



CENTRAL WAREHOUSING CORPORATION
(A GOVT. OF INDIA UNDERTAKING)



By Speed Post / Email

No. CWC/FD-Taxation/ST (Gen)/12-13

31st October, 2013

Service Tax Circular # 72

Sub : Implications of Service Tax under different clauses in H&T Contracts

Enquiries were received from some of the units i.e. RO Hyderabad, RO Kolkata & RO Chennai with respect to issues of service tax in some of the H&T Tenders/contracts for which the clarifications are issued as under:

Sl. No.	Question	Clarification
1.	<p>Regional office has executed Handling and Transport Contract for obtaining services from the contractor for handling of 'Fertilizers'. There is no clause in the 'Technical Bid' or The Price Bid of tender document which throws light on the issue whether the rates are inclusive of service tax or the service tax is to be paid extra by CWC. The tender has no clause with respect to payment of taxes and duties. RO has recovered Service Tax from H&T bills considering the rates in the contract as Inclusive of Service Tax.</p> <p>Whether CWC should treat the rates inclusive or exclusive of Service tax as per Law?</p>	<p>Where the H&T tender / contract is silent about the reimbursement of Service Tax, the Service provider i.e. H & T Contractor can legally recover the Service Tax from CWC. So, in such a case, the rates mentioned in the price schedule should be treated as exclusive of service tax and the Regional Office need not file / pursue any claim against the contractor for recovery of service tax portion by assuming the rates as inclusive of service tax.</p> <p>Service tax, if any, claimed by the service provider / contractor is to be reimbursed by CWC in addition to the service charges payable to the contractor if he submits valid invoice / duty paying document incorporating the minimum information as required under rule 4A(1) of Service Tax Rules, 1994 and CENVAT credit be taken.</p>

<p>2 The Regional Office has executed H&T contract for obtaining services from contractor for handling & Transportation of Fertilizer. The H&T Contract/tender provides for the following clause as part of the Contractor's liability of payments:</p> <p><i>"All taxes/Charges payable to the State Govt. /Local bodies etc., shall be paid by the contractors and no claim whatsoever shall lie against the corporation on this account".</i></p> <p>There is no other clause in the tender/contract with respect to payment of taxes/duties. The Regional Office has interpreted the above clause to include service tax also in the rates mentioned in price schedule. The interpretation advanced by the R.O. is that the H&T Contractor is himself liable to pay service tax on the service charges billed by him upon CWC and has withheld/recovered Service Tax from the bills of H&T Contractor.</p> <p>Whether this interpretation is legally tenable?</p>	<p>The said clause stated under the head "Contractor's liability of payments" deals with the taxes and charges which the contractor is obliged to pay to the State Government or local bodies etc. There is no other clause in the tender/contract with regard to payment of taxes/duties. The said clause refers to the payment of taxes or charges to the State Government / local bodies and not to the Central Government.</p> <p>The word "etc." mentioned immediately after the words "State Government / Local bodies" cannot be interpreted to mean a different agency like Central Government. The word "etc." can be interpreted as the authority which is similar to local bodies like Municipal authority.</p> <p>As far as service tax is concerned, the same is not payable to the State Government but to the Union Government under Central statute viz. Chapter V of Finance Act, 1994 read with Service Tax Rules, 1994.</p> <p>Since the said Clause does not cover the subject matter of service tax payable to the Central Govt., the effect would be as if the H&T Contract does not contain any specific clause for service tax.</p> <p>This will bring this case at par with H&T Contract for handling of 'Fertilizer' dealt above at serial No. 1 i.e. Contract is silent about reimbursement of service tax to the service provider. Therefore, RO need not file/pursue any claim against</p>
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		<p>contractor for recovery of Service Tax portion assuming the rates as inclusive of Service Tax.</p> <p>Service tax, if any, claimed by the service provider / contractor is to be reimbursed by CWC in addition to the service charges payable to the contractor if he submits valid invoice / duty paying document incorporating the minimum information as required under rule 4A(1) of Service Tax Rules, 1994 and CENVAT credit be taken.</p>
<p>3</p>	<p>H&T Contract provides a clause that H&T contractor will provide casual labour to CWC and CWC shall pay the minimum wages fixed by the State Govt. or any other appropriate authority at the time of execution of the contract. Clause dealing with service to be performed by the contractor in the Tender document States that:</p> <p><i>“The payment of casual labour wages shall be not less than the minimum statutory rates fixed by the appropriate authority for the material period as fixed wage per male / female casual labour per day. However, it will not entitle the contractor to claim any increase during the currency of the contract. The labour so supplied can be asked to do fumigation/ brushing dusting, spraying or undertaking prophylactic / curative disinfection measures, whenever necessary.”</i></p> <p>Additionally, the H&T Contract for Handling and Transportation of food grains where above clause exists also contains the following Clause;</p> <p><i>“All tax / charges payable to the State</i></p>	<p>As far as H&T Contract for Handling and Transportation of Foodgrains is concerned, the relevant clause of taxes does not deal with the service tax liability on the services rendered by the contractor whether as H&T Contractor or as manpower supply agency. There is also no other clause which deals with the inclusion or exclusion of service tax in the rates settled between the CWC & H&T Contractor. Hence the contract is silent about service tax .</p> <p>However, the relevant clause in the H&T Contract of CFS/ICD is not silent about the service tax liability unlike the H&T Contract for Foodgrains. The clause mentioned in tender/contract for CFS/ICD includes Service Tax as tax payable to Government Body.</p> <p>The Minimum wages per day fixed by the State Govt. under the Minimum Wages Act, 1948 do not contain an element of service tax or any other taxes.</p> <p>Since, the wage rates for casual labour cannot be expected to include service tax component, it</p>

<p><i>Government / Local bodies etc. shall be paid by the contractors and no claim whatsoever shall be lie against the Corporation on this account."</i></p> <p>However, in the Handling & Transportation Contract for ICD/CFS, the following Clause also exists:</p> <p><i>"All taxes/levies / fees / charges payable to any Government Body/ local body shall be paid by the contractor and no claim, whatsoever, shall be against the Corporation in this account"</i></p> <p>Since in the case of supply of manpower, a portion of service tax equal to 75% of the service tax is required to be paid by CWC (service recipient) under reverse charge mechanism from 01.07.2012, RO has started recovering 75% Service Tax from Casual labour charges bills of H&T Contractor, taking rates as inclusive of service tax.</p> <p>Whether CWC is correct in recovering service tax element (75% portion) from the bills of H&T Contractor to deposit the Corporation's service tax liability under reverse charge mechanism?</p>	<p>will neither be justified nor legally correct to insist upon the contractor to pay service tax himself out of minimum wages paid by the CWC more so when the minimum wages have increased during the currency of the contract but the Corporation continues to pay to the contractor minimum wages fixed at the time of execution of the contract.</p> <p>Therefore, CWC will have to discharge the Service Tax liability payment of casual labour charges on its own under "reverse charge mechanism" without recovering the service tax portion from the bills of H&T contractor.</p> <p>Same view shall apply to H&T Contracts of CFS/ICD, as the minimum wages fixed by the government cannot be considered to include element of service tax except for other items as the rates mentioned in the price schedule are inclusive of service tax.</p> <p>The action of the Corporation for recovering from the contractor the service tax amount on the minimum wages payable to casual workers may not be legally tenable in the eyes of law.</p> <p>Accordingly, it is advised to discharge service tax liability under "reverse charge mechanism" without recovering the service tax from the contractor.</p> <p>It will be within the law for CWC to claim CENVAT credit in respect of service tax deposited under "reverse charge Mechanism. However the Corporation is debarred from taking CENVAT credit in respect of service</p>
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		<p>tax paid under reverse charge mechanism where casual labour is used for handling / warehousing of agricultural produce which is covered in the Negative List.</p> <p>This Clarification overrides the clarification given in Circular no. 70 dated 18th June, 2013.</p>
<p>4</p>	<p>In respect of H&T Contracts, where the rates in the agreement were stated to be inclusive of all taxes, CWC made payments of H&T bills to the contractors strictly in accordance with the SOR without ensuring that the invoice was raised by the contractor in accordance with rule 4A(1) of Service Tax Rules, 1994. Since, H&T contractors did not issue the invoices containing the information prescribed in rule 4A(1), CWC could not avail CENVAT credit against those bills. Consequently, CWC has deposited service tax on their billing to the depositors without taking the benefit of CENVAT credit which otherwise they were eligible, had the contractor issued tax invoice containing the details required statutorily under rule 4A(1). Now, the recoveries are being made by the Regional Offices from H&T Contractors equal to the amount of service tax by making reverse calculations in respect of bills raised by the contractors in the past and also settled/paid by CWC in case of following clause in H&T Agreement;</p> <p><i>“All taxes/levies / fees / charges payable from H&T Contractor to any Government Body/ local body etc. shall be paid by the contractor and no</i></p>	<p>The said clause on payment of taxes/levies/fees/charges includes the Service Tax. Since the contractor has not issued invoice as required under rule 4A(1) and consequently CWC can not avail CENVAT credit . The recovery of service tax in such a case is towards compensation of CENVAT loss suffered by the Corporation due to default of the contractor in not issuing Tax Invoice as per rule 4A(1).</p> <p>The recovery being made should reduce the cost in the same manner in which cost would automatically have gone down if the CENVAT credit was availed by CWC in time. For this reason, the recoveries made by CWC from H&T Contractors will be credited to the respective cost head.</p>

<p><i>claim, whatsoever, shall be against the Corporation on this account"</i></p> <p>Since, the H&T Contractors of CFS/ICDs where the above clause appears in the contract, have disputed the contention of the corporation that the rates quoted by the corporation are inclusive of Service Tax. It has been asked by the contractor how CWC can take the benefit of CENVAT when it has not paid service tax extra to them.</p> <p>What treatment is to be made on the amount of the service tax recovered from the contractor in above case?</p>	
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The receipt of this Circular may please be acknowledged and Contents brought to the notice of all concerned for scrupulous compliance.

This issues with the approval of Competent Authority.



(A.S.Gopalan)

Dy. Gen. Manager (F&A)

Distribution to:

1. All Regional Managers of CWC.
2. All Executive Engineers in-charge of all the Construction Cells of CWC.
3. All AGMs/Managers/ (Sr.) Asstt. Managers in-charge of the Finance, Accounts & Internal Audit Wings of all ROs & CCs of CWC.

Copies for information to:

1. All HODs at CWC, Corporate Office, New Delhi.
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3. PS to Managing Director, CWC, CO, New Delhi.
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5. PS to CVO/ OSD (Recovery)/GM (F&A)s, CWC, Corp. Office, New Delhi.
6. PS to GM (Systems), CWC, CO, New Delhi with a request to place this Circular on CWC's Website.
7. Manager (Rajbhasha), CWC, CO, New Delhi with a request to arrange Hindi Version of this Circular.