

INDIRECT TAXES UPDATE -7

SERVICE TAX

Construction; erection, commissioning or installation; repair services etc. in the nature of on-going works contract to be classified as works contract service from 1st June 2007 even if the contract is entered before that date

In respect of on-going works contracts entered till 31st May, 2007, composition scheme to be available only when service tax has not been paid till 31st May, 2007

(i) With effect from 01.06.2007, when the new service 'Works Contract' service was made effective, classification of construction; erection, commissioning or installation; repair services in the nature of works contract 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 as 'works contract' describes the nature of the activity more specifically. 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.

(ii) The on-going works contract, entered till 31.05.2007, satisfying rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 only would be entitled for Composition Scheme. Rule 3(3) 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.

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.

[Circular No.128/10/2010 ST dated 24.08.2010]

The complete text of above circular is available at www.cbec.gov.in

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Please email idthc@icai.org for feedback.

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