

June 28, 2013

Smt. Praveen Mahajan
Chairperson,
The Central Board of Excise & Customs,
Ministry of Finance
Department of Revenue
Room No.158-B, North Block
New Delhi-110 001

Madam,

Sub: Need for Review/ Clarification regarding Mega Exemption notification No 25/2012-ST in respect of Road, Bridges, Irrigation, Dam, Port, Railways and Tunnel Projects etc.

Construction Federation of India (CFI) is the representative body of leading engineering and Civil construction firms of the country, engaged in the execution of various infrastructure projects viz. dams, power stations, highways, ports, Buildings and other Civil contracts etc. thereby playing a critical role in nation's development and creation of infrastructure.

The members of CFI are of the view that there is ambiguity on the captioned subject and accordingly, this representation is submitted for your favourable consideration and necessary action.

The facts pertinent to the issue are as under:

To execute the various infrastructure projects, the Govt. / Semi Govt./ Private bodies and other Entities incorporated through Public Private Partnership etc. are awarding the 'Construction Contracts' to Contractors.

1. For execution of these 'Construction Contracts', the employer has following 'options':
 - a) Award pure 'Service Contract' of construction, wherein entire material component required and incorporated in the project is being supplied 'free of cost' by the employer.
 - b) Award 'Divisible Contract', wherein the 'cost of material component' required and incorporated in the project as well as 'cost of various services component' for construction are distinctly defined in the contract agreement.
 - c) Award 'Works Contract' i.e. a 'Composite Contract', wherein Contract Price is on **all inclusive basis** i.e. Supply of materials, Services and all applicable 'Taxes & Duties'.
2. It should be appreciated that execution of captioned infrastructure projects viz. Road, Bridges, Irrigation, Dam, Port, Railways and Tunnel Projects etc. requires huge skilled & unskilled workers, which are unorganized and have limited knowledge in respect of intricacies of accounting and taxation rules. Many times these infrastructure projects are scattered and located at

far flung areas and getting the work force at such distant place itself is a challenging task.

3. The construction companies for execution of various construction activities award sub-contract, to leader of group of workers (consisting of skilled and unskilled workers) known as PRW's on 'Piece Rate Basis'. For such sub-contract work, such Piece Rate contractors deploy, control and supervise group of skilled and unskilled workers as per the requirement of the activity, wherein the main contractor provide them the desired incorporated goods as 'free of cost'.
4. It is an admitted fact that the 'Construction Services' consist of 'bundle of services' and defining of each 'Construction Service' is **"impractical"**. For example, Construction of road may consist of 'n' number of construction activities /Services. Some of the related 'Construction services/ activities' executed through sub-contracting the work to PRWs on 'Piece Rate Basis' are enumerated as under:
 - i) Earth excavation and its disposal @ per cum
 - ii) Earth filling, Grading & Compaction @ per cum / per sqm
 - iii) Demolition of existing structures & its relocation on Lumpsum basis or per unit basis.
 - iv) Shuttering fixing and removal @ per sqm
 - v) Cement / Bituminous Concrete Mixing, Placing & compaction @ per cum
 - vi) Curing of concrete @ per cum
 - vii) Reinforcement steel Cutting, bending & placement @ per MT
 - viii) Demarcation and painting of road signs @ per RM.
 - ix) Construction of Reinforced Earth wall @ per RM.
 - x) Boulder Pitching and Turfing @ per sqm/ per cum
 - xi) And there are similar 'n' number of allied construction services / activities which are difficult to pen down.
5. After mechanization, for execution of the aforesaid activities, the desired machinery is either some time provided by the main contractor or some time brought by the Sub-contractor i.e. PRWs themselves depending on nature and quantum of work. Since, the desired goods required to be incorporated in the works are mostly supplied free of cost by the main contractor and hence such sub-contract given on 'Piece Rate Contract/ work is a pure 'Construction Service contract' other than 'Works contract'.

In the background of above facts, the status of applicability of 'Service tax' in respect of 'Construction Services' related to exempted projects viz. Road, Bridges, Irrigation, Dam, Port, Railways and Tunnel Projects etc. prior to 01.07.2012 and afterwards was as under.

A) Status of applicability of 'Service tax' for providing the services in respect of construction of Road, Bridges, Irrigation, Dam, Port, Railways and Tunnel Projects Prior to 01.07.2012:

Following three enactments of Service Tax rules /notifications provides exemptions in respect of Services rendered for activities related to Road, Bridges, Irrigation, Dam, Port, Railways and Tunnel Projects etc.

I. Services defined u/s 65 (25b) i.e. "Commercial or industrial construction Service' Effective w.e.f. 10.09.2004.

Under this chapter, the 'Construction services' specifically excludes the services provided in respect of construction of roads, airports, railways, transport terminals, bridges, tunnels and dams. Obviously, it implies that all construction activities including executed through 'Piece Rate Contracts' i.e. PRWs are exempted from levy of 'Service Tax' if the work relates to exempted category as defined above.

II. Services defined u/s 65 (97a) i.e. "Site formation and clearance, excavation and earth moving and demolition Service'. Effective w.e.f. 16.6.2005.

Under this chapter, the aforesaid Services were also exempted vide Notification No. 17/2005-ST dated 07.06.2005, from the service tax, if provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports.

III. Services defined u/s 65 (105) (zzzza) i.e. Works Contract Services. Effective w.e.f. 01.06.2007.

Under this chapter, the Services related to composite contracts i.e. Works contract were defined wherein the work contract services rendered in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams were excluded from levy of 'Service Tax'. For more clarity, the definition of "Taxable Service" for 'Works Contract' services is reproduced as under:

"Taxable Service" means any service provided or to be provided, to any person by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports.

From all the above three enactments, it is abundantly clear that both pure construction activities / services as well as 'works contract' services shall be exempted from 'Service tax' if it is provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

B) Status of applicability of 'Service tax' for providing the services in respect of construction of Road, Bridges, Irrigation, Dam, Port, Railways and Tunnel Projects after introduction of Mega Exemption notification 25/2012 -ST effective w.e.f. 01.07.2012 is as under :

Under the notification, 25/2012 -ST para 13(a) and 14(a) following services are exempted from 'Service Tax' and the same are reproduced as under:

13) Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

14) Services by way of construction, erection, commissioning, or installation of original works pertaining to:

(a) An airport, port or railways, including monorail or metro;

The above two clauses of mega exemption i.e. 13 (a) and 14 (a) are amply clear in defining the exemption of various Services rendered in respect of a road, bridge, tunnel, or terminal for road transportation for use by general public and for original work in respect of an airport, port or railways, including monorail or metro.

The clause 13(a) and 14(a) of mega exemption notification, do not impose specific qualification of the person who is rendering the said exempted Service. It may be any person including 'Main contractor' or 'Sub-contractors' who were exempted from service tax, if it is provided in respect of a road, bridge, tunnel, or terminal for road transportation for use by general public.

However, the confusion has arisen by reading clause 29 (h) of the mega exemption notification which is reproduced as under:

29) Services by the following persons in respective capacities -

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

From, the plain reading of the above clause, it appears that the exemption from 'Service Tax' is applicable only wherein both 'Main Contractor' as well as 'Sub-Contractor' should be designated and qualified as 'Works Contractor'.

Hence, the 29 (h) clause of mega exemption notification is in contradiction to the provisions of clause 13 (a) and 14 (a) and therefore need to be clarified.

Further, w.e.f. 01.07.2012, section 65(b) of the finance act was added wherein, number of interpretations were given. Similarly, in the mega exemption notification 25/2012 definition of various Services and individuals were given. In the aforesaid definition and interpretations, the 'Construction Service' and Piece Rate construction activities executed by PRWs are nowhere defined or interpreted.

It is pertinent to note that, the very purpose of giving the exemption to aforesaid infrastructure projects is to keep the overall project cost as low. Any new indirect tax levy as mentioned in clause 29(h) will bring imbalance and taxation issues in respect of existing contract awarded prior to 01.07.2012 and may result in litigation. Moreover, it will lead to unnecessarily huge administrative cost, compliance issue, unhealthy practice in 'wording' of the contracts while awarding of aforesaid construction activities etc., which will only defeat the very purpose of granting the exemption from service tax for said infrastructure projects.

CFI sincerely hope that due consideration will be made to address the aforesaid issue by reviewing the same at your end and issuing the necessary instructions/clarification.

We shall also be glad to have an opportunity for explaining our submissions on the subject matter in person, in case of need, at your convenience and time.

With kind regards,

Yours sincerely,

(Siddharth Singh)
Secretary General