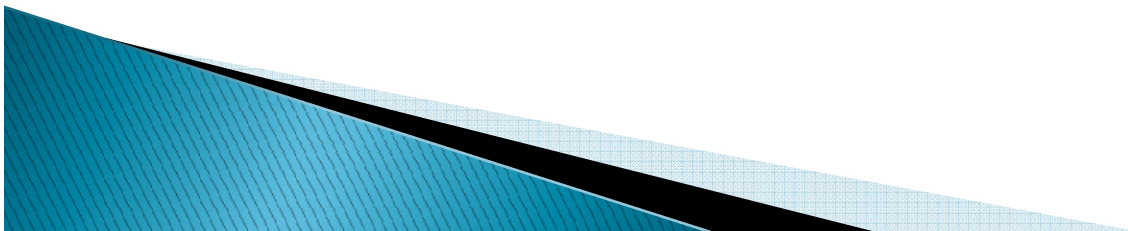


Impact of Service Tax on Redevelopment of Co-operative Societies

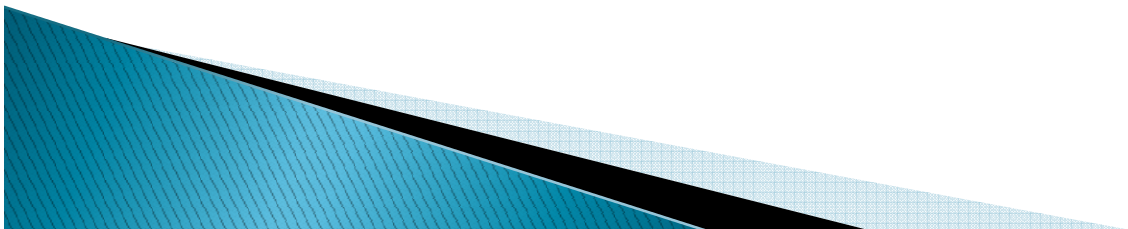
By
BHARAT RAICHANDANI
ADVOCATE



NEW LEVY

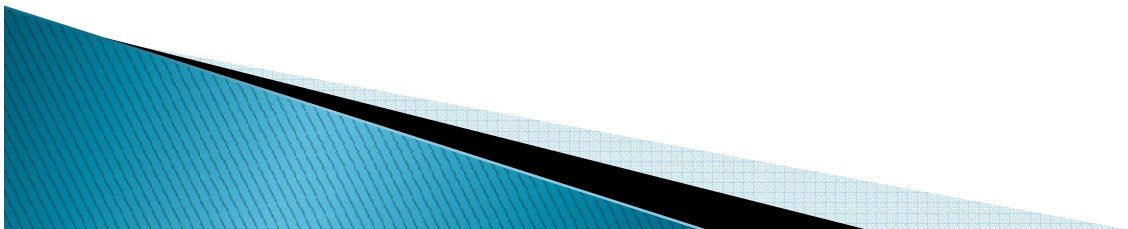
- Section 66B:

There shall be levied a tax at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.



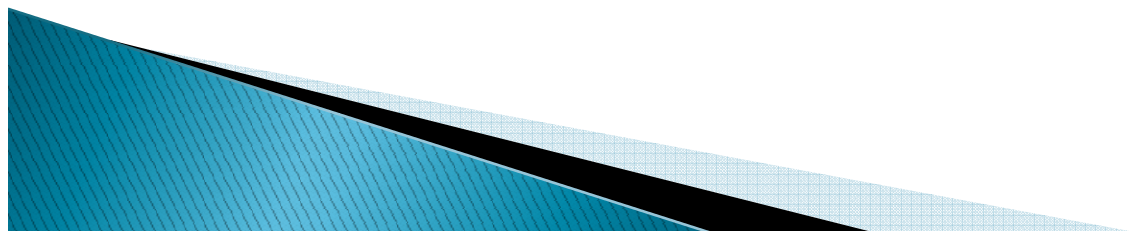
PHRASE – AGREED TO BE PROVIDED

- Not defined in the Act
- Guidance Note:
 - Services taxable on agreement even before actual provisioning
 - Advances retained on cancellation of contract taxable



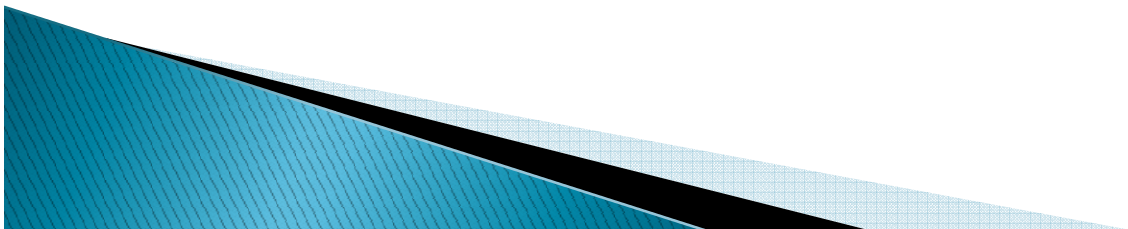
SERVICE-DEFINED

- Section 65B(44) defines 'Service' as:
 - any activity carried out by a person for another for consideration
 - And includes Declared Services
 - Not to include:
 - Mere 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 article 366 of the Constitution."*



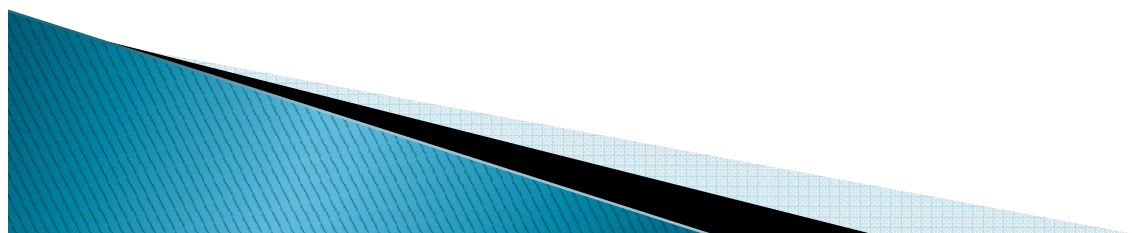
ACTIVITY

- Not defined in the Act
- Guidance Note:
 - Meaning as understood in common parlance should be given
 - Activity could be active or passive so to include act of forbearance etc



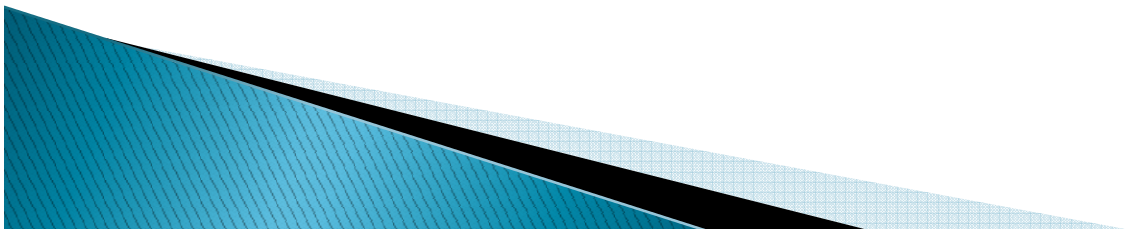
CONSIDERATION

- Not defined in the Act
- Guidance Note:
 - Definition of consideration from Indian Contract Act, 1872 could be borrowed
 - Anything which the receiver does or abstain from doing for receiving the service
 - Would include both monetary as well as non-monetary
 - Section 67 to determine value of non-monetary consideration



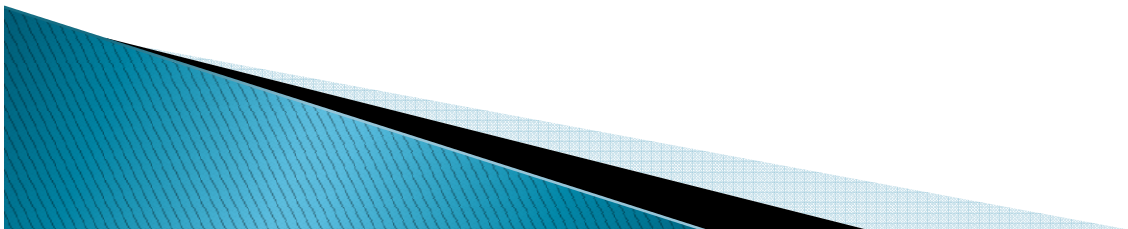
EXEMPTIONS RELATED TO BUILDER AND CONSTRUCTION CONTRACTOR

- Services by way of construction, erection, commissioning, or installation of original works pertaining to:–
 - An airport, port or railways, including monorail or metro
 - A single residential unit otherwise than as a part of a residential complex;
 - low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’



EXEMPTIONS RELATED TO BUILDER AND CONSTRUCTION CONTRACTOR

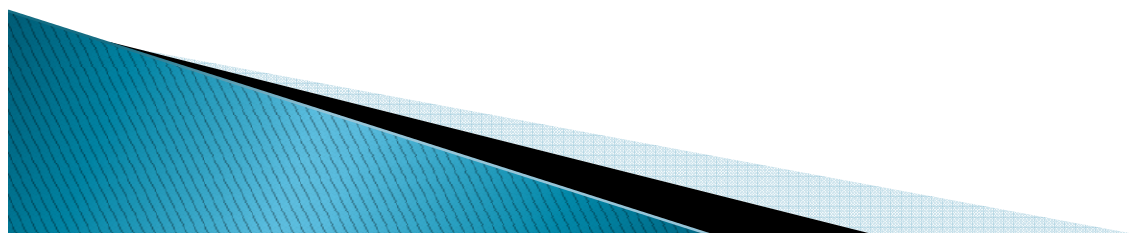
- Services provided by an unincorporated body or a non-profit entity registered under applicable law to its own members by way of reimbursement of charges/share of contribution :
 - Up to Rs.5,000/- per month per member for sourcing goods or services from a third person for common use of members in housing society/residential complex



REVERSE CHARGE



- Whether service provider to charge full rate of tax?
- Payment of entire tax by service provider:
 - Service recipient absolved?
- Different options be exercised by provider and receiver?



SOME ISSUES



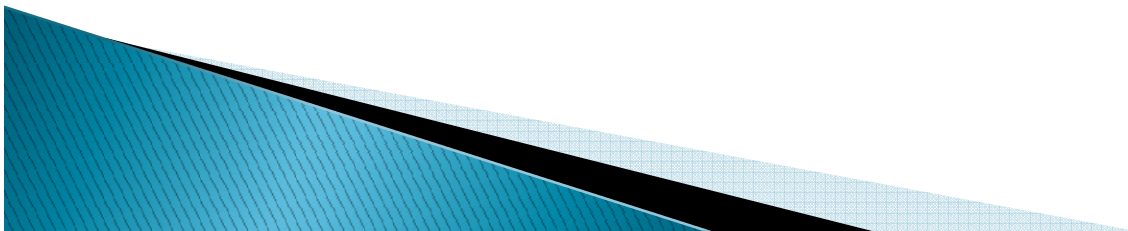
- ▶ Larsen & Toubro – SC (FB)
- ▶ Development rights?
- ▶ Redevelopment rights?
- ▶ Option contracts?
- ▶ 99 year lease?
- ▶ Stamp duty?

Some ISSUES



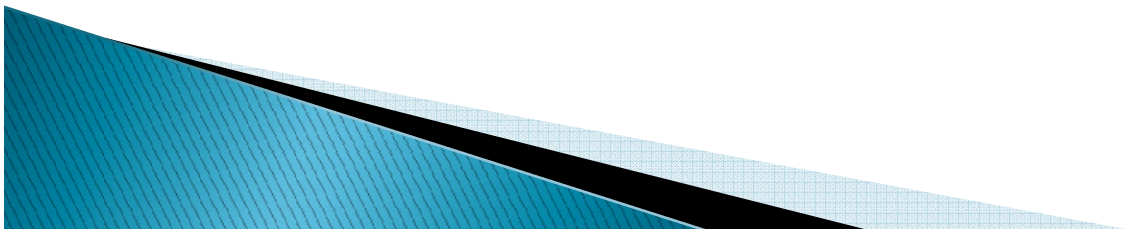
- ▶ Land Value?
- ▶ Construction pre July, 2010 – Sale After 2010?
- ▶ Electricity charges?
- ▶ Reimbursements?
- ▶ Security deposits – maintenance or repair service – Pre formation of society?
- ▶ Input service credit– taxable as well as non taxable supplies?

VALUATION



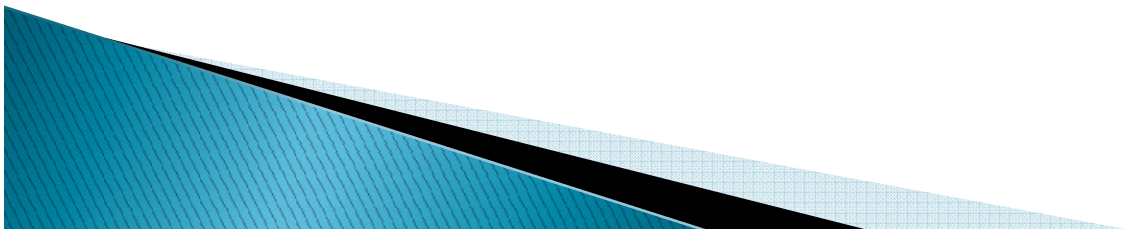
VALUATION : RULE 2A

- W.e.f. July 1, 2012
- Works Contract Service
 - Rule 2A substituted
 - Value of service = Gross amount charged less actual value of goods transferred in execution
 - Actual value of goods for VAT purposes to be considered for determining material value



VALUATION: RULE 2A

- Where value is not determined then:
 - Service value shall be computed as :
 - Original work – 40% of total amount charged
 - Contract for maintenance or repair, renovation or restoration of any goods – 70%
 - Other works – 60%
- 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



VALUATION: RULE 2A

- 'Total amount' means:

Gross amount charged

Plus

FMV of all goods and services supplied in or in relation to the contract whether or not supplied under the same contract

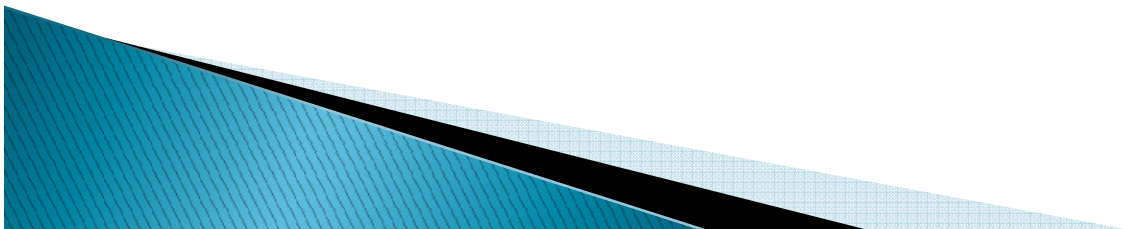
Less

The amount charged for such goods and services, and

Less

VAT or sales tax levied thereon

- Specific bar inserted for availing excise duty credit in respect of inputs used in works contract services



Thank you

Bharat Raichandani
Advocate

b_raichandani@yahoo.com

