

Circular No. 147/16/2011 – Service Tax

F. No. 137/57/2011 – Service Tax
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

New Delhi, 21st October 2011

To

Chief Commissioners of Central Excise & Customs (All)
Chief Commissioners of Central Excise (All)
Director General of Central Excise Intelligence
Director General of Audit & DGST
Commissioners of Service Tax (All)

Madam/Sir

Subject: Commercial construction/infrastructure development projects of road, airports, dams, tunnels etc, – levy of service tax on various service providers engaged / associated with such construction work – regarding;

Reference is invited to the Circular No. 138/07/2011 – Service Tax dated 06.05.2011 wherein it was clarified that the services provided by the subcontractors / consultants and other service providers to the Works Contract Service (WCS) provider in respect of construction of Dams, Tunnels, Road, Bridges etc. are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act and are chargeable to service tax accordingly. Clarification has been requested as to whether the exemption available to the Works Contract Service providers in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide Works Contract Service to these main contractors in relation to those very projects.

2. The matter has been examined. Vide the circular referred above, it was clarified that when the service provider is providing WCS service in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc. 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, then while exemption is available to the main contractor (as per Section 65 (zzzza) of the Finance Act), as regards the services provided by its subcontractors, the same are distinctly classifiable under the respective sub-clauses of section 65 (105) of the Finance Act, as per their description and that their taxability shall be decided accordingly. *It is thus apparent that just because the main contractor is providing the WCS service in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as WCS.* Rather, the classification would have to be independently done as per the rules and the taxability would get decided accordingly.

3. However, it is also apparent that in case the services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure projects mentioned above. Thus, it may happen that the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnels and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor

for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor.

It is hoped that this clarifies the statutory position. The Circular may please be widely disseminated to the trade and field formations.

Yours faithfully

(Deepankar Aron)
Director (Service Tax)
CBEC, New Delhi