

GOVERNMENT OF ODISHA
FINANCE DEPARTMENT

No. 5178 /F., Dated 25.02. 2017
FIN-CODES-RULE-0009/2016

OFFICE MEMORANDUM

Sub: **Payment of Service Tax in respect of Works Contract executed by Government Departments, State PSUs and Construction Corporations.**

Service Tax is payable on the value of service component in composite works contract as per Section 67 of Finance Act, 1994 introduced with effect from 18th April, 2006. Service Tax is payable when services provided by one person to another person, as per Section 66B of Finance Act, 1994 (introduced with effect from 1st July, 2012). Government is considered as a person under Service Tax Act.

2. State Government Departments, Public Sector Undertakings (PSUs) and Construction Corporations are claiming Service Tax in different manners for Government works and there is a need to bring clarity on the Service Tax liability under different mode of execution. A committee was constituted in Finance Department to examine the issue and make necessary recommendations. After careful consideration of the recommendations, it has been decided to issue a set of guidelines on payment of Service Tax on Works Contracts for Government work executed by PSUs, Construction Corporation & Govt. Departments.

3. As per exemption Notification No.25/2012-ST dated 20.6.2012 (Entry-12), Service Tax is exempted from payment with effect from 1st July, 2012 in case of following construction/maintenance work of Government/ local authority/Government authority :

- a.** A historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).
- b.** Canal, dam or other irrigation works.
- c.** Pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

4. As notified in exemption Notification No. 25/2012-ST dated 20.6.2012 (Entry 13, 14 and 25), Service Tax is exempted from payment with effect from 1st July, 2012 in case of following construction/ maintenance work of Government/local authority/Governmental Authority –

- a.** A road, bridge, tunnel, or terminal for road transportation for use by general public.
- b.** A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana/ Pradhan Mantri Awas Yojana etc.
 - (i)** A civil structure or any other original works pertaining to the " In- situ rehabilitation of existing slum dwellers using land as a resource through private participation under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana, only for existing slum dwellers.
 - (ii)** A civil structure or any other original works pertaining to the Beneficiary-led individual house construction/enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana".
- c.** A building owned by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public.
- d.** Pollution control or effluent treatment plant, except located as a part of a factory; or
- e.** A structure meant for funeral, burial or cremation of deceased.
- f.** Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
- g.** an airport, port or railways, excluding monorail or metro (The contracts pertaining to mono-rail entered before 1st March,20 16 shall remain exempt)
 - ii)** a single residential unit otherwise than as a part of a residential complex;

iii) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority under:

- the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana".
- any housing scheme of a State Government

iv) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

v) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

g) Services provided to Government, a local authority or a governmental authority by way of –

i) carrying out any activity In relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

ii) repair or maintenance of a vessel or an aircraft;

5. As per Government of India Notification No.9/2016-ST dated 1st March, 2016, Service Tax will continue to be exempted from payment **up to 31st March, 2020** in case of following **ongoing** construction/ maintenance work of Government/local authority/Governmental authority, **where contracts were entered into prior to 1st March, 2015:**

a. A civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession.

b. A structure meant predominantly for use as (i) an educational, (ii) a clinical or (iii) an art or cultural establishment.

c. A residential complex meant predominantly for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of Section 65 B of the said Act.

- d.** Services by way of construction, erection, commissioning or installation of original works pertaining to an airport or port provided under a contract, which had been entered into prior to 1st March, 2015 and that Ministry of Civil Aviation or the Ministry of shipping in the Government of India as the case may be certifies that the contract had been entered into before the 1st March, 2015.

6. In a works contract, when service and goods can be separated the goods portion will attract VAT/CST whereas Service Tax is payable for the service component under Section 67 of the Finance Act, 2006. Where value of services cannot be determined or not determined, the value of service will be taken as 40% of value of original works and 70% of value for other work such as maintenance or repair or reconditioning or restoration or servicing of any goods/maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings or movable property.

7. While processing the contracts, the Departments of Government of Odisha, Companies/Public Sector Undertakings, Bodies and Authorities under the State Government are advised to follow the guidelines mentioned below:-

- a.** The work to be executed/ being executed will be examined with reference to the points mentioned at paragraphs 3 to 5 above to assess the liability of service tax.
- b.** If the work attracts service tax after a thorough examination as per 'a' above, the executing agencies including the Govt. Departments are to ensure that the Service Tax being an indirect tax shall be the part of Cost of Works.
- c.** The element of service tax needs to be calculated at the stage of estimation before accordance of Administrative Approval. The tax component and rates included in the estimate need to be spelt out distinctly in the tender agreement in case of Government works as well as works executed through PSUs/ Construction Corporations.
- d.** The element of Service Tax may be shown separately and supervision - charges may be paid only on cost of the project and not on-service tax.

- e. Service Tax on the cost of work already included in the estimate as well as on the supervision charges shall be paid to the executing agencies.
- f. The liability for payment of Reverse charge 50% by the Service Provider and 50% by the Service Receiver as applicable for Works Contract will rest upon the Government Departments in case they become Service Receiver and by the PSUs Construction Corporations in case of Government works entrusted to them as provided in Government of India Notification No. 30/2012-ST dated 20.6.2012.
- g. Such works contract is awarded only to the agencies having Service Tax registration along with other statutory requirement.

Sd/-
(T.K. PANDEY)
Principal Secretary to Government