



OFFICE OF THE CHIEF COMMISSIONER OF SERVICE TAX  
SERVICE TAX ZONE, CHENNAI  
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C.NO.IV/16/96/2015 CCO ST(TECH VI)

DATED 4.10.2016

Minutes of the meeting of Zonal RAC for 3<sup>rd</sup> quarter of 2016-17 held on 26<sup>th</sup> September 2016

The Zonal Regional Advisory Committee meeting for the III Quarter of 2016 was held under the Chairpersonship of Shri. C.P. Rao, Chief Commissioner of Service Tax, Chennai Service Tax Zone, on 26.09.2016 at 15.30 Hrs. The following members attended the meeting.

S.No.	Name of the Member (S/Shri.)	Association represented
1	S. Balaji	CHA Association
2	Divakaran Nair	
3	V. Vijay Anand	Institute of Chartered Accountants of India
4	N. Nandakumar	CREDAI
5	K. Venkatesan	Builders' Association of India
6	S. Rama Prabhu	
7	V. Murali	Hindustan Chamber of Commerce

The following Departmental Officers attended the meeting.

S.NO	Name of the Officer (S/Shri.)	Designation
1	C.P. Rao	Chief Commissioner & Principal Commissioner Service Tax I
2	G. Ravindranath	Commissioner Service Tax II
3	M. Sreedhar Reddy	Commissioner Service Tax III
3	M. Rajan	Additional Commissioner, CCO, Service Tax
4	Parmod Kumar	Additional Commissioner, Service Tax II
5	D. Venkateswara Reddy	Additional Commissioner, Service Tax III
9	P.N. Swaminathan	Assistant Commissioner, CCO, Service Tax.

2. Chairperson welcomed all the members of the Zonal RAC and then proceeded with the points for discussion .

**Points raised by Chartered Accountants of India, Chennai**

**Point. 1 :** Letters issued from the Range Office regarding non filing of ST 3 returns being sent to those who have filed returns periodically.

**Reply:**

Letters were issued to few assesseees with regard to non filing of returns for the financial year 2014-15 based on the data retrieved through EDW ( enterprise data warehouse ). It appears that in stray cases, letters have also gone to the assesseees who had already filed their returns, inadvertently. The Divisional Officers are suitably instructed to avoid such incidences in future.

**Point. 2 :** Insistence of the mail id of the assessee alone while granting registration is detrimental to senior citizens who are not literate in the digital world.

**Reply:**

It is just a one-off case. System does not insist for personal e-mails. ACES is programmed in such a way that it will accept any email furnished by the registrant for the purpose of sending user id and password. The chairperson drew reference to Para 2 (iii) of Order No.1/2015-ST dated 28.02.2015 issued by CBEC, wherein it is mandated that the applicant shall quote the email address and mobile number in the requisite column of the application form for communication with the department.

**Points raised by CREDAI**

**Point No. 1:** *What is the current stand on the service tax on the landowner portion? As per Circular No. 151/2/2012-Service Tax dated 10/02/2012 the liability arises only on allotment of the land owner portion. What is the value on which service tax is to be computed? Is it based on the first sale or average sale value or guideline value or any other valuation? Does the service tax liability cease in cases where the landowner flats are retained and not sold. What is the exact position in case the landowner flats are sold by the builder himself on their behalf, and it so happens that this value is less than the value computed as mentioned above?*

**Reply:**

(a) Valuation of the landowner's portion of constructed building is already dealt with in the Board's Circular No.151/2/2012-ST Dated 10-02-2012 and instruction F.No.354/311/2015-TRU dated 20-01-2016.

(b) Service tax is chargeable in both the situations i.e Landowners flats retained or sold either by the landowner or the builder as there is existence of service provider and also the recipient.

(c) Value of landowner's flats to be determined as prescribed in the aforesaid Board Circular / Instruction irrespective of its quantum whether more or less.

Further, Board vide circular dated 20.01.2016 affirms that the guidelines given vide the Board's Circular F.No.332/13/2011-TRU dated 10.02.2012 should be followed in adopting the value for construction service. Hence the same status quo maintained now also.

Flats allotted to the Land owner portion are also liable for service tax. In respect of flats given to the land owner, the value should be determined in terms of Section 67 (i) (iii) of Finance Act 1994 read with Rule 3(a) of Service Tax (Determination) Rules 2006. Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the other buyers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument. The same valuation is applicable to flats retained by the land owner and also flats sold by the builders on behalf of land owners also.

**Point No. 2:** *What is the service tax liability in case of labour charges. The relevant sections say that it comes under Manpower only when the principal employer has no control over the labourers. But during service tax audit we are asked pay service tax on the labour charges which of course we can avail service tax input credit. Can we defend saying that we have no control over the labourers in the execution of the work. What about cases where the labour charge paid exceeds Rs. 10,00,000/- to a single person for labour. It so happens that the person is not registered under service tax. In that case does the liability to service tax fall on the principal employer. Are we liable to pay service tax under Man power supply and take the input.*

**Reply:**

(a) In terms of Notification 30/2012 –ST dated 20.06.2012, 100% Service tax is to be paid under reverse charge mechanism by the recipient of service.

(b) Input service credit can be availed subject to eligibility for e.g. such service is used for manufacture of a product / providing of output service which are either dutiable / taxable.

**Point No. 3:** *What is the service tax implication in case of services like advertising received abroad from foreign companies?*

**Reply:** As per Rule 3 of Place of Provision Rules 2012, the location of the Service Receiver is the Place of Provision of Service. Hence the location of the Service Receiver is the Place of Provision, so the Service received by the Tax payer is chargeable under Reverse Charge Mechanism.

**Point No. 4:** *For projects after the receipt of Completion Certificate, can we still continue availing the service tax input credit.*

**Reply:** As per Section 66 E, construction services ceases to be a declared service when entire consideration is received after the project completion certificate is issued. In such cases, the assessee is not eligible for input service tax credit.

**Point No. 5:** *Cancellation charges recovered from the customer re-payment, whether subject to service tax?*

**Reply:** Any monetary consideration received towards / in relation to any taxable service is chargeable to service tax. As per Section 66 E (e) of the Finance Act, 1994 even the act of agreeing to the obligation to refrain from an act or to tolerate an act or to do an act is a declared service and hence it is certainly a service for a consideration and hence liable for service tax. Chairperson also drew reference to Rule 6 (3) of Service Tax Rules, 1994 wherein it has been provided that the assessee may take the credit of such excess service tax paid by him if the assessee has (a) refunded the payment, so received or (b) has issued a credit note for the value of service not so provided.

**Point No. 6:** *Input On construction services is disallowed to the extent of abatement on out services, whether UDS value to be reckoned while disallowing input credit?*

**Reply:** As per Notification No. 26/2012 ST dated 20.06.2012, abatement is eligible for construction services subject to fulfillment to conditions that:

- (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of CCR 2004,
- (ii) The value of land is included in the amount charged from the service receiver.

For construction services, abatement is allowed subject to non avilment of CENVAT credit on inputs and there is no question of disallowing Credit to the extent of abatement.

**Point No. 7:** *Clarity on filing of annual return against 2 half yearly return being filed now.*

**Reply:** As this is a policy matter CBEC alone is empowered to take a decision in this regard. However, attention is invited to the provisions dealing with the issue provided under Rule 7 (1) of Service Tax Rules 1994 read with Section 70 of Finance Act 1994, wherein it is mandated that every assessee is to submit half yearly returns.

**Point No. 8:** *We need clarification on the recent Delhi High Court Judgment stating non applicability of service tax for real estate projects-CBEC's position as because Customers across India have started asking for refunds and unwilling to pay service tax on new sales. This might permeate to TN very soon. Better to have a clarity.*

**Reply:** Again this being a Policy decision, Board is Competent to take a decision. However, it is opined that the above judgement may not be applicable in all cases where facts & circumstances are different. Implication of the above judgement will be examined by the competent authority to decide appeal against or otherwise and therefore it has not attained finality.

**Point No. 9:** The flip side is that in TN since we have land and building dealt separately for us as developers we might be deprived of Input credit.

**Reply:** As per Notification No. 26/2012 ST dated 20.06.2012, in construction services abatement is allowed subject to non availment of Cenvat credit on the inputs used. Since the benefit of abatement is already availed, the simultaneous benefit of credit cannot be given.

**Point No. 10:** Service Tax either suspended or will continue after High court, Delhi Judgement.

**Reply:** The issue has not attained finality as the Department has filed appeal in the Supreme Court.

3. The Chairperson then inquired if there were further points for discussion.

*Point No. (1) Member representing CHA raised a point regarding the taxable value to be arrived in the instances of mark up value being added to the ocean freight?*

Reply : Chairperson replied that the tax is to be paid on the Transaction value shown in the invoices. Further the concept of pure agent was also deliberated regarding valuation under Rule 5 (1) and 5 (2) of Service Tax ( Determination of value ) Rules , 2006 and it was informed that a departmental appeal is admitted before the Honourable Supreme Court against the Delhi High Court's decision on the issue and the issue is subjudiced.

*Point No. (2) Member representing Builder's Association of India raised a point whether Service tax is payable for the work rendered to the Government / Local bodies.*

Reply: Chairperson drew reference to Notification No. 25/2012 ST ( Mega exemption notification ) as amended by 09/2016 ST dated 01.03.2016 wherein Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc., was withdrawn with effect from 1.4.2015, and the same is restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date.

4. Before concluding the RAC meeting the Chairperson drew the attention of the Trade Associations to the availability of GST Model Law and the FAQs on GST in the CBEC Website. The chairperson also requested the Chambers to sensitize their members on the GST. As the Department is keen to address industry specific concerns, if any, the Trade Association being a common forum can collate industry specific issues and bring it to the knowledge of the Department for proper addressing . If need be, as part of GST outreach programme, the Department would come to the doorsteps of the Trade to discuss industry specific issues.

5. The meeting concluded with the Chairperson thanking the RAC members.

This is issued with the approval of the competent Authority.

*M. Rajan*  
( M. RAJAN ) 4/10/16

o/c  
ADDITIONAL COMMISSIONER (CCO)

To  
All Members of RAC  
Chennai Service Tax Zone.

Copy to:

1. The Indirect Tax Ombudsman, 26/1, M.G. Road, Nungambakkam, Chennai 600034
2. The Commissioner of Service Tax Chennai I / II / III.
3. The Directorate General of Taxpayer Services, CR Building, IP Estate, New Delhi 110109
4. The Assistant Director, Chennai Zone, O/O Additional Director General Tax Payer Services, 26/1, M.G. Road, Nungambakkam Chennai 600034.
5. Sr. P.S. to Chief Commissioner.
6. Copy to Supdt. Computers, with a request to upload the same in the website.

*GKS* को प्रेषित  
DESPATCHED ON 4.10.16

