



Bangalore Chamber of Industry and Commerce

No.1A, Bharat Apartments, 44/1, Fairfield Layout, Race Course Road, Bangalore - 560 001
Tel: 22286080 – 82; Fax: 22251475; e-mail: bcic@bcic.org.in; website: www.bcic.org.in

Indirect Taxes (Service Tax)

Circular No.117

30.08.2010

All Members

Dear Sirs,

We enclose herewith the following Circular issued by Government of India, Ministry of Finance, Department of Revenue, Officer of the Commissioner of Service Tax - for your reference and record.

1. Circular No. 128/10/2010-ST, F.No.354/141/2010-TRU, dated 24th August, 2010 - Service tax on on-going works contracts entered into prior to 01.06.2007 – regarding

Thanking you,

Yours faithfully

T.S. Sampath Kumar
Secretary General

Circular No. 128/10/2010-ST, F.No.354/141/2010-TRU, dated 24th August, 2010.

Service tax on on-going works contracts entered into prior to 01.06.2007 – regarding

It has been brought to the notice of the Board that the following confusions/disputes prevail with respect to long term works contracts which were entered into prior to 01.06.2007 (when the taxable service, namely, Works contract came into effect) and were continued beyond that date:

- (i) While prior to the said date services like Construction; Erection, commissioning or installation; Repair services were classifiable under respective taxable services even if they were in the nature of works

contract, whether the classification of these activities would undergo a change?

(ii) Whether in such cases of continuing contracts, the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 under Notification No. 32/2007-ST dated 22/05/2007 would be applicable?

2. The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service 'Works Contract' service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because 'works contract' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

3. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies rule 3 (3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

4. The Board's previous Circular No. 98/1/2008-ST dated 04.01.2008 and the ratio of judgement of the High Court of Andhra Pradesh in the matter of M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST) are in line with the above interpretation.

**Sd/-
(J.M. Kennedy)
Director (TRU)**

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