

**F. No. 345/6/2007 – TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi**

Circular No. 98/1/2008-ST

Dated 4th January, 2008

Amendment to Circular No. 96/7/2007-ST dated the 23rd August, 2007 – Clarification in respect of renting of immovable property service and works contract service – Regarding

In the Circular No. 96/7/2007-ST dated the 23rd August, 2007,-

- (i) after Reference Code 086.05/23.08.07, the following Reference Code and corresponding issue and clarification shall be inserted, namely :-

<i>Reference Code</i>	<i>Issue</i>	<i>Clarification</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
096.01/04.01.08	Commercial or industrial construction service [Section 65(105)(zzq)] or works contract service [Section 65(105)(zzza)] is used for construction of an immovable property. Renting of an immovable property is leviable to service tax [Section 65(105)(zzzz)]. Whether or not, commercial or industrial construction service or works contract service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the CENVAT Credit Rules, 2004?	Right to use immovable property is leviable to service tax under renting of immovable property service. Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to service tax. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' or 'goods' as referred to above, input credit cannot be taken.

- (ii) after Reference Code 097.01/23.08.07, the following Reference Codes and corresponding issues and clarifications shall be inserted, namely :-

<i>Reference Code</i>	<i>Issue</i>	<i>Clarification</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
097.02/04.01.08	Services provided in relation to execution of a works contract is leviable to service tax [Section 65(105)(zzza)]. VAT/sales tax is payable on the transfer of property in goods involved in the execution of a works contract. Service tax is leviable on the value equivalent to the gross amount charged for the	Value for the purposes of levy of service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract.

<i>Reference Code</i>	<i>Issue</i>	<i>Clarification</i>
(1)	(2)	(3)
	works contract less value of the transfer of property in goods involved in the execution of the works contract which is leviable to VAT/sales tax [Rule 2A of the Service Tax (Determination of Value) Rules, 2006]. Whether or not, excise duty paid on goods, subjected to levy of VAT/sales tax under works contract service, can be taken as credit under the CENVAT Credit Rules, 2004?	
097.03/04.01.08	<p>Services provided in relation to execution of works contract is leviable to service tax w.e.f. 01.06.07 [Section 65(105)(zzzza)].</p> <p>Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides option to pay service tax @ 2% of the gross amount charged for the works contract. However, the service provider opting for composition scheme for payment of service tax should exercise the option prior to payment of service tax.</p> <p>The issue pertains to,-</p> <p>(i) contracts entered into prior to 01.06.07 for providing erection, commissioning or installation and commercial or residential construction service, and</p> <p>(ii) service tax has already been paid for part of the payment received under the respective taxable service.</p> <p>Whether in such cases, the service provider can revise the classification to works contract service from the respective classification and pay service tax for the amount received on or after 01.06.07 under the Composition Scheme?</p>	<p>Prior to 01.06.07, service provider classified the taxable service under erection, commissioning or installation service [section 65(105)(zzd)], commercial or industrial construction service [Section 65(105)(zzq)] or construction of complex service [section 65(105)(zzzh)], as the case may be, and paid service tax accordingly. The contract for the service was a single composite contract. Part of service tax liability corresponding to payment received was discharged and the balance amount of service tax is required to be paid on or after 01.06.07 depending upon receipt of payment.</p> <p>Classification of a taxable service is determined based on the nature of service provided whereas liability to pay service tax is related to receipt of consideration. Vivisectioning a single composite service and classifying the same under two different taxable services depending upon the time of receipt of the consideration is not legally sustainable.</p> <p>In view of the above, a service provider who paid service tax prior to 01.06.07 for the taxable service, namely, erection, commissioning or installation service, commercial or industrial construction service or construction of complex service, as the case may be, is not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.07 and hence, is not entitled to avail the Composition Scheme.</p>

Sd/-
(G. G. PAI)
Under Secretary (TRU)