

BENEFITS OF ADOPTING WORKS CONTRACT SERVICE

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Benefits of adopting of Service tax liability on new Works Contract service in place of Erection, Commissioning and Installation service and Construction service where a composite or combined contract is of supply of goods and service both, are discussed here. There are two alternatives provided regarding value and payment of Service tax. Cenvat credit admissibility also depends on which alternative can be chosen.

First Case :- As per Notification No. 32/2007-S.T., dated 22-5-2007, Erection, Commissioning and Installation service and Construction service, the service provider shall not take Cenvat credit duties or Cess paid on any inputs, used in or in relation to the particular works contract for which Service tax is paid at lesser rate under composition scheme.

Second Case :- Like any other taxable service, for Works Contract service also, Cenvat credit on inputs, input services and capital goods can be availed. It is only under the optional Composition Scheme that bar on Cenvat credit on inputs has been placed. The provisions are clear in this regard. Even under this composition scheme Cenvat credit on input services and capital goods is available. This has also been clarified by the Department in its Master Circular No. 96/7/2007-S.T., dated 23-8-2007 in Para No. 097-01/23-8-2007 [2007 (7) S.T.R. C69-C88]. As long as you are not opting for composition scheme and Service tax @ 12.36% on gross amount [subject to exclusions and inclusions as per Rule 2A of Service Tax (Determination of Value) Rules, 2006] is paid, Cenvat credit is admissible on inputs, input services and capital goods without any restriction in the case.

Therefore in Works Contract service, the essential ingredients are as follows :

- The service shall be provided to any person by any other person.
- The services shall be in relation to execution of work contracts which satisfy the conditions specified in *Explanation* (i).
- The contract is for the purpose of carrying out the works specified in (a) to (e) of the *Explanation* (ii).
- Works contracts in respect of certain specified items are excluded.

The contract must be for the purpose of carrying out the following items mentioned in (a) to (e) of the *Explanation* (ii) :

- (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated 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;
- (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;

- (c) construction of a new residential complex or a part thereof;
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

The scheme of valuation of service of Service tax is well conceived and well designed. As per earlier scheme for tax on construction services, the tax payable was 4.08% (12.36% of 33%). Under new scheme of Service tax on works contract service, the tax will be 2.06%. In earlier scheme, material supplied by contractor (service or other person) was required to be added to avail the abatement of 67%. Thus, actual tax liability could be even higher than 4.08%. A Comparative Chart in this connection is as follows to give detailed explanation :-

PARTICULARS	NATURE OF SERVICE (Amount in Rs.)		
	Erection, Commission- ing, Installa- tion & Service	Industrial Construction Service	Works Contract Service
Composite Contract including supply	1000000	1000000	1000000
Taxable value after abatement claimed	330000	330000	1000000
Valuation as per scheme under Works Contract service @ 2%	Not available	Not available	20000
Service Tax	39600	39600	N.A.
Total Service tax payable	39600	39600	20000
Add Education Cess	792	792	400
Add Higher Education Cess	396	396	200
Total Service Tax	40788	40788	20600
LESS :- Credit on input service on said contract, like Service tax paid on inward freight, business exp., telephone, etc. Example - 3500	Not available	Not available	3500
LESS :- Credit on capital goods used in said contract like machine is purchased Rs. 2 lac and duty paid 16% i.e. Rs. 32000 therefore First year credit is only 50% i.e. Rs. 16000	Not available	Not available	16000
Balance Tax Payable	40788	40788	1100

Therefore it is clear that the Works Contract service is more beneficial from the category of services namely Erection, Commissioning & Installation service and Construction service. The choice is on the assessee to decide that which category is to be adopted for payment of Service tax.

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the tax cannot be overruled since they have not been challenged or stayed. Judicial pronouncements prevail over the latest circular which itself contains a disclaimer that these circulars are not to be treated as part of law and does not override the legal provisions. In the case of turnkey operators and works contract operators who normally give the civil work or construction work to sub-contractors, this results in double taxation denying equity and fair play especially by the anomaly between the proviso to Notification No. 1/2006-S.T. on the one hand, and the explanation No. 2 to Notification No. 32/2007-S.T. and the Master Circular vide reference 097-01 on the other hand. This is a serious issue involving huge amount of money involved for turnkey project executors and work contract executors who pay a large chunk of Service tax and it is hoped that the Board would rectify the contradiction and the anomaly.