



Service tax file

केन्द्रीय उत्पाद एवं सीमा शुल्क आयुक्त
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS
HYDERABAD-II COMMISSIONERATE: HYDERABAD

C.No:IV/16/41/2006-COM/CCS

Date: 3-3-2006



To

M/s Mehata & Modi Homes
5-4-187/3&4
Soham Mansion, 3rd Floor
M.G.Road, Secunderabad
PIN - 500003

Dear Sir,

Sub: Service Tax -- certain clarification in respect of construction of complex services - Reg.

* * *

Please refer to your written Queries submitted on construction of complex services during course of meeting held with the Chief Commissioner of Customs & Central Excise, Hyderabad Zone, Hyderabad on 2.3.2006.

Before answering queries, the taxability of construction of complex services is briefly detailed below for guidance:

- (i) This service was brought under Service Tax by the Finance Act, 2005 with effect from 16.6.2005.
- (ii) The definition of construction of complex service is given under clause(30 a) of Sec.65 of the Finance Act, 1994.
- (iii) The definition of taxable services provider by the service provider in relation to construction of complex is given under clause 105(zzb) of Sec 65 of the Act.
- (iv) The value of taxable service in relation to construction of complex service provided or to be provided by the service provider shall be the gross amount charged from any person in relation to such service as per Sec 67 of the Act.
- (v) Vide Notifn No.18/2005-ST dated 7.6.2005 with effect from 16.6.2005, the value of taxable service shall be limited 33% of the gross amount charged. The abatement of 67% under this notification shall be available only when there is composite contract for the construction of complex service i.e gross amount charged includes the value of goods and material supplied or provided or used by the provided of such service.

However, such abatement is not available if such services are provided only for completion and finishing services in relation to residential complex (Sec sub-clause(b) of clause 30(a) of Sec 65)

- (vi) CBEC vide par 13.6 of circular No.B1/6/2005-TRU dated 27.6.2005 has clarified that service tax would be payable on the gross amount charged by the service provided for construction service provided and it would not include the cost of land and stamp duty paid for registration of land.

However, notification 18/2005-ST provides option to avail abatement and pay service tax only on 33% of the gross amount charged subject to fulfilment of conditions specified in the notification.

3. In the above back ground, the queries are clarified as under.

Query 1: whether service tax is payable on the cost of land and registration charges.

Reply: As explained vide para 2(vi) supra, the cost of land and stamp duty paid for registration of land would not include the taxable value.

Query 2: What is the taxable value for payment of service tax in a situation when 60% of consideration for semi finished construction which includes undivided or divided share of land and 40% of consideration is for construction:

Reply: 40% consideration relating to construction is a taxable service. The 60% consideration excluding land value and registration charge of such land shall be the taxable value.

Query 3: Whether abatement of 67% for the service tax payable on construction of residential house can be availed as per notification No.15/2004 ST

Reply: The exemption of 67% of gross amount under Notifn. No.15/2004 ST dated 10.9.2004 is available to construction service (renamed as commercial or industrial services w.e.f 16.6.2005) but not to the construction of complex service which is taxable with effect from 16.6.2005.

Query 4: Confirm whether abatement provided under Notn No.18/2005 cannot be availed for completion and finishing services.

Reply: Yes, the explanation given para 2(v) above may be referred to.

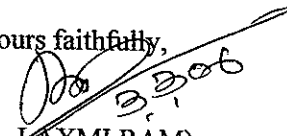
Query 5: What is completion and finishing services? Whether 60% of consideration towards cost of land value and semi-finished consideration and 40% of consideration for construction could fall under completion and finishing services.

As per sub-clause (b) of clause (30a) of Sec 65, completion and finishing services in relation to construction of complex means – “ completion and finishing services in relation to residential complex such as glassing, plastering, painting, floor and wall filing, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services”.

The nature of construction involved in the query does not fall under the definition of “Completion and finishing” services.

The above clarification is given with the approval of Commissioner.

Yours faithfully,


(L. LAXMI RAM)
Joint Commissioner
Service Tax Cell

Copy submitted to the Chief Commissioner, Hyderabad Zone, Hyderabad for information.

Service Tax Queries

A company is constructing more than 12 residential units on its own land. The residential units sold in two different ways:

- Case – 1: A residential unit along with divided or undivided share of land is sold as a unit. Sale deed is executed for the entire sale consideration by payment of stamp duty and registration charges in favour of the purchaser.
- Case – 2: In case of purchaser availing housing loan a sale deed for about 60% of the consideration is registered in favour of the purchaser for a semi-finished construction along with divided / undivided share of land. For the balance 40% consideration, a construction contract is entered into.

Queries:

- In Case-1 above, since no service is rendered and sale is of immovable property no service tax is payable.
- In Case-2 service tax is not payable for the sale consideration mentioned in the sale deed for semi-finished construction. Service tax is payable only on the value of the construction contract.
- Abatement of 67% for the service tax payable on the construction contract in Case-2 can be availed as per Notification No. 15/2004.

Q.1. Are the above three assumptions are correct?

- As per Notification No. 18/2005, abatement cannot be availed for completion and finishing services.

Q.2. What is 'completion and finishing services'? Does the construction contract in Case-2 above fall under completion and finishing services?