



**CENTRAL WAREHOUSING CORPORATION**  
(A GOVT. OF INDIA UNDERTAKING)



By Speed Post / Email

No. CWC/FD-Taxation/ST (CO)/13-14

1567

18<sup>th</sup> June 2013

Service Tax Circular # 70

**Subject = Chargeability of Service Tax on Casual Labour supplied by Handling & Transport Contractor.**

Reference is invited to CO Service Tax Circular # 50 dated 12.04.2012 with regard to the payment of Service Tax and utilisation of CENVAT Credit in respect of All Inclusive H&T Contracts, wherein the following Clause is incorporated in the Terms & Conditions appended to the Tender Document, which implies that the Service Tax (including the Education Cess) is not to be paid extra in respect of such H&T Contracts over and above the Schedule of Rates (SoR) under any circumstances and that the Service Tax Liability is to be invariably discharged by the concerned H&T Contractor:

***“All Taxes/Duties/Levies/Fees payable by the H&T Contractor to any Government/Govt. Body/Local Body etc. shall be borne by the H&T Contractor, and No Claim, on this account, whatsoever, shall lie against the Corporation.”***

Enquiries have now been received from the Field Units with regard to CWC's Liability to deposit Service Tax on the Labour Charges paid to the H&T Contractor in respect of Labour engaged in terms of such H&T Contracts containing the above Clause on the Labour Charges under the Reverse Charge Mechanism (RCM), since such supply of Labour by the H&T Contractor falls under the category of Manpower Supply Agency Service.

In this context, it is clarified that the H&T Contractor was expected to discharge his Service Tax Liability, in case of such Contracts, wherein the above Clause existed in the Tender Conditions, from out of their Profit Component under the Pre-2012 Budget Scenario. However, with the amendment of Service Tax Law through the Budget 2012, the onus of discharging the Service Tax Liability on 10 Notified Services including the Manpower Supply Agency has been partially shifted to the Service Recipient under the Reverse Charge Mechanism (RCM).

Thus, CWC has, from 01.07.2012 onwards, become liable to deposit a part of the Service Tax (75%) in respect of the Labour Charges paid to the H&T Contractor in respect of the Labour engaged through him in accordance with Contract Conditions. In case CWC deducts the Service Tax Component from the Contractor's Bills for the Labour supplied to discharge its Service Tax Liability under RCM, the amount paid by CWC to the Contractor would be less than the Minimum Wages notified by the District Administration, which may induce him to violate the Service Tax Law. Contrarily, if the

Service Tax Liability is discharged by CWC under RCM from its own Resources, the same would amount to over-payment and may thus amount to be violating the relevant Contract Condition, since the Taxes are to be borne by the Contractor in accordance with the Contract Conditions.

In view of the above, it is felt that though the Rates quoted by H&T Contractor in respect of the Labour supplied are inclusive of Service Tax and without any Profit Element (%age) to be loaded to the Notified Labour Rate, the Service Tax payable by the H&T Contractor is obviously to be taken care of by the Profit Element (%age) quoted by him for the remaining Schedule of Rates/Services.

That being the case, the Corporation has to discharge its portion of the Service Tax Liability under the Reverse Charge Mechanism by debiting such Amount through a separate Debit Note to the account of the concerned H&T Contractor, which shall have to be later adjusted from the H&T Bills payable to the Contractor, thereby not only ensuring compliance of the Service Tax Provisions but also of the Payment of Minimum Wages Act and the relevant Contract Condition by the Contractor vis-a-vis the Corporation.

For this purpose, the SoR is to be treated as inclusive of Service Tax and the H&T Contractor would be liable not only to discharge his Service Tax Liability by Reverse Calculation treating the SoR as Cum Duty (Service Tax), but also issue the Bill/Invoice in the Format prescribed u/r 4A(1) of the Service Tax Rules, 1994, thereby meaning that the Bill/Invoice issued by the Service Provider should contain his Complete Name, Address & PAN Based Service Tax Registration Number, it should be serially numbered, besides the Name & Address of the Service Recipient (CWC), the Nature of the Taxable Service as also the amount of Service Charges, Service Tax & Education Cess thereon having been clearly indicated therein.

As a matter of fact, the intention of the Tender Drafting People appears to be very clear that nothing should be paid beyond the Schedule of Rates settled at the time of award of the Tender as would be evident from Clause XX (24) of the Tender Document dealing with the Supply of Casual Labour, which stipulates that ***the payment of casual labour wage 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***. The Clause further provides that ***it will not entitle the contractor to claim any increase (in Labour Rate) during the currency of the contract***. Thus, according to this Clause, even though the Contractor is expected to pay the Minimum Wages to the Labour as notified by the Appropriate Administrative Authority, the increase in the Minimum Wages would not be reimbursable to the Contractor by CWC during the currency of the Contract vis-a-vis the Tendered Rate.

Thus, the Contract being the essence, the Payments to the H&T Contractor by CWC have to be necessarily regulated in accordance with the Contract Conditions and once it is provided in the Contract that all the Taxes are to be borne by the Contractor and No Claim on that account would lie on the Corporation, the Service Tax to the extent payable by CWC under RCM has certainly to be recovered from the Contractor's Dues.



In view of the above, it has been decided, with the approval of the Competent Authority, that the Corporation would, in such cases, discharge its Service Tax Liability on 75% of the Labour Charges under the Reverse Charge Mechanism, by debiting the Service Tax so payable through a separate Debit Note to the Account of the concerned H&T Contractor, which will be adjusted from the H&T Bills or other Dues payable to the Contractor.

Receipt of this Circular may be acknowledged and its Contents brought to the Notice of all concerned for scrupulous compliance.

This issues with the approval of GM (F&A).



(AS Gopalan)

Dy. General 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.
2. All DGM/AGMs/Managers/ (Sr.) Asstt. Managers/Accountants in Finance, Accounts & Internal Audit Cadre at CWC, Corporate Office, New Delhi.
3. PS to Managing Director, CWC, CO, New Delhi.
4. PS to Director (Pers)/Director (MCP)/Director (Fin), CWC, CO, New Delhi.
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.