

## **No Service Tax on installation of thermal insulation being 'Work Contract Service'**

The CESTAT, Ahmedabad in ***Rudra Engineering v. C.C.E. & S.T.-Vadodara-I [Service Tax Appeal No.10535 of 2013 dated January 16, 2023]*** has set aside the order demanding Service Tax for alleged wrongly availing abatement and wrong classification of service under Works Contract Service. Held that, the installation of 'thermal insulation' is a covered under the definition of "Works Contract Service" and therefore, the Service Tax is not demandable.

### **Facts:**

Rudra Engineering ("**the Appellant**") is a Commissioning and Installation agency and undertook "erection, installation and commissioning work", wherein, the Appellant has provided 'thermal insulating' material ("**the Goods**") such as:

- (i) Hot insulation including supply of LRB and Aluminium Sheet
- (ii) Cold insulation with Thermocol and Aluminium Sheet
- (iii) Insulation of Pipeline with black superior sleeve providing and fixing of black superior with cellotape
- (iv) insulation with black nitrile rubber foam, sheet, etc.

The Goods sold by the Appellant during the course of executing work were purchased by the customers/ clients and then supplied to the Appellant for application.

The Appellant was alleged for wrongly availing abatement at 67% for calculating the taxable value for payment of service tax as per ***Notification No. 1/2006- Service Tax dated March 1, 2006*** ("**the Impugned Notification**"). An inquiry was initiated and documents were scrutinized wherein, it was found that the supply of Goods and services of and applying of thermal insulation by the Appellant falls outside the purview of eligibility criteria for availing the benefit

under the Impugned Notification as the Appellant was not supplying plant, machinery, equipment or structures but carrying out application of thermal insulation material on plant, machinery, equipment already installed at the factory /business premises of the service receiver.

Further, it was alleged that the Appellant had wrongly classified the service as 'Works Contract Service' as the condition of transfer of property as per the definition did not exist and also the contract was not leviable to tax as sale of goods. Accordingly, a Show Cause Notice ("SCN") dated October 8, 2012 was issued to the Appellant for demand of service tax of INR 69,61,972/- on wrong availment of abatement and demand of service of INR 24,37,017/- for wrong classification of service and to impose penalty.

The Revenue Department ("**the Respondent**") denied the benefit of the Impugned Notification to the Appellant on the ground that Appellant is not supplying plant, machinery, equipment or structures, but carrying out thermal insulation and hence benefit of 67% abatement from gross value would not be available to Appellant as the condition laid down in the Impugned Notification is not fulfilled by Appellant. The matter was adjudicated and the demand of service tax was confirmed along with interest and penalty vide Order dated December 19, 2012 ("**the Impugned Order**").

Being aggrieved, this appeal has been filed by the Appellant.

The Appellant contended that substantial VAT/Sales Tax under appropriate scheme and at appropriate rates were paid. Further, that the activities undertaken by the Appellant are covered under the Impugned Notification therefore, eligible for abatement benefit. Further, the CBEC vide **Circular No. B1/16/2007-TRU dated May 22, 2007**, has clarified that, all those contracts which qualifies 'works contract' under the Sales Tax Laws equally qualify as 'work contract' for the purpose of levy of Service tax therefore, the work undertaken by the Appellant not only attract VAT/Sales Tax, but is also qualified as "works contract".

**Issues:**

1. Whether the Appellant is eligible to the benefit under the Impugned Notification?
2. Whether the service undertaken by the Appellant comes under the purview of 'Works Contract Service'?

**Held:**

The CESTAT, Ahmedabad in ***Service Tax Appeal No.10535 of 2013*** held as under:

- Noted that, the condition in explanation to Sl. No. 5 of the Impugned Notification clearly used the words "and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service". Hence, it cannot be considered that, it is applicable only on the supply of plant, machinery or equipment or structures.
- Stated that, the Appellant is a Commissioning and Installation agency and for providing the taxable services Appellant has provided the thermal insulating materials and has also paid sales tax/ VAT therefore, the Appellant is eligible to the benefit under the Impugned Notification.
- Noted that, as per the definition of 'Work Contract Service' under Section 65(105) (zzzza) of the Finance Act, 2007 ("**the Finance Act**"), only specified categories of works contract are considered for levy of Service Tax.
- Set aside the Impugned Order.
- Held that, the Appellant had supplied the Goods used in installation of 'thermal insulation', which is covered under Section 65(105) (zzzza) of the Finance Act, therefore, the work carried on by the Appellant is covered under 'Works Contract Service'.

**Relevant Provisions:**

**Section 65(105) (zzzza):**

*“Works Contract service- 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 and dams.*

*Explanation. - For the purposes of this sub-clause, "works contract" means a contract wherein, -*

*I. transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and*

*II. such contract is for the purposes of carrying out, -*

*(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*

*(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*

*(c) construction of a new residential complex or a part thereof; or*

*(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*

*(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects”*

**Sl. No. 5 of the Impugned Notification:**

| <b>“Sl. No</b> | <b>Sub- clause of clause (105) of Section 65</b> | <b>Description of taxable service</b> | <b>Conditions</b> | <b>Percentage</b> |
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| 5 | (zsd) or (zn) or (zsl) or (zsm) | Erection, commissioning or installation, under a contract for supplying a plant, machinery, equipment or structures] and erection, commissioning or installation of such plant, machinery, equipment or structures | This exemption is optional to the commissioning and installation agency.<br><br>Explanation.- The gross amount charged from the recipient of service shall include the value of the plant, machinery, equipment, structures or parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service. | 33" |
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