

GST EXEMPTION TO SUPPLY OF SERVICES / WORKS CONTRACTS FOR CONSTRUCTION OF ROADS, CANAL, DAM, BRIDGES, TUNNEL, RAILWAYS, MONO RAIL, METROS, PORTS, AIRPORTS, LOW COST HOUSING & OTHER PUBLIC UTILITY RELATED CONSTRUCTION WORKS:

Under the present laws governing Service Tax, exemptions are available to almost all the above construction works subject to certain conditions. The express provisions related to exemption are contained in various sub clauses of clause 12, 12A, 13 and 14 of the Mega Exemption Notification 25/2012-ST dated June 20, 2012 as amended time to time till date.

In the Budget of 2015, the Government has removed the exemption granted to Construction of *Non Commercial / Non Industrial Civil structures, Ports & Airports*, *Structure used as educational, clinical or on a cultural establishment & exemption available for construction of a residential complex for self-use was also withdrawn. Similarly in the Budget of 2016, the exemption granted to construction related works of *Monorail & metros* were also removed. Running contracts for which exemptions were removed were made liable to service tax in between, thus practically & contractually, it became difficult for various turnkey / EPC contractors to convince their clients in Government / Non-Government sector for reimbursement of additional service tax over & above contract value. After much hue & try, the Government eventually came up with a retrospective exemption to all running contracts as on March 1, 2015 to all the above works made liable w.e.f. March 1, 2015, provided the stamp duty on such contracts was paid before March 1, 2015 and also with a further condition that exemption will be available till April 1, 2020 only. Similarly for running contracts as on March 1, 2016 for construction of Monorail and metros exemption was granted with a similar condition of stamp duty payment and completion before April 1, 2020. All new contracts for construction of non-commercial buildings, ports & airports, construction of structure for educational, clinical & cultural use,

residential complex for self-use entered into after March 1, 2015 & for Monorails & metros entered into after March 1, 2016 was imposed with service tax and is being continued to be taxed today under existing laws. With effect from March 1, 2016 Government also introduced exemption to low cost housing up to carpet area of 60 sq. mtr. for housing schemes of State Government also. The exemption to Sub Contractors were also prominently available in clause 29(h) of the said mega exemption notification.

Position under GST: Works Contract involving transfer of property in the form of goods or other and related to immovable property is deemed to be a Service under GST laws. That means though it involves sale of goods in the process of execution the goods portion also would be taxable at the rate applicable to works contract which is fixed at 18%.

Interestingly none of the above exemption to Non Commercial buildings, roads, bridges, tunnel, dams & other irrigation works, railways, monorails, metros as discussed in the preceding paras find place in the list of exemptions finalised in the meeting of GST Council. The exemption is allowed at S.No 66, 67 of the said list only to pure labour contracts for beneficiary led individual house construction schemes for Pradhan Mantri Awas Yojana ("PMAY") and all (urban) mission & for construction of individual single unit as a part of residential complex.

Breach of promise: One can understand that though the captioned, works which are exempted from service tax today are liable to VAT in many states for transfer of property in goods. Thus, exempting above works in totality would deny states of their valid claim of GST in lieu of VAT which they are collecting at present.

BUT at the same time Government should have come up with solution to the running contracts for above works as on March 1, 2015 & March 1, 2016 which were made retrospectively exempted till April 1, 2020 vide amending notification no 09/2016-ST dated March 1, 2016, but are made liable again w.e.f. July 1, 2017 under GST. Hope the ensuing GST Council meeting on 11th June would consider these issues.
