

F.No.354/141/2010-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)  
\*\*\*\*\*

North Block, New Delhi,  
24<sup>th</sup> August, 2010.

To

Director General (Service Tax),  
Director General (Central Excise Intelligence)  
Director General (Audit)  
Chief Commissioner of Central Excise and Service Tax (All)  
Commissioner of Central Excise and Customs (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

Subject: Service tax on on-going works contracts entered into prior to 01.06.2007 – regarding –

It has been brought to the notice of the Board that the following confusions/disputes prevail with respect to long term works contracts which were entered into prior to 01.06.2007 (when the taxable service, namely, Works contract came into effect) and were continued beyond that date:

- (i) While prior to the said date services like Construction; Erection, commissioning or installation; Repair services were classifiable under respective taxable services even if they were in the nature of works contract, whether the classification of these activities would undergo a change?
- (ii) Whether in such cases of continuing contracts, the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 under Notification No. 32/2007-ST dated 22/05/2007 would be applicable?

2. The matter has been examined. As regards the classification, with effect from 01.06.2007 when the new service 'Works Contract' service was made effective, classification of aforesaid services would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007. This is because 'works contract' describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

3. As regards applicability of composition scheme, the material fact would be whether such a contract satisfies rule 3 (3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. This provision casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered. Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007 but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

4. The Board's previous Circular No. 98/1/2008-ST dated 04.01.2008 and the ratio of judgement of the High Court of Andhra Pradesh in the matter of M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST) are in line with the above interpretation.

5. Trade Notice/Public Notice may be issued accordingly.

Yours faithfully,

(J.M. Kennedy)  
Director (TRU)  
Tel: 011-23092634