

CIRCULAR NO 138/07/2011-Service Tax

Dated : May 6, 2011

Subject: Representation by Jaiprakash Associates Limited, Noida, in terms of Judgement dated 14.02.2011 in W.P. No. 7705 of 2008 - regarding

The Works Contract service (WCS) in respect of construction of Dams, Tunnels, Road, Bridges etc. is exempt from service tax. WCS providers engage sub-contractors who provide services such as Architect's Service, Consulting Engineer's Service, Construction of Complex Service, Design Services, Erection Commissioning or Installation Service, Management, Maintenance or Repair Service etc. The representation by Jaiprakash Associates Limited seeks to extend the benefit of such exemption to the sub contractors providing various services to the WCS provider by arguing that the service provided by the sub contractors are 'in relation to' the exempted works contract service and hence they deserve classification under WCS itself.

2. The matter has been examined.

(i) Section 65A of the Finance Act, 1994 provides for classification of taxable services, which mentions that classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65. When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected under the sub-clause which provides the most specific description and not the sub-clauses that provide a more general description.

(ii) In this case the service provider is providing WCS and he in turn is receiving various services like Architect service, Consulting Engineer service, Construction of complex, Design service, Erection Commissioning or installation, Management, maintenance or repair etc., which are used by him in providing output service. The services received by the WCS provider from its subcontractors are distinctly classifiable under the respective sub clauses of section 65 (105) of the Finance Act by their description. When a descriptive sub clause is available for classification, the service cannot be classified under another sub clause which is generic in nature. As such, the services that are being provided by the sub contractors of WCS providers are classifiable under the respective heads and not under WCS.

(iii) Attention is also invited to CIRCULAR NO 96/7/2007-ST, dated 23 rd August, 2007 regarding clarification on technical issues relating to taxation of services under the Finance Act, 1994. The relevant portion is reproduced below,-

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| 999.03 /23.08.07 | A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work. | A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided. |
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4. Therefore, it is clarified that the services provided by the subcontractors / consultants and other service providers are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act, 1944 and chargeable to service tax accordingly.

F. No. 137/57/2011-ST

(Deepankar Aron)
Director (Service Tax)