat credit attributable to above referred transactions needs to be reversed?**

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## Words of Caution

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- Application of various provisions and its implications will vary on facts of the case and law prevailing on relevant time
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