

Jai(tley) Ho for Construction Industry
(G. Natarajan, Advocate, Swamy Associates)

Central Excise.

1.0 Concrete mix manufactured at the site of construction, commonly known as Ready Mix Concrete, is always exempted from payment of duty of excise. The recent Hon'ble Supreme Court judgement in the case of Larson & Toubro Ltd. VS CCE – 2015 (324) ELT 646 SC came as a shocker, wherein the Hon'ble Supreme Court has held that technically concrete mix is different from ready mix concrete and the exemption is available only for concrete mix and not for ready mix concrete. As a great succour to the construction industry, Notification 12/2012 CE DT. 01.03.2012 has been amended vide Notification 12/2016 CE Dt. 01.03.2016, whereby the exemption has been extended for ready mix concrete also.

1.1 But the problem would continue to haunt the industry for the period prior to 01.03.2016.

Service Tax.

2.0 The following exemptions available under Notification 25/2012 ST Dt. 20.06.2012, were withdrawn with effect from 01.04.2015, vide Notification 6/2015 ST Dt. 01.03.2015.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65B of the said Act;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port.

2.1 The sudden withdrawal of the above exemptions has brought lot of misery in case of ongoing contracts. It was very difficult for the contractors (service providers) to convince the service recipients (mainly Government agencies) that they have not factored any service tax while tendering for the work and hence the service recipients have to reimburse this additional service tax liability.

2.2 Much to their relief, the withdrawal of the exemption is proposed to be undone, in the following manner.

2.3 Wherever the contracts in respect of the above work are entered into prior to 01.03.2015 (the date on which the intention of the Government to withdraw the exemption is made public vide Notification 6/2015 ST Dt. 01.03.2015), the exemption which was withdrawn with effect from 01.04.2015 is proposed to be restored for the period from 01.04.2015 to 29.02.2016, by enacting Section 102 and 103 in the Finance Act, 1994 vide clause 156 of the Finance Bill 2016. The above retrospective exemption will be available, only in respect of the contracts entered into prior to 01.03.2015 on which appropriate stamp duty wherever required has been paid before 01.03.2015.

2.4 If service tax has already been paid in this regard by any service providers, they can also claim refund of the same. They can get the refund, only if they have not collected the service tax from their service recipients.

2.5 If such contracts are still being carried out, prospective exemption has been provided upto 31.03.2020, vide amendments in Notification 25/2012 ST Dt. 20.06.2012 (S.Nos.12A and 14 A), made vide Notification 9/2016 ST Dt. 01.03.2016. This exemption is also available, only in respect of the contracts entered into prior to 01.03.2015 on which appropriate stamp duty wherever required has been paid before 01.03.2015.

3.0 As per S.No. 12 of Notification 25/2012 ST Dt. 20.06.2012 the following exemption was available.

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

(out of which, (a), (c) and (f) were removed and now allowed partially as discussed above).

3.1 It may be observed that the above exemptions are available only if the service is provided to Government, Local authority or Government authority. The term "Government authority" has also been defined in the notification as below.

"governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.

3.2 It may be noted that as per the above definition, in order to be considered as a Government authority, the authority must have been set up by Central or State Act. Many Government companies established under the Companies Act, would not qualify as "Government authority" even though they satisfy all other conditions as they are not "set up" by an Union Act / State Act.

3.3 The above definition of "government authority" has been amended as below vide Notification 2/2014 ST Dt. 30.01.2014.

(s) "governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

3.4 Now, this amended definition is proposed to be given retrospective effect from 01.07.2012 to 29.01.2014, vide clause 156 of the Finance Bill, 2016 by enacting clause 101 in the Finance Act, 1994. It may be noted that this retrospective exemption for the services provided to Government authority is proposed to be allowed not in respect of all services covered under S.No. 12 above, but only in respect of canal, dam or other irrigation works.

4.0 Under S.No. 14 of Notification 25/2012 ST DT. 20.06.2012, the following exemption is available.

Services by way of construction, erection, commissioning, or installation of original works pertaining to

(a) railways, including monorail or metro.

(Under the same entry exemption was available for ports and airports, which has been withdrawn and now restored).

4.1 The above exemption available for railway works is sought to be disallowed for monorail and metro, by amending the above entry as "railways, excluding monorail or metro" with effect from 01.03.2016. Thoughtfully, if the contracts for such monorail / metro work was awarded before 01.03.2016 and the stamp duty, if required is paid before 01.03.2016, such contracts would continue to be exempted.

5.0 The following new exemption has been added under S.No. 14 in Notification 25/2012 ST Dt. 20.06.2012 vide Notification 9/2016 ST Dt. 01.03.2016, which would be effective from 01.03.2016.

"(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under: (i) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (ii) any housing scheme of a State Government."