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**CONSTRUCTION  
FEDERATION OF  
INDIA**

January 7, 2014

**Smt. Praveen Mahajan**  
Chairman  
Central Board of Excise & Customs (CBEC)  
Department of Revenue,  
North Block,  
NEW DELHI-110001



Madam,

**Sub: Anomaly in applicability of Service Tax on Water Supply Projects/  
Water Irrigation Projects of State Governments and State Government  
Undertakings primarily not intended for the purpose of commerce or  
industry but for civic amenities**

Construction Federation of India (CFI) is the representative body of leading engineering firms of the country engaged in the construction of critically important infrastructure development projects such as dams, power stations, highways, ports and similar works. They have been integral part of the nation building process over several decades and are today playing a critical role towards achieving the highly ambitious infrastructure creation targets.

We are writing this to bring to your kind notice the anomalies in applicability of Service Tax on most of the Water supply projects/Water Irrigation projects of the State Governments or State Government Undertakings/Enterprises not intended for the purpose of Commerce or Industry but to provide drinking water or water for irrigations as civic amenities.

When Service Tax was introduced on Construction Service effective from 10.9.2004, CBE&C in its Circular dated 17.9.2004 pertaining to the issues of Service Tax in Finance Bill, 2004, clarified to the trade and industry that construction of civic amenities for Government would not be taxed. Works Contracts were reclassified as Works Contract Services which were in fact included under "Commercial or Construction Service till 01.6.2007. Hence the ratio of clarification issued under Notification dated 17.09.2004 holds good even after 1.6.2007 in respect of all Works contract including EPC/Turnkey Projects even after 01.06.2007.

.....2/-



: 2 :

Further, when such projects were undertaken by the State Government Departments / Undertakings/Enterprises in several States, the judiciary came to their rescue upholding that water supply projects/water irrigation projects undertaken by these State Govt. Departments /State Govt. Undertakings/ Enterprises are to provide drinking water/water for irrigation and such Undertakings cannot be construed as projects intended for business or commerce though they may charge for providing such public amenities and hence would not attract service tax.

Vide Circular No.116/110/2009-ST dated 15<sup>th</sup> September, 2009 CBE&C has clarified that canal system built by the Government or Government agencies is not falling under commercial activity and hence such projects would not attract service tax.

In the said Circular it has also been clarified that works contract in respect of dams, road, airports, railways, transport terminals, bridges and tunnels executed through EPC/Turnkey are exempt from payment of service tax as these services are excluded from the definition. However, the said Circular has missed to include EPC/Turnkey Projects of State Government /State Government Departments /State Government Undertakings/Enterprises also from the exemption of Service Tax.

Subsequently, the Department of Revenue issued a Notification No.41/2009-ST dated 23.10.2009 exempting works contracts for canals other than those primarily used for the purpose of commerce or industry from the whole of service tax. This Notification has given an impression that canals are exempted only from 23.10.2009 and they are chargeable to Service Tax prior to 23.10.2009. This Notification has virtually superseded the retrospective effect of Clarification Circular dated 15.9.2009. Consequently, this has prompted the Department to initiate action to recover service tax for the period.

As we all aware, the Central and the State Governments have been taking various effective measures to promote development of public amenities especially in respect of Drinking Water/Water for Irrigation to meet the growing public demand and that is why in many States such Projects are also undertaken by State Government Departments / Undertakings / Enterprises.

However, in the absence of clarity on non-applicability of Service Tax in respect of EPC/Turnkey Contracts of State Governments/State Government Undertaking/Enterprises, the Revenue is issuing show cause notices/ demanding services tax on such projects.

....3/-



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The Government's intention not to tax such projects is strongly fortified in the Negative List of Service Tax introduced from 01.07.2012 wherein Services provided to Government, a local authority or a Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works, pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal are exempted from Service Tax.

In view of the fact that in some states these projects are also undertaken by State Government Undertakings/Enterprises established with 90% or more participation by way of equity or control by the Government, other part of the definition i.e. "and set up by an Act or the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution" needs to be dropped in the public interest.

Under the circumstances, the CFI request for the following:

- a. Clarification about availability of exemption to EPC/Turnkey projects for Water supply/Water Irrigation projects including canals (i) Water supply (ii) Water treatment, or (iii) Sewerage treatment or disposal of State Government/State Government Undertakings/Enterprises;
- b. Amendment to definition of "Government Authority" to read as "a Board or an authority or any other body established with 90% or more participation by way of equity or control by Government intended to carry out any function of canal, dam or other irrigation works; pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

In view of the difficulties faced by the members, CFI requests that an early clarification and amendment would not only provide clarity to post construction work provided to these civic amenities but also minimize the avoidable litigation cost.

With kind regards,

Yours sincerely,

(Siddharth Singh)  
Secretary General



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January 7, 2014

**Shri M. Vinod Kumar**  
Joint Secretary (TRU-II)  
**Central Board of Excise & Customs (CBEC)**  
Department of Revenue,  
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