
English Vinglish: Service Tax - Abatement - Construction of Residential Unit - Confusion between FM's Speech and CBEC Notification

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English Vinglish:

Service Tax - Abatement - Construction of Residential Unit - Confusion between FM's Speech and CBEC Notification

A Netizen writes in:

Para 182 of the Budget Speech reads as:

182. Homes and flats with a carpet area of 2,000 sq.ft. or more or of a value of Rs. 1 crore or more are high-end constructions where the component of 'service' is greater. Hence, I propose to reduce the rate of abatement for this class of buildings from 75 percent to 70 percent. Existing exemptions from service tax for low cost housing and single residential units will continue.

The Honourable Finance Minister has included homes and flats in the category of high-end constructions if these meet the following conditions:

- 1. If the Carpet Area is equal to or greater than 2000 sq. ft; or*
- 2. If the value is equal to or greater than Rs. 1 Crore.*

If one of the conditions specified above meets, then that construction will fall under high-end category and the abatement will be limited 70% and taxable portion will be 30%.

Now, Sl. No. 12 to be substituted in Notification No. 26/2012 - ST dated 20th June, 2012 vide Notification No. 2/2013-ST dated 1st March, 2013 is reproduced below:

12. ¶ . (i) for residential unit having carpet area upto 2000 sq. ft; or where the amount charged is less than rupees one crore¶ - 25%

As per this condition, if the carpet area is less than or equal to 2000 sq. feet; or if the value is less than Rs. 1 crore., the taxable portion will remain at 25%, which means, if any one of these conditions are satisfied, the rebate will be 75% and taxable portion will be 25% only.

Is this the intention of the budget speech? Meaning thereby if the carpet area is 1000 sq. ft; and the value charged is Rs. 2.00 crores, will that be not a high-end construction?

In this case, can the assessee be denied 75% rebate (taxable portion only 25%), when he is meeting one of the conditions of clause (i) of the Notification No. 2/2013?

DDT adds:

The notification clearly failed to give effect to the intention of the Government reflected in the Budget speech of FM. The Notification in the present form allows 75% abatement to a flat having a carpet area of 1000 sft and costing Rs 2 crores. Actually, in such cases, the abatement should have been only 70%, if we go by the Budget Speech.

The Notification reads now:

Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,-

(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004;

(ii) The value of land is included in the amount charged from the service receiver

(i) for 25
residential
unit
having
carpet
area upto
2000
square
feet or
where the
amount
charged
is less
than
rupees
one crore;
(ii) for 30
other
than the
(i) above

Perhaps, it should have been worded like this:

12. Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,-

(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004;

(ii) The value of land is included in the amount charged from the service receiver.

(i) for 30 residential unit having carpet area of 2000 square feet or more OR where the amount charged is more than rupees one crore;
(ii) for 25 other than the (i) above.

It is obviously difficult for the babus to translate the FM's English into Notifications.

4 Lakh Crores - Income Tax Arrears

THE

total income-tax arrears outstanding as on December 31, 2012 are Rs 4,18,696 crore,” the Finance Minister informed the Rajya Sabha yesterday.

This includes tax arrears of Rs 1,16,773.77 crore by major defaulter Hassan Ali Khan, Chandrika Tapuriah (Rs 47,040.99 crore) and (late) Harshad S. Mehta (Rs 17,050.56 crore).

The Government has constituted a Special Cell to exclusively deal with recovery of arrears classified as “Assessee not traceable” and “Assessee with no assets/ inadequate assets for recovery”.

As a result of recovery measures undertaken by the Income-Tax Department, total amount of Rs 16,686 crore has been collected during April 1, 2012, to December 31, 2012, which includes Rs 4.65 crore due to the efforts of the Special Cell.

“As tax arrear is not a static concept, it is not possible to recover in full at any given point of time,” enlightened the FM.

The Minister of State for Finance S.S. Palanimanickam informed that arrears of indirect taxes was Rs 68,741.02 crore in 2011-12 and Rs 56,889.62 crore in 2010-11 and Rs 44,212.23 crore, in 2009-10.

Targets for recovery of arrears of indirect taxes for 2013-14 is fixed at Rs 4,000 crore.

FEMA - Export of Goods and Services - 'Write-off' of unrealized bills

AS

of now, exporters have limited powers of write-off and AD Category - I banks are permitted to accede to the requests for ¶write-off¶ made by the exporters, subject to the conditions, inter alia, that the exporter has to surrender proportionate export incentives, if availed of, in respect of the relative shipments.

It has now been decided to effect the following liberalization in the limits of “write-offs” of unrealized export bills:

1. 5% of
Self “write-off” by an exporter (Other than Status Holder Exporter) the total export proceeds realized during the previous calendar year.
2. Self “write-off” by Status Holder Exporters 10% of the total export proceeds realized during the previous calendar year.
3. “Write-off” by Authorized Dealer bank 10% of the total export proceeds realized during the previous calendar year.

The “write-off” will be subject to the following conditions:

- (a) The relevant amount has remained outstanding for more than one year;

(b) Satisfactory documentary evidence is furnished in support of the exporter having made all efforts to realize the dues;

(c) The case falls under any of the following categories:

(i) The overseas buyer has been declared insolvent and a certificate from the official liquidator indicating that there is no possibility of recovery of export proceeds has been produced.

(ii) The overseas buyer is not traceable over a reasonably long period of time.

(iii) The goods exported have been auctioned or destroyed by the Port / Customs / Health authorities in the importing country.

(iv) The unrealized amount represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;

(v) The unrealized amount represents the undrawn balance of an export bill (not exceeding 10% of the invoice value) remaining outstanding and turned out to be unrealizable despite all efforts made by the exporter;

(vi) The cost of resorting to legal action would be disproportionate to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could not execute the Court decree due to reasons beyond his control;

(vii) Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges but the amount has remained unrealized consequent on dishonour of the bills by the overseas buyer and there are no prospects of realization.

(d) The exporter has surrendered proportionate export incentives if any, availed of in respect of the relative shipments. The AD Category - I banks should obtain documents evidencing surrender of export incentives availed of before permitting the relevant bills to be written off.

(e) In case of self write-off, the exporter should submit to the concerned AD bank, a Chartered Accountant's certificate, indicating the export realization in the preceding calendar year and also the amount of write-off already availed of during the year.

[RBI/2012-13/435 - A.P. \(DIR Series\) Circular No. 88; Dated, March 12 2013](#)

Ojhar in Maharashtra appointed as Customs Airport for Defence

Government has notified Ojhar in Maharashtra as a Customs Airport for unloading of baggage of defence personnel & imported goods related to Ministry of Defence and loading of baggage of defence personnel & export goods related to Ministry of Defence.

[Notification No. 29/2013-Cus., \(N.T.\), Dated: March 11, 2013](#)

Jurisprudential - Thursday's cases

Service Tax

Non-payment due to different interpretation - No deliberate violation; no penalty: CESTAT

THIS is a Revenue appeal. And the service tax involved is a princely amount of Rs.86,198/-, an equivalent amount of penalty u/s 78 and another Rs.2000/- of penalty u/s 77 of FA, 1994, all of which were dropped by the Commissioner(Appeals) way back in the year 2008.

Income Tax

Whether when assessee has received only advance payment against sale transaction, Revenue is right in law to bring entire sum to tax in same year - NO: HC

THE

issues before the Bench are - Whether when assessee has received only advance payment against a sale transaction, Revenue is right in law to bring entire sum to tax in same year and Whether when there is no evidence that borrowed capital has been used for the purchase, the gain on sale of such asset can be taxed under the head 'Profits and Gains for Business & profession'. And the verdict goes against the Revenue.

Customs

Import of 'Hydraulic Piling Rig' - To equate MMRDA with a road construction corporation would be an insult, both to common sense and to said organization, especially when one considers vast and varied nature of activities undertaken by said authority - CESTAT.

PRIOR

to budget 2012, benefit of customs duty exemption on road construction equipment was not available in cases where the contract for such construction was awarded by a Metropolitan Development Authority. Thus the appellant in the present case is not eligible for the benefit of duty exemption under notification No. 21/2002-Cus

See our Columns Tomorrow for the judgements

Until Tomorrow with more **DDT**

Have a Nice Day

Mail your comments to vijaywrite@taxindiaonline.com