

Institute of Chartered Accountants of India

Workshop on Service Tax

Subject : Exemptions, Exclusions, negative list, abatements and valuation for Construction, Works Contract , Renting and Job work services

Date : Saturday, May 30, 2015

Venue : ICAI Tower, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

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Preamble

- Abbreviations:
 - The Act – Finance Act, 1994 (Service tax legislation), amended till date
 - The Rule – Service Tax Rules, 1994 , amended till date
 - CCR – Cenvat Credit Rules, 2004, amended till date
 - Mega Exemption Notification – Notification 25/2012-ST dated 20.06.2012, amended till date
 - Valuation Rule – Service Tax (Determination of Value) Rules,2006, amended till date
- Presentation deals with applicable exclusions, exemptions, abatements and Valuation provisions impacting service tax on:
 - Builders/Developers
 - Construction Service
 - Works contract service
 - Renting Of Immovable Property
 - Job work
- **Cenvat and Reverse Charge** are **not** in scope of this presentation
- Presentation deals with position **on or after 01.07.2012** only

Analysis of Charging section

Section 66B	Analysis and Interpretation
There shall be levied a tax (Service Tax)	This enables the government to levy service tax
At the rate of 14% (12% plus Cess till 31.05.2015)	Tax rate is provided in statute itself
On the <u>value</u> of	<ul style="list-style-type: none"> • Service tax is payable on 'value' of services. • Section 67 and Service Tax (determination of value) Rules, 2006 deals with valuation of services
All <u>Services</u>	Service tax is payable on ' service ' provided or to be provided
Provided or to be provided	Term ' <u>Service</u> ' is defined u/s 65B(44) of the Act and it includes ' <u>Declared service</u> ' as defined U/s 66E of the Act
Other than those specified in <u>negative list</u>	<ul style="list-style-type: none"> • Service listed in negative list is out of domain of service tax • Section 66D lists out negative list of services

Analysis of Charging section

Section 66B	Analysis and Interpretation
By one person to another person	<ul style="list-style-type: none">•Service is a bilateral transaction•Only bilateral transaction can be taxed•Self service is not taxable•Exception to above general Rule:<ul style="list-style-type: none">▪ Transactions between unincorporated association or body of persons and it's members [explanation 3 to section 65B(44)]▪ Transactions between two establishments of same person one located in taxable territory and other located in non-taxable territory [explanation 4 to section 65B(44)]
In the taxable territory	<ul style="list-style-type: none">•Service provided in taxable territory is taxable•Service provided in non taxable territory is out of service tax domain•Taxable territory means whole of India (excluding Jammu and Kashmir) section 64 read with section 65B(52)•Non taxable territory means the territory which is outside the taxable territory•Place of provision of Service Rules, 2012 determines the place where services are deemed to have been provided

Analysis of Charging Section

Section 66B	Analysis and Interpretations
To be collected in a manner prescribed	<ul style="list-style-type: none"><li data-bbox="664 254 1825 486">• Service tax is payable on occurrence of taxable event (Point of Taxation) The Point of Taxation Rules, 2011 prescribes the point of taxation<li data-bbox="664 525 1825 815">• Section 68(1) provides for collection of service tax from service provider Section 68(2) read with Rule 2(1)(d) provides for collection of service tax from service recipient (Reverse Charge Mechanism) Service Tax Rules, 1994 prescribes the due date and manner of payment<li data-bbox="664 996 1825 1110">• Exemption notifications grant full exemption Abatement notification grants partial exemption<li data-bbox="664 1149 1825 1239">• Cenvat Credit Rules, 2004 prescribes for tax credits of input, capital goods and input services

BUILDERS / DEVELOPERS

- Position on or after 01.07.2012

Litigation History Till Date On Position Upto 30.06.2012

- Honorable Punjab & Haryana High Court in **M/s G S Promoters Vs Union of India** [2010-TIOL-813] upheld constitutional validity of service tax levy on builders and developers
- Honorable Bombay High Court in **Maharashtra Chamber of Housing Industry's case** [2012-TIOL-78-HC-MUM-ST] also upheld the levy of Service tax on sale of under construction flats / units
- Honorable Supreme Court, on 30th March, 2012, admitted Special Leave Petition (SLP) challenging the above referred order of Bombay High Court
- Legal issues are still open whether:
 - Sale of under construction flats amount to provision of Service?
 - Levy of Service tax on sale of under-construction flats is constitutionally valid?

Builders/ Developers - Chargeability on or after 01.07.2012

- Service means [Section 65B(44) of the Act]:
 - Any activity
 - Carried out by a person for another person
 - For consideration

- It includes **declared service** (Section 66E of the Act)
 - construction of a complex, building, civil structure or a part thereof,
 - including a complex or building
 - intended for sale to a buyer, wholly or partly,
 - except where the entire consideration is received after issuance of completion-certificate by the competent authority

- It does not include:
 - An activity which constitutes merely, a **transfer of title in goods or immovable property**, by way of sale, gift or in any other manner

Builders/ Developers - Chargeability on or after 01.07.2012

- Sale of under construction flats/units is **declared as Service** under Section 66E of the Act
- Definition of Service specifically **excludes** transfer of title in immovable property
- A strong view is prevalent that builders / developers transfer title in immovable property to buyer and hence transaction is not that of Service
- Old issue still remains, whether builder is:
 - Seller of property; or
 - Provider of service
- In view of specific exclusion of transfer of title in immovable property from 'service' definition, builder / developer are in better position to contend that sale of flat is not a service
- Presentation proceeds with the presumption that builders / developers are liable to Service tax

Builders/Developers - Exemptions and Exclusions on or after 01.07.2012

Transaction	01.07.2012 – 31.03.2015	On or after 01.04.2015
Sale of flats/units where any part of sale consideration is received before issuance of completion certificate	Taxable – Declared Service	Taxable – Declared Service
Sale of flats/units where entire sale consideration is received after issuance of completion certificate	Non-taxable - not covered in declared service	Non-taxable - not covered in declared service
Sale of single residential unit otherwise than as a part of a residential complex	Exempt – Clause 14(b) of Mega Exemption Notification	Exempt – Clause 14(b) of Mega Exemption Notification
Sale of residential flats in building/complex having more than 1 unit but not more than 12 units	Taxable – No Specific exemption	Taxable – No Specific exemption

- “Single residential unit” means a self contained residential unit designed for use, wholly or principally, for residential purposes for one family [Clause 2(ze) of Mega Exemption notification]

Builders/Developers - Exemptions and Exclusions on or after 01.07.2012

Transaction	01.07.2012 – 31.03.2015	On or after 01.04.2015
Sale of residential flats in building/ complex having more than 12 units	Taxable	Taxable
Re-sale of flats/units by original allottee	Non-taxable	Non-taxable
Sale of Entire Building under construction to a company meant for use of its employees as staff quarters	Taxable – No Specific exemption	Taxable – No Specific exemption
Sale of under construction units for commercial purpose (irrespective of number of units in a complex)	Taxable – Declared Service	Taxable – Declared Service
Sale of under construction units to Government	Exempt – Clause 12(a) of Mega Exemption Notification	Taxable – As Exemption under clause 12(a) is withdrawn w.e.f 01.04.2015

Exemptions and Exclusions on or after 01.07.2012

Transaction	01.07.2012 – 31.03.2015	On or after 01.04.2015
Sale of residential unit pre-dominantly meant for employees of Government, MP, MLA etc	Exempt – Clause 12(f) of Mega Exemption Notification	Taxable – As Exemption under clause 12(f) is withdrawn w.e.f 01.04.2015
Sale of under construction flats/units to entity registered under Sec 12AA of Income tax Act, 1961 and to be used by general public for religious purpose	Exempt – Under Clause 13(c) of Mega Exemption Notification	Exempt – Under Clause 13(c) of Mega Exemption Notification
Sale of units to charitable trusts for educational / hospital / clinic etc	Taxable – No specific exemption	Taxable – No specific exemption

Abatement - From 01.07.2012 to 28.02.2013

- No specific valuation provision / Rule for determining Value of service
- Service tax is payable on abated value of flats/units as per **Notification No. 26/2012 dt. 20.06.2012** amended from time to time:

Particulars	Abatement	Taxable Position	Effective Rate	Conditions / Remark
Sale of under construction flats / industrial units / commercial units irrespective of area or value of such flats/units	75%	25%	3.09%	<ul style="list-style-type: none"> • No Cenvat for input • Sale value to include the land value • Cenvat available for input services • Cenvat available for capital goods
No distinction between commercial and residential units				
No Distinction between premium residential units and non premium residential units				

Abatement - From 01.03.2013 to 07.05.2013

- No specific valuation provision / Rule for determining Value of service
- Service tax is payable on abated value of flats/units as per **Notification No. 26/2012 dt. 20.06.2012** amended from time to time:

Particulars	Abatement	Taxable Position	Effective Rate	Conditions / Remark
i. Residential unit having carpet area upto 2000 sq. ft. or less irrespective of value of sale consideration	75%	25%	3.09%	<ul style="list-style-type: none"> • No Cenvat for input • Sale value to include the land value
ii. Residential unit having consideration of less than Rs.1 Crore irrespective of area of the flat	75%	25%	3.09%	
For other than above:				<ul style="list-style-type: none"> • Cenvat available for input services • Cenvat available for capital goods
i. Residential unit having carpet area more than 2000 sq. ft. and consideration is Rs. 1 Crore or more	70%	30%	3.708%	
ii. Commercial unit irrespective of area or value	70%	30%	3.708%	

Abatement – On or after 08.05.2013

- No specific valuation provision / Rule for determining Value of service
- Service tax is payable on abated value of flats/units as per **Notification No. 26/2012 dt. 20.06.2012** amended from time to time:

Particulars	Abatement	Taxable Position	Effective Rate	
			Prior to 31.05.2015	On or after 01.06.2015
Residential unit having carpet area upto 2000 sq. ft. or less and consideration is less than Rs. 1 Crore	75%	25%	3.09%	3.5%
For other than above:				
i. Residential unit having carpet area more than 2000 sq. ft. irrespective of value of sales consideration	70%	30%	3.708%	4.20%
i. Residential unit having sales consideration of Rs.1 Crore or more irrespective of area of the flat	70%	30%	3.708%	4.20%
i. Commercial unit irrespective of area or sale value	70%	30%	3.708%	4.20%

- Above referred abatement is subject to conditions – refer next Slide

Conditions for availment of abatement

- Land value is to be included in the value of flat/units sold
- Cenvat on inputs (excise duty / CVD paid on any material including cement, steel, glass, etc.) is **not** taken:
- Cenvat Credit of Input services **can be taken** subject to provisions of CCR
- Cenvat of Capital goods **can also be taken** subject to provisions of CCR
- What happens if builder/developer has claimed cenvat of inputs erroneously?

Builders/Developers – Some Issues

- Whether preferential location and floor rise charges are taxable at 12.36% or 3.09% ?
- Whether sale of following are liable to Service tax:

Development right	FSI	TDR
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- Whether builder is liable to service tax in respect of flats allotted to :
 - Land Owner in lieu of land development rights.
 - Existing members of the society in redevelopment project.
 - Hutment occupants in case of SRA project.
- Whether land owner (getting the flats in lieu of sale of development rights) is liable to service tax in respect of such flats sold during construction by him?
- Whether completion certificate issued by an architect , Chartered engineer or license surveyor is still a valid certificate post 01.07.2012?
- Whether Builder/developer can be regarded as work contractor and be taxed accordingly?

CONTRACTORS / SUB CONTRACTORS

Position On or after 01.07.2012

Contractors - chargeability on or after 01.07.2012

- Service means [Section 65B(44) of the Act]:
 - Any activity
 - Carried out by a person for another person
 - For consideration
- It includes **declared service** (Section 66E of the Act)
 - construction of a complex, building, civil structure or a part thereof,
- **And shall not include:**
 - Such transfer, delivery or supply of any goods which is deemed to be sale within a meaning of Clause 29A of Article 366 of Constitution
- Construction or works contract service provided **by** government is not covered under Negative List – i.e Section 66D(a) of the Act
- Construction or works contract service provided **to** government is not covered under negative list

Contractors - chargeability on or after 01.07.2012

- Service provided in taxable territory (India except Jammu & Kashmir) is taxable
- Service provided in Non taxable territory is not taxable
- Place of Provision of Service Rules, 2012 (POPSR) will be relevant for determining whether services are provided in taxable territory or not
- Composite construction contracts (with material contracts) were classifiable under two categories till 30.06.2012:
 - Construction services ; or
 - Works contract service
- Works contract service was taxable w.e.f 01.06.2007. There was dispute whether composite contracts can be taxed prior to enactment of “Works Contract Service” category. Due to difference in view among Tribunals matter referred to special bench.
- Honorable special bench of CESTAT in case of Larsen and Toubro Ltd. / Kehems Engg Pvt. Ltd. (2015-TIOL-527-CESTAT-DEL-LB) held that works contracts were liable to service tax even before 01.06.2007

Contractors - chargeability on or after 01.07.2012

➤ Various scenario where service provider is in taxable territory:

Location of			Provided In	Rule of POPSR	Tax Implications
Service Provider (SP)	Service recipient (SR)	Property			
Taxable Territory	Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable. Tax to be paid by SP
Taxable Territory	Non Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable. Tax to be paid by SP
Taxable Territory	Non Taxable Territory	Non Taxable Territory	Non Taxable Territory	5	Not Taxable
Taxable Territory	Taxable Territory	Non Taxable Territory	Taxable Territory	8	Taxable. Tax to be paid by SP

chargeability to service tax

➤ Various scenario where service provider is in non taxable territory:

Location of			Provided In	Rule of POPSR	Tax Implications
Service Provider (SP)	Service recipient (SR)	Property			
Non Taxable Territory	Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable. Tax to be paid under RCM by SR
Non Taxable Territory	Taxable Territory	Non Taxable Territory	Non Taxable Territory	5	Not Taxable
Non Taxable Territory	Non Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable but Exempt u/c 34(c) of Mega Exemption Notification
Non Taxable Territory	Non Taxable Territory	Non Taxable Territory	Non Taxable Territory	5	Not Taxable

Abatement

➤ Value on which service tax liability to be discharged:

- If treated as 'works contract' service – Rule 2A of Valuation Rules – Refer slides 37, 39 and 40
- If treated as Construction service – Tax to be paid on abated value as per Notification 26/2012-ST dated 20.06.2012

Particulars`	Abatement	Taxable Position	Effective Rate	
			Prior to 31.05.2015	On or after 01.06.2015
Construction of complex, building, Civil Structure or a part thereof:	70%	30%	3.708%	4.20%

➤ Conditions for claiming abatement:

- **No Cenvat** to be taken on Inputs
- Amount charged shall be sum total of:
 - Amount charged for service; **plus**
 - Fair market value of goods and services supplied by recipient; **less**
 - Amount charged for such goods and services and VAT or sales tax levied if any

➤ Controversy as to inclusion of value of free material in taxable value:

- Larger bench of Delhi CESTAT held issue in the favour of assessee in case of Bhayana Builders (P) Ltd. and Ors (2013-TIOL-1331-CESTAT-DEL-LB)

GOVERNMENT CONTRACTS – Exemptions (Clause 12 of mega exemption notification)

- Entry 12 of Exemption Notification No. 25/2012 –ST dated 20.06.2012 amended vide Notification No. 6/2015-ST dated 01.03.2015
- This entry provides exemption for **Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration services** provided to **Government, Local authority and Governmental authority (Specified Services)**
- The exemption is in respect of:

Specified Service Relating to	Up to 31.03.2015	On or after 01.04.2015
Civil structure or other original works meant predominantly for use other than for commerce, industry, business or profession	Exempt	Exemption withdrawn and hence Taxable
Historical monument, archaeological site or remains of national importance, archaeological excavation or antiquity	Exempt	Exempt
a structure meant predominantly for use as: <ul style="list-style-type: none"> - educational ; or - clinical; or - art or cultural establishment 	Exempt	Exemption withdrawn and hence Taxable

GOVERNMENT CONTRACTS – Exemptions (Clause 12 of mega exemption notification)

Specified Services relating to	Up to 31.03.2015	On or after 01.04.2015
Canal, dams, or other irrigation work	Exempt	Exempt
Pipeline, conduit, or plant for : - Water Supply ; or - Water treatment ; or - Sewerage treatment	Exempt	Exempt
Residential complex predominantly meant for self use or the use of their employees or other persons specified in explanation 1 to section 65B(44)	Exempt	Exemption withdrawn and hence Taxable

➤ Implications and points for Consideration:

- Government projects will be Costlier to the extent of tax incidence
- Fate of contracts negotiated factoring “Nil” rate of Service tax at the time of bidding
- Sub-Contractor’s services to main contractors (where main service is taxable) will be liable to service tax as exemption entry 29 (h) will not be applicable

GOVERNMENT CONTRACTS – Exemptions (Clause 12 of mega exemption notification)

- Contractor will be liable to Service Tax under RCM on sub-contract payments, wherever applicable
- Contractor will be entitled to CENVAT of Input Service Tax including service tax on sub contract payments
- **Taxability of on going projects:**
 - work completed till 31.03.2015 and not billed
 - work billed till 31.03.2015 but payment not received
 - Advance received before 31.03.2015 for work to be done on or after April 2015

INFRASTRUCTURE and OTHER PROJECTS – exemptions (Clause 13 of mega exemption notification)

Transaction	01.07.2012 – 31.03.2015	On or after 01.04.2015
Services provided to any person by way of construction of: (i) Road	Exempt, if for general public use	Exempt, if for general public use
(ii) Bridge	Exempt, if for general public use	Exempt, if for general public use
(iii) Tunnel	Exempt, if for general public use	Exempt, if for general public use
(iv) Road transport terminal	Exempt, if for general public use	Exempt, if for general public use
(v) Civil structure or original works under JNNURM or RAY	Exempt	Exempt
(vi) Building owned by a entity registered under Sec 12AA of Income tax Act, 1961 and to be used by general public for religious purpose	Exempt, if for general public use	Exempt, if for general public use

INFRASTRUCTURE and OTHER PROJECTS – exemptions (Clause 13 of mega exemption notification)

Transaction	01.07.2012 – 31.03.2015	On or after 01.04.2015
(vii) Construction/Erection of pollution control or effluent treatment plant (other than as a part of factory)	Exempt	Exempt
(viii) Construction/Erection of structure meant for funeral, burial or cremation	Exempt	Exempt
Repair, renovation, commissioning, installation, completion, fitting out, maintenance, or alteration of all the above	Exempt	Exempt
Construction of hospital, educational institutions such as schools, colleges, etc by charitable trusts or NGO's	Taxable	Taxable

- Exemption is granted for service in respect of in respect of civil structures meant for use by general public. The term 'general public' is defined U/c 2(q) of notification to mean public at large sufficiently defined by some common quality of public or impersonal nature

Specified Construction, Erection, Commissioning or Installation Services -Exemptions - Entry 14 of Mega Exemption Notification

- Entry 14 of Exemption Notification of 25/2012 –ST dated 20.06.2012 amended vide Notification No. 6/2015-ST dated 01.03.2015
- This entry provides exemption for **Construction, erection, commissioning or installation pertaining to certain infrastructure projects (Specified Services)**
- **The exemption is now restricted as under :**

Specified Service relating to	Up to 31.03.2015	On or after 01.04.2015
Airport	Exempt	Exemption withdrawn And hence taxable
Ports	Exempt	Exemption withdrawn And hence taxable
Railways including monorail and metro	Exempt	Exempt
A single Residential unit otherwise than as a part of a residential complex	Exempt	Exempt
Approved low cost housing project	Exempt	Exempt

Specified Construction, Erection, Commissioning or Installation Services -Exemptions - Entry 14 of Mega Exemption Notification

Specified Service relating to	Up to 31.03.2015	On or after 01.04.2015
Post harvest storage infrastructure for agriculture produce including a cold storage for such purpose	Exempt	Exempt
Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages	Exempt	Exempt

➤ **Implications and Points for Consideration:**

- Infrastructure projects will be Costlier to the extent of tax incidence
- Fate of contracts negotiated factoring “Nil” rate of Service tax at the time of bidding
- No CENVAT available to Service recipient (Airport or port) in respect of works contract/construction of building or civil structure in view of specific exclusions from definition of “Input Services” under CCR

Specified Construction, Erection, Commissioning or Installation Services -Exemptions - Entry 14 of Mega Exemption Notification

- Sub-Contractor's services to main contractors (where main service is taxable) will be liable to service tax as exemption entry 29 (h) will not be applicable
- Contractor will be liable to Service Tax under RCM on sub-contract payments, wherever applicable
- Contractor will be entitled to CENVAT of Input Service Tax including service tax on sub contract payments
- Taxability of :
 - work completed till 31.03.2015 and not billed
 - work billed till 31.03.2015 but payment not received
 - Advance received before 31.03.2015 for work to be done on or after April 2015

Sub Contractors – Tax Implications

- Sub-contractors are independent assesseees liable to Service tax. Merely main contractor or builder pays Service tax, sub-contractor is not automatically exempted
- Clause 29(h) of Mega exemption Notification No 25/2012-ST dated 20.06.2012 provides for exemption to sub-contractor providing:
 - works contract services
 - to main contractor providing exempt Works Contract services
- Sub-contractor providing labour services (other than works contract services) is **not entitled** to above referred exemption
- Whether sub contractor is entitled to exemption for providing works contract and/or labour contract service to main contractor in respect of following :
 - Construction of civil structure in SEZ/for SEZ developers
 - Construction of civil structure in respect of government building which were exempt under clause 12 of mega exemption notification.
 - Infrastructure projects such as road, bridge, temple, etc which are exempt under clause 13 and 14 of mega exemption notification

WORKS CONTRACT SERVICE

w.e.f. 01.07.2012

Works Contract Service – Chargeability on or after 01.07.2012

- Service means [Section 65B(44) of the Act]:
 - Any activity
 - Carried out by a person for another person
 - For consideration
- It includes **declared service** (Section 66E of the Act)
 - Service portion in execution of works contract,
- **And shall not include:**
 - Such transfer, delivery or supply of any goods which is deemed to be sale within a meaning of Clause 29A of Article 366 of Constitution

Works Contract Service - Meaning

- Works contract service U/s 65B(54) means:
- Contract involving transfer of goods in execution of such contract; and
 - such transfer of goods is leviable to tax as sale of goods; and
 - such contract is for carrying out:

Construction	Erection	Commissioning	Installation
Completion	Fitting out	Repair	Maintenance
Alteration	Renovation	Other similar activity	

of / in respect of movable or immovable property

- It includes works contract in respect of goods / movable property also

Works Contract Service - Meaning

- “Original work” means:
 - all new constructions
 - all types of additions and alteration to abandoned / damage structures on land that are required to make them workable
 - Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise

- “Other works” means other than original works and includes:
 - maintenance, repair, reconditioning, restoration or servicing of goods; or **(on or after 01.10.2014)**
 - Maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property
 - Works contract for maintenance, repair, reconditioning, restoration or servicing of goods is separately distinguished from “original work” and “other works” **till 30.09.2014**

Works Contract Service - Valuation

- Post 01.07.2012, Assessee had a choice of discharging tax on specific value of Services or presumptive value of services (Rule 2A of Valuation Rules)
- Specific value under Rule 2A(i) of Valuation Rules :
 - Value of service portion shall be gross amount of works contract less value of goods (material) transferred in execution of contract.
 - VAT / Sales Tax to be excluded from gross amount of works contract.
 - Where vat/sales tax has been paid or payable on actual value of goods transferred in execution of contract, such value should be taken for determining value of service portion

Gross Contract Value	A
(less) VAT / Sales tax	B
(less) value of goods	C
Taxable Value	$D = (A - B - C)$
Tax payable at applicable rate on D	

Works Contract Service - w.e.f. 01.07.2012

- Value of service should include following specified overheads :

Labour / service charges paid	Sub-contractor charges
Planning, designing, architect fees	Tools / machinery hire charges
Water, electricity, fuel, consumables	Establishment cost
Expenses relatable to services	Profit relatable to services

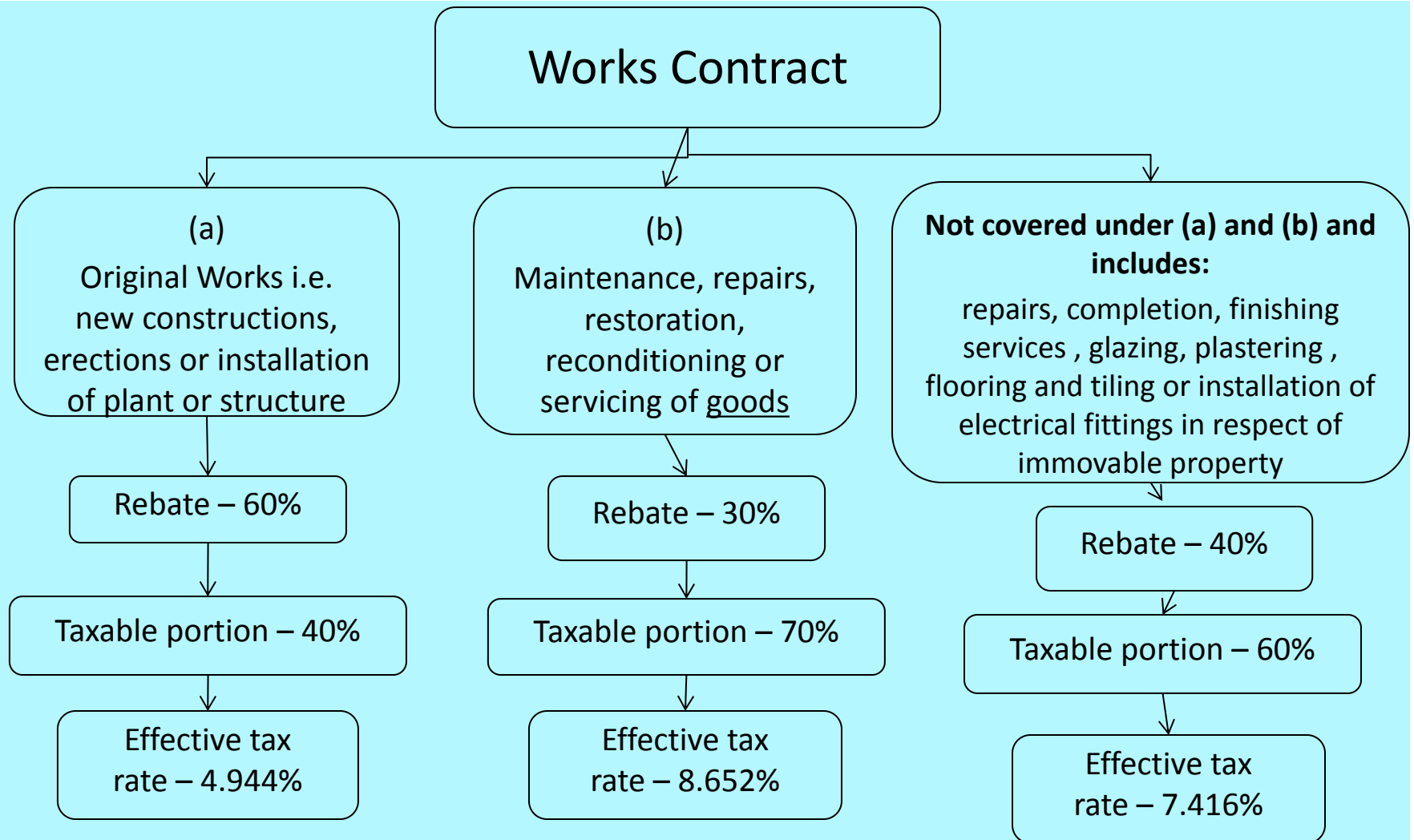
➤ Presumptive value U/r 2A(ii) of Valuation Rules:

- Where value of service is not determined as above, value of the service would be specified percentage of contract value (presumptive Scheme) [**Refer Slide No.39 and 40**]
- Even for presumptive scheme, the vat or sales tax to be excluded from gross contract value

➤ Service provider is entitled to Cenvat of Input services and Capital goods irrespective of valuation method

➤ Service provider is not entitled to Cenvat of 'inputs' in both the methods of valuation

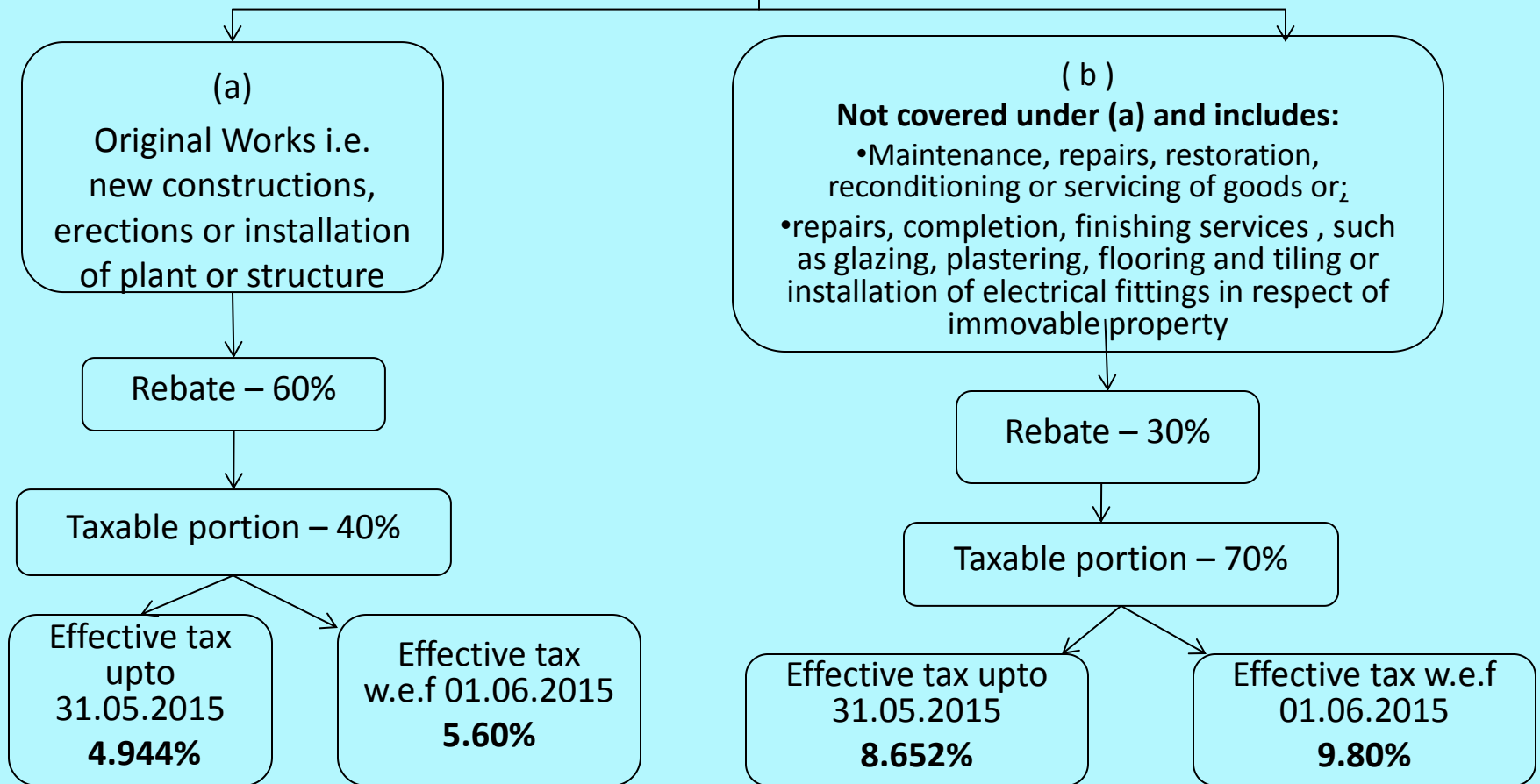
Works Contract – Presumptive valuation U/R 2A (ii) w.e.f 01.07.2012 to 30.09.2014



*Service provider is entitled to Cenvat of Input services and capital goods

Works Contract – Presumptive valuation U/R 2A(ii) on or after 01.10.2014

Works Contract



*Service provider is entitled to Cenvat of Input services and capital goods

Works Contract – Inclusion of Material / Service Value

- Rule 2A (ii) (D) - “total amount” for presumptive taxation :

Gross Amount Charged for Works Contract	A
Add : Fair Market Value of All Goods Supplied in or in relation to execution of works contract (Under same contract or separate contract)	B
Add : Fair Market Value of All Services Supplied in or in relation to execution of works contract (Under same contract or separate contract)	C
Less: Amount Charged for above goods / services	D
Less: VAT / Sales Tax levied thereon	E
Total Amount on which tax to be worked out (A+B+C-D-E)	F
Tax at presumptive rate on F	

- Fair Market Value of Goods and services so supplied may be determined in accordance with Normally accepted accounting principles?

Works Contract – Some Issues

- Whether all Works Contract under VAT are Works Contract under Service Tax ?
- In case where contractor has paid vat on actual basis, whether he is entitled to presumptive valuation for service tax?
- In case where contractor pays VAT under composition scheme (Where value of material is not declared for VAT purpose), whether contractor is obliged to follow presumptive scheme of valuation or he can follow specific valuation?
- What will be the applicable rate of Service tax in respect of following finishing and completion contracts for new construction:

Plastering	Tilling	Painting
Electrical	Plumbing	Carpentry

- Controversy as to inclusion of free material supplied by client or material supplied at concessional value

RENTING OF IMMOVABLE PROPERTY

w.e.f 01.07.2012

Litigation History Till Date On Position Upto 30.06.2012

- Honorable Delhi High court in case of Home Solutions India Limited Vs. UOI struck down the levy as renting per se was not taxable and services relating to renting was taxable
- Finance Act, 2010 made retrospective amendment in the definition of Renting to nullify the decision of Delhi high Court
- Constitutional validity of retrospective amendment was challenged in many High courts.
- SLP was filed by Retailers Association as well as Home Solutions to Honorable Supreme Court
- Final Decision of Apex Court is still awaited and hence issue of taxability is still open
- However, presentation proceeds with presumption that levy is valid and subsisting

Renting of Immovable Property – Chargeability on or after 01.07.2012

- Renting of immovable property is a declared service [Sec 66E(a) of the Act]
- Renting means allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property [Sec 65B(41) of the Act]
- Following, being in negative list, are non taxable:
 - Renting of residential dwelling for use as residence [sec 66D(m) of the Act]
 - Renting of vacant land relating to agriculture [sec 66D(d) (iv)]
 - Access to road or bridge [sec 66D(h)]
 - Access to amusement facilities [sec 66D(j)] **till 31.05.2015. It is chargeable to Tax on or after 01.06.2015**

Renting of Immovable Property - Chargeability

➤ Various scenario where service provider (property Owner) is in taxable territory:

Location of			Provided In	Rule of POPSR	Tax Implications
Service Provider (SP)	Service recipient (SR)	Property			
Taxable Territory	Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable. Tax to be paid by SP
Taxable Territory	Non Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable. Tax to be paid by SP
Taxable Territory	Non Taxable Territory	Non Taxable Territory	Non Taxable Territory	5	Not Taxable
Taxable Territory	Taxable Territory	Non Taxable Territory	Taxable Territory	8	Taxable. Tax to be paid by SP

Renting of Immovable Property - Chargeability

➤ Various scenario where service provider (property Owner) is in non taxable

territory:	Location of		Provided In	Rule of POPSR	Tax Implications
Service Provider (SP)	Service recipient (SR)	Property			
Non Taxable Territory	Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable. Tax to be paid under RCM by SR
Non Taxable Territory	Taxable Territory	Non Taxable Territory	Non Taxable Territory	5	Not Taxable
Non Taxable Territory	Non Taxable Territory	Taxable Territory	Taxable Territory	5	Taxable but Exempt u/c 34(c) of Mega Exemption Notification
Non Taxable Territory	Non Taxable Territory	Non Taxable Territory	Non Taxable Territory	5	Not Taxable

Renting of Immovable Property - Exemptions

- Exemptions under mega exemption notification no.25/2012 –ST dated 20.06.2012:
 - Services provided to united nations or specified international organization (clause 1)
 - Services by an entity registered under sec 12AA of income tax Act and carrying on **specified** charitable activities (clause 4 r.w. clause 2(k) of Notification). Specified charitable activities have been given very restrictive meaning
 - Renting of precincts of religious place meant for general public [clause 5(a)]
 - Renting of immovable property to an exempt educational institution [clause 9(b)] **till 10.07.2014. It is taxable thereafter**
 - Renting of immovable property by an exempt educational institution [clause 9(b)] **Till 31.03.2013. It is taxable thereafter**
 - Renting of a hotel , inn, guest house or other commercial places meant for residential or lodging purpose, having declared tariff of a unit of accommodation below Rs.1000/- per day or equivalent. (clause 18)
 - service by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility (clause 24) **Till 31.03.2013. It is taxable thereafter**

Renting of Immovable property – Exemption for Property Tax

- Notification 29/2012 ST dated 20.06.2012 deals with exemption in respect of property tax
- Exemption is granted in respect of property tax levied and collected by local bodies
- Interest and penalty paid to local bodies is not treated as property tax for this exemption
- wherever the period for which property tax paid is different from the period for which service tax is paid or payable, property tax proportionate to the period for which service tax is paid or payable shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

Example:

- Property tax paid for April to September = Rs. 12,000/-
- Rent received for April = Rs. 1,00,000/-
- Service tax payable for April = Rs. 98,000/- $(1,00,000 - 12,000/6) * \text{applicable rate of service tax}$

Summarized Position of Taxability on or after 01.07.2012

Transactions	Taxability
Renting of immovable property by religious body of :	
a) precincts of religious place meant for general Public	Exempt
b) Other than precincts of religious place	Taxable
Renting of immovable property to religious body	Taxable
Renting of immovable property to an Educational body for specific Purpose	Exempt till 10.07.2014. Taxable W.e.f 11.07.2014
Renting of immovable property by an Educational body for specific purpose	Exempt till 31.03.2013. Taxable w.e.f 01.04.2013
Renting of immovable property to government department	Taxable
Renting of immovable property by government/local authority	Taxable. Service Tax is payable by Government

Renting of immovable property on or after 01.07.2012

Transactions	Taxability
Renting of residential property used for commercial purpose.	Taxable
Renting of residential unit for residential purpose	Non-Taxable - Covered in Negative list U/S 66D(m)
Renting of rooms in a hotel/lodge etc	
a) Tariff below Rs.1000/- per day	Exempt
a) Tariff of Rs.1000/- or above	Taxable
Residential building given on rent and the tenant uses it as hotel, lodge, hostel	Taxable
Residential house used partly for residence and partly for non residential purpose	Taxability depends on dominant use

Renting of immovable property on or after 01.07.2012

Transactions	Taxability
vacant land used for allowing parking of vehicles of public.	Exempt till 31.03.2013. Taxable w.e.f 01.04.2013
vacant land used for allowing parking to car dealers	Taxable
vacant land taken on lease for commercial purposes	Taxable
Renting of agricultural land	Non taxable as under negative list 66D(d)(iv)
Renting of vacant land for animal husbandry/poultry/floriculture	Non-taxable falling under negative list 66D(d)(iv)
Renting of halls or vacant land for social, official or business functions	Taxable
Renting of theaters by owners to film distributors	Taxable

Renting of immovable property on or after 01.07.2012

Transactions	Taxability
Revenue sharing arrangement in case of theatre / distributors or hotel conducting arrangements	Litigative issue till 31.03.2015. Specific Exemption granted to exhibition by theatre w.e.f 01.04.2015
Renting of land for sports, entertainment, circus etc	Taxable
Renting of space for communication tower or hoarding.	Taxable
Renting of space for vending or dispensing machine	Taxable

Renting of Immovable Property - Issues

- Whether premium received on Long term lease of land say for 99 years is liable to service tax?
- Whether recovery of society charges, maintenance, property taxes, etc. by property owner is liable to service tax?
- Whether recovery of electricity charges by landlord is liable to service tax?
- In case of a co-owned property, whether threshold exemption limit applies to each co-owner or all co-owners jointly?
- Whether owner of a mall (where all shops are let out) is entitled to Cenvat Credit of :
 - Construction and works contract services for construction of mall
 - Security and house keeping services

JOB WORK
w.e.f 01.07.2012

Job work Amounting to process of Manufacture – Section 66D(f)

➤ Position till 31.05.2015:

- U/S 65B(40) of Act, Process amounting to manufacture means a process on which :
 - Excise is leviable U/s 3 of central Excise Act, 1944
 - Excise is leviable under Medicinal and toilet preparations (excise duties) Act, 1955
 - Manufacture of alcoholic liquors on which excise is leviable under State Act
- Any process amounting to manufacture or production of goods is covered in the Negative list
- Hence, it is **not** liable to service tax
- Refer Slide 59 and 60 for summarized position

➤ Amendments w.e.f 01.06.2015:

- Process of production or manufacture of **alcoholic liquor for human consumption** is excluded in the above entry to the negative list
- Definition of “**process amounting to manufacture or production of goods**” is amended to **exclude** “manufacture/ production of alcoholic liquor for human consumption “ [Section 65B(40)]

Job work Amounting to process of Manufacture – Section 66D(f)

➤ Implications on or after 01.06.2015:

- All Job works relating to manufacturing / production of alcoholic liquor (whether such job work amounts to manufacture / production or not) for human consumption will now be liable to service tax from 01.06.2015
- Refer Slides 59 and 60 for summarized position

➤ Points for Consideration:

- Contract manufacturing of alcoholic liquor will be liable to service tax
- Dual taxation on manufacture of alcoholic liquor. It will be liable under State excise as well as Service tax
- Whether Central Government is constitutionally competent to encroach upon State subject (entry 8 of state list)?
- Following Judicial precedence are relevant on the issue:
 - *Maa Sharda Wine Trades [2009 (15) STR 3-HC-MP]*
 - *Som Distilleries Private Limited [2009-TIOL-292-HC-MP-ST-LB]*
 - *Makjai Laboratories [2011 (21) STR 398 TRI MUM]*

Job work not amounting to manufacturing – Entry 30

➤ Position till 31.05.2015:

- Any intermediate and production process in relation to **any goods (including alcoholic beverages liable to State Excise)** on which appropriate duty is payable by principal manufacture is exempt till 31.05.2015 [Entry 30(c)]
- Clause 2(b) of mega exemption notification defines appropriate duty to mean “ *duty payable on manufacture or production under central Act or State Act, but shall not include Nil rate of duty or duty wholly exempt* ”
- Refer Summary slides 61 and 62 for other exemptions

➤ Amendment on or after 01.06.2015:

- Any intermediate and production process in relation to alcoholic beverages will be excluded from this exemption entry w.e.f 01.06.2015

➤ Implications after 01.06.2015:

- Services of job worker in relation to production of alcoholic liquor for human consumption will be subject to tax w.e.f. 01.06.2015
- Refer Summary slides 61 and 62 for other exemptions

Summarized Position of job work Amounting to manufacture on or after 01.07.2012

Nature Of Job Work	01.07.2012 to 31.05.2015	On or after 01.06.2015
<p>Process on which Excise is leviable on final product U/s 3 of Central Excise Act, 1944:</p> <ul style="list-style-type: none"> - whether or not excise duty is paid or not paid by principal manufacturer or excise duty is exempt in the hands of principal manufacturer 	Not taxable U/s 66D(f)	Not taxable U/s 66D(f)
<p>Process on which excise is leviable on final product under medicinal and toilet preparations (excise duty) Act, 1955</p>	Not taxable U/s 66D(f)	Not taxable U/s 66D(f)
<p>Process under which excise is leviable on final product under State Act – i.e. on alcoholic liquor manufacturing</p>	Not taxable U/s 66D(f)	Taxable – definition of ‘process amount to manufacture’ is amended

Summarized Position of job work Amounting to manufacture on or after 01.07.2012

Nature Of Job Work	01.07.2012 to 31.05.2015	On or after 01.06.2015
Job work for SEZ unit for activity amounting to manufacture	Chargeable as SEZ is not falling U/s 3 of CEA However, one may explore exemption under notification 12/2013-ST dated 01.07.2013	Chargeable as SEZ is not falling U/s 3 of CEA However, one may explore exemption under notification 12/2013-ST dated 01.07.2013
Job work for 100% EOU Unit	Not taxable	Not taxable
Job work for principal manufacturer claiming threshold exemption	Not taxable	Not taxable
Job work for units in excise free Zone like <i>badi</i>	Not taxable	Not taxable

**Summarized Position of process not amounting to manufacture on or after
01.07.2012**

Nature Of Job Work	01.07.2012 to 31.05.2015	On or after 01.06.2015
Processing of any goods where duty is payable by principal manufacturer under central excise Act,1944	Exempt U/c 30(c) of Mega Exemption notification	Exempt U/c 30(c) of Mega Exemption notification
Processing of any goods where duty is payable is NIL	Taxable	Taxable
Processing of any goods where excise duty is wholly exempt	Taxable	Taxable
Processing of any goods where duty is payable under State Act	Exempt U/c 30(c) of Mega Exemption notification	Taxable – it is specifically excluded from exemption clause
Processing of goods for SEZ unit	May have to explore exemption granted under Notification 12/2013- ST dated 01.07.2013	May have to explore exemption granted under Notification 12/2013- ST dated 01.07.2013

**Summarized Position of process not amounting to manufacture on or after
01.07.2012**

Nature Of Job Work	01.07.2012 to 31.05.2015	On or after 01.06.2015
Processing of goods for principal manufacturer claiming threshold exemption	Taxable	Taxable
Processing for 100% EOU Unit	Exempt U/c 30(c) of Mega Exemption notification	Exempt U/c 30(c) of Mega Exemption notification
Intermediate production Processing in relation to agriculture, printing or textile processing	Exempt U/c 30(a) of Mega Exemption notification	Exempt U/c 30(a) of Mega Exemption notification
Processing in relation to cut polished diamonds, gemstones or plain studded jewellery of gold and other precious metals U/Chap 71 of CETA, 1985	Exempt U/c 30(b) of Mega Exemption notification	Exempt U/c 30(b) of Mega Exemption notification
Specified processes in course of manufacture of parts of cycle or sewing machines upto limit of Rs. 150 Lacs	Exempt U/c 30(d) of Mega Exemption notification	Exempt U/c 30(d) of Mega Exemption notification

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