

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

1. After the Finance Act 2012 enacted, Clause 54 of the newly introduced section 65B provides definition to works contract, which means, “*a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of **any moveable** or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*”

Analysis of Work Contract Service.

(a) For execution of a contract

(b) there should be transfer of Property in Goods,

(c) such transfer of goods should be leviable to tax as Sale of Goods.

(d) such contract is for the purpose of carrying out

- ❖ Construction
- ❖ Installation
- ❖ Repair
- ❖ Maintenance
- ❖ Completion
- ❖ Erection
- ❖ Commissioning
- ❖ Fitting out
- ❖ Renovation & Alteration

(e) In Relation of :

- ❖ any movable or immovable property or
- ❖ for carrying out any other similar activity or

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

- ❖ a part thereof in relation to such property;

CASE 1



CASE 2

Would labour contracts in relation to a building or structure treated as a works contract?

No. Labour Contracts do not fall in the definition of works contract. It is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value.

CASE 3

Would contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise be treated as a works contract?

Such contracts would be treated as works contracts if -

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

- (a) Transfer of property in goods is involved in such a contract; and
- (b) The machinery equipment structures are attached or embedded to earth after erection commissioning or installation.

2. Valuation

The manner for determining the value of service portion of a works contract from the total works contract is given in Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

In said Rule 2A, there are two methods provide are as given below:-

a. As per sub-rule (i) of the said Rule 2A the value of the service portion in the execution of a works contract are as given below:-

Gross amount charged for the works contract	XXXX
Less: - the value of transfer of property in goods	XXXX
Taxable Value	XXXX

Note:

- (i) VAT or Sales Tax shall be excluded from GAC.
- (ii) Value of transfer of property in goods shall be the value taken for VAT purposes.

Value of service portion includes:

- (i) Labour charges for execution of the works
- (ii) Amount paid to a sub-contractor for labour and services
- (iii) Charges for planning, designing and architect's fees
- (iv) Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract
- (v) Cost of consumables such as works contract water, electricity, fuel, used in the execution of the works contract
- (vi) Cost of establishment of the contractor relatable to supply of labour and services and other similar expenses relatable to supply of labour and services

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

(vii) Profit earned by the service provider relatable to supply of labour and services

b. As per sub-rule (ii) of the Rule 2A of the Service Tax (Determination of Value) Rules, 2006, the value of the service portion in the execution of a works contract are as given below:-

Where Value Cannot be ascertained as per **sub-rule (i) of the said Rule 2A** then value shall be worked out as under:

S. No.	Nature of contract	Taxable Value
1.	Execution of Original Works	40%
2.	Execution of contract for maintenance, repair, reconditioning or servicing of any goods	70%
3.	Other works contracts not covered by 1 & 2 above (including completion and finishing services such as glazing, plastering, installation of electrical fittings of an immovable property).	60%

Explanations

1. Original works means

(i) All new constructions;

(ii) All types of additions and alterations to abandoned or damaged structures to make them workable;

(iii) Erection, commissioning or installation of plant, machinery or equipment whether pre-fabricated or otherwise.

2. Total amount means the gross amount charged plus the value of any material supplied under the same contract or any other contract. Where supply is free of cost, value shall be determined on FMV

Less:-

(i) the amount charged for such goods or services provided by the service receiver; and

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

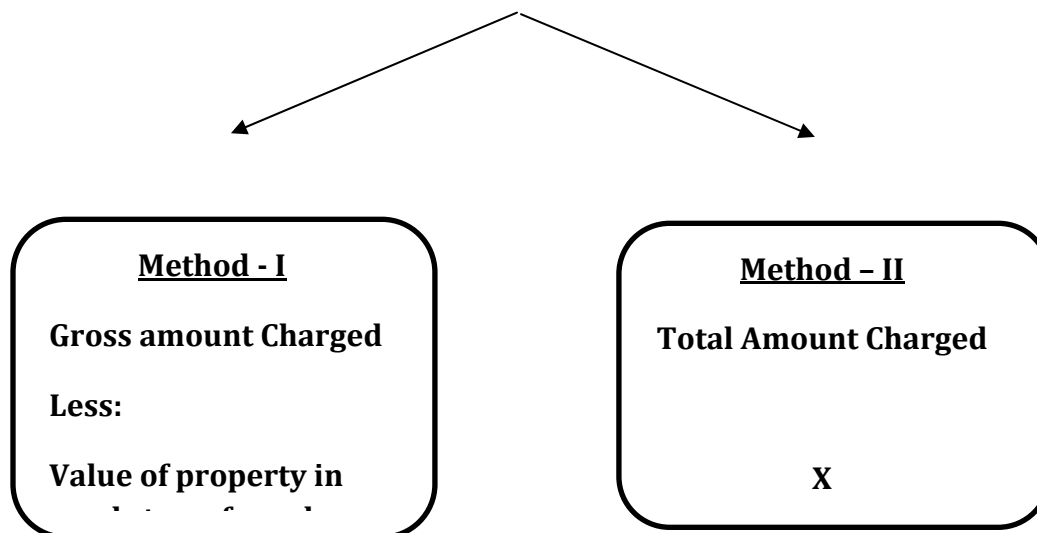
+919953519787

E-mail:- nitin.gupta52@yahoo.com

- (ii) the value added tax or sales tax, if any, levied to the extent they form part of the gross amount or the total amount, as the case may be.
3. the fair market value of the goods or services so supplied shall be determined in accordance with the generally accepted accounting principles.

As per Rule 2A of Service tax (Determination of value) Rules, 2006:-

Determined the value of service rendered in execution of a works contract



3. CENVAT Credit on work contract

(a) Input

No input tax credit of excise duty paid on goods, property transferred in execution of works contract.

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

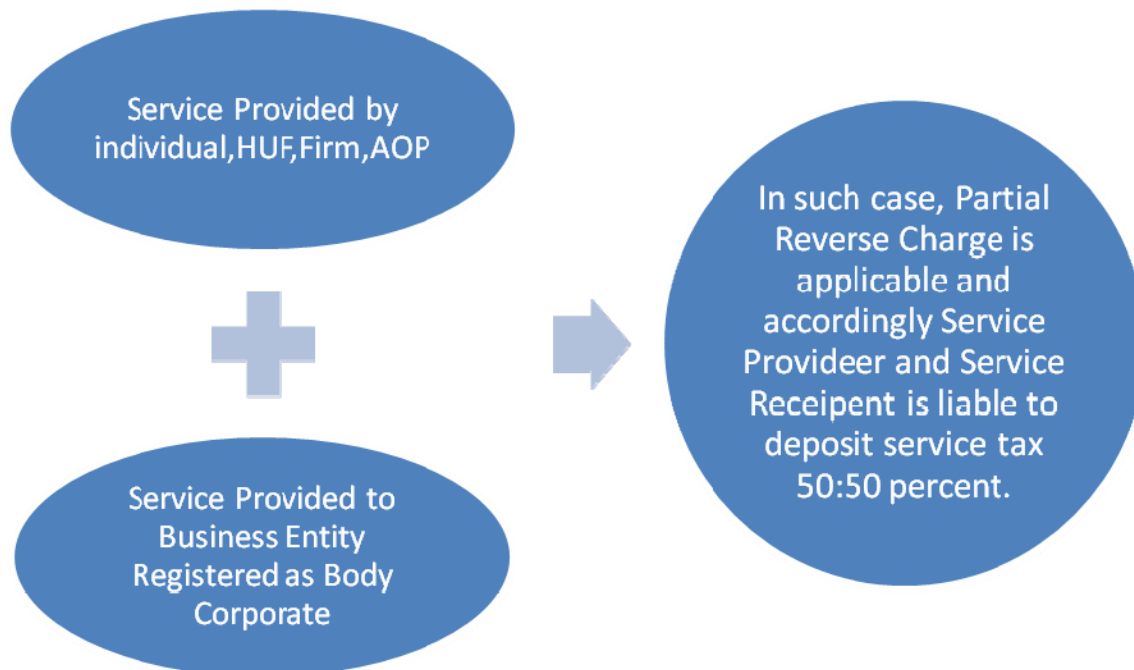
(b) Capital goods

Taxes paid on capital goods will be available.

(c) Input Service

Taxes paid on capital goods and input services will be available. However, No credit if this service is used for construction of building/laying foundation or making structure for support of capital goods.

4. Service Tax Liability under Partial Reverse Charge



5. In case of Partial Reverse Charge, If the service provider is exempted being a SSI (turnover less than Rs 10 lakhs), how will the reverse charge mechanism work?

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

The liability of the service provider and service recipient are different and independent of each other. Thus in case the service provider is availing exemption owing to turnover being less than Rs 10 lakhs; he shall not be obliged to pay any tax. However, the service recipient shall have to pay service tax which he is required to pay under the partial reverse charge mechanism.

6. Exemption from Service Tax in execution of work contract?

(i) As per Mega Exemption: Entry No. 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 predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

(ii) As per Mega Exemption: Entry No. 13

Service provided by way of Construction, Erection, Commissioning, Installation, Completion, Fitting Out, Repair, Maintenance, Renovation, or Alteration of -

NOTE ON WORK CONTRACT SERVICE

BY CA NITIN GUPTA

+919953519787

E-mail:- nitin.gupta52@yahoo.com

- (a) A road, bridge, tunnel, or terminal for road transportation for use by general public.
- (b) A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana.
- (c) A building owned by an entity registered under section 12AA of the Income tax Act, 1961 and meant predominantly for religious use by general public.
- (d) A pollution control or effluent treatment plant, except located as a part of a factory.
- (e) A structure meant for funeral, burial or cremation of deceased.

(iii) As per Mega Exemption: Entry No. 14

Service by way of Construction, Erection, Commissioning, or Installation of Original Works pertaining to –

- (a) An airport, port or railways, including monorail or metro.
- (b) A 'single residential unit' otherwise than as a part of a 'residential complex'.
- (c) Low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'scheme of affordable housing in partnership' framed by the ministry of housing and urban poverty alleviation, government of India.
- (d) Post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes.
- (e) Mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.