

SERVICE TAX

Services provided by the sub-contractors classifiable as per Section 65A of the Finance Act, 1994 under respective sub-clauses (105) of Section 65 of the Finance Act, 1944

It has been clarified by the Board that services provided by the sub-contractors/consultants and other service providers are classifiable as per Section 65A of the Finance Act, 1994 under respective sub-clauses (105) of Section 65 of the Finance Act, 1944 and chargeable to service tax accordingly.

The clarification has been issued in response to the representation by Jaiprakash Associates Limited seeking to extend the benefit of exemption available to works contract service (WCS) in respect of construction of dams, tunnels, road, bridges etc. to the sub-contractors providing various services to the WCS provider on the ground that the service provided by the sub-contractors are 'in relation to' the exempted works contract service and hence should be classified under WCS itself.

In the instant case, the service provider is providing WCS 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.

The Board has clarified that the services received by the WCS provider from its sub-contractors are distinctly classifiable under the respective sub-clauses of section 65 (105) of the Finance Act by their description. As per section 65A, when a descriptive sub-clause is available for classification, the service cannot be classified under another sub-clause which is generic in nature. As such, the services that are being provided by the sub-contractors of WCS providers are classifiable under the respective heads and not under WCS.

[Circular No. 138/07/2011 – ST dated 06.05.2011]

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

Disclaimer

Information published in the newsletter are taken from publicly available sources and believed to be accurate. The Indirect Taxes Committee of ICAI takes no responsibility of accuracy and reliability of information published in the newsletter. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording, or otherwise without the permission of ICAI.

Feedback

The Indirect Taxes Update is an endeavour of the Indirect Taxes Committee to apprise the readers about

the amendments made in various central indirect tax laws vide significant notifications, circulars etc. We welcome your feedback on the Update and its contents.

Please email tdtc@icai.org for feedback.

You can also write to:

Secretary

Indirect Taxes Committee

The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62, NOIDA (U.P.)India

Telephone Direct - +91 120 3045 906 Telephone Board - +91 120 3045900 Ext. 906