

J. B. Nagar CPE Study Circle of WIRC

Subject : Service tax issues in Real Estate Sector.

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Preamble

The purpose of this seminar is to discuss some of the critical service tax issues for builders and developers post introduction of negative list based levy of service tax i.e. 01-07-2014.

The case studies deal with various critical issues that are faced by most of assesses in the industry. The paper deals with certain controversies that might come up and to be tested by judicial forums.

Case Study 1:

Facts & Background:

M/s Agitated Builders ('AB') feels that the builder is not liable to service tax on sale of under construction flats / commercial units on or after 01.07.2012.

AB seeks your opinion whether it is **legally advisable** and **commercially prudent** to take such position on or after 1-7-2012?

Case Study 2

Facts & Background:

- Anand Mangal housing society (herein after referred to as "Society") is 40 years old society and is having 5 buildings and huge development potentials in Mumbai.
- Society has entered into an agreement dated **15.07.2012** with M/s. Happy go lucky builders (herein after referred as "HB") for redevelopment of said society complex
- HB to reconstruct a huge residential complex on above referred property

- The project will be completed in December 2015.
- The broad terms and conditions of agreement are as under:
 - Cost of construction, development and other cost for entire project will be borne by HB.
 - HB to allot flats to all members (agreement entered on 15.07.2012)
 - Any member requiring extra area will be given at concessional rate of Rs.15000/- per square feet as against market rate of Rs.20,000/-
 - HB to give following to the society:
 - Rs.10 Crore for development rights in the land
 - 1 office premises in newly constructed building
 - Club house in the reconstructed premises
 - HB to give following to the members except 5 members:
 - 30% extra area to all members
 - Free parking space
 - Rent allowance
 - Shifting allowance
 - Hardship allowance
 - Corpus of Rs. 5,00,000 to each member

Issues under deliberation:

1. Service tax implications for members:

- Whether the new flats allotted to them is liable to service tax?
- Whether extra free area of 30% is liable to service tax?
- If service tax is leviable on above, whether members are liable to bear service tax?
- Whether extra saleable area given to members is liable to service tax? If yes, on which rate i.e. Rs.15,000/- (i.e. Concessional rate) or Rs.20,000/- (i.e. Market rate)
- Whether consideration received in kind in form of reconstructed flat for surrendering occupancy rights in flat by members of the society to HB is liable to service tax?

- Whether Corpus, shifting allowance, rent allowance and hardship allowance are liable to service tax?
- In case where company owns flat in society, whether it is liable to pay service tax under reverse charge mechanism on value of reconstructed flats?

2. Service tax implications for Society:

- Whether value of development rights given to HB is liable to service tax?
- Will society be liable service tax on value of club house and new office in redeveloped premises?

3. Service tax implications for HB:

- Whether HB is liable to service tax on flats allotted to members?
- Whether HB is liable to service tax on club house and office constructed in redeveloped premises for society?
- If both the above are taxable, what will be the value of the services?
- If taxable, at what point of time above referred transactions are taxable?
- Whether HB is entitled to cenvat in respect of this project?

4. Whether service tax implications for all stake holders will change if the agreement is executed before **01.07.2012**?

Case Study 3:

Facts & Background:

- Mr. Amir ('A') owned huge bungalow and plot of land adjacent to said bungalow in posh locality of Shivaji Park.
- A has four old tenants in the bungalow
- A has entered into an agreement dated **15.08.2012** with M/s. Ambitious builders ('AB') for development of above referred bungalow and adjacent plot.
- AB to construct a huge residential complex on above referred property.
- The project will be completed in December 2015.

- The broad terms and conditions of agreement are as under:
 - Cost of construction, development and other cost for entire project will be borne by AB.
 - AB to allot flats to all four tenants (agreement entered on 15.08.2012).
 - AB to allot penthouse to A for personal use.
 - AB to give rent allowance, shifting allowance and hardship allowance to all four tenants.
 - AB will take on lease small bungalow on rent for alternate accommodation for A during construction period.
 - AB to allot 80 flats to A which will be sold by him directly.
 - A can sell flats allotted to him on booking basis.
 - AB will get about 120 flats for sale.

Issues under deliberation:

1. Service tax implications for tenants:

- Whether surrender of tenancy is liable to service tax?
- Whether shifting allowance, rent allowance and hardship allowance are liable to service tax?
- If service tax is leviable on new flats allotted to them, whether tenants are liable to bear service tax?

2. Service tax implications for A(Property Owner):

- Whether value of development rights given to AB is liable to service tax?
- Whether A is liable to pay service tax in respect of sale of flats coming to his share?
- Can A take Cenvat of input services (expenses borne by AB) relating to construction of his 80 flats?

3. Service tax implications for AB:

- Whether AB is liable to service tax on flats allotted to tenants?
- Whether AB is liable to service tax on penthouse allotted to A for his personal use?
- Whether AB is liable to service tax on 80 flats given to A?
- If he is liable to service tax in respect of above:
 - When such tax is payable?
 - On what value such tax is payable?
 - Whether AB is entitled to cenvat in respect of this project?

4. Whether service tax implications for AB and A will be differ in case:

- Agreement is done for sharing of gross sales revenue of 200 flats?
- Joint venture Agreement is done for sharing the net revenue of the project?

Case Study 4:

Facts & Back ground:

Builder acquired a plot in **June, 2009** for construction of residential complex of 50 units. The construction started in **July, 2012** and completed in **May, 2014**. The builder has sold all flats during the period **June, 2013 to May, 2014**.

Builder has incurred huge expenses on labour charges, Architect fees, security services, site formation etc. during the period **June, 2009 to June, 2012** (before commencement of construction) and has paid substantial service tax on such services availed by him.

Issues Under Deliberation:

Whether builder is entitled to Cenvat of service tax on services availed by him during the period:

- June, 2009 to June, 2010 – where sale of under construction flats was not liable to service tax?

- July, 2010 to June, 2012 – where builder has paid service tax on abated value of sale of under construction flats.
- July 2012 onwards

Case Study 5:

Facts & Back ground:

A developer has constructed 80 flats in a building during the period July, 2012 to May,2014. The building completion certificate (“BCC”) was received on 20th June,2014. The builder was able to sell 70 flats till date of receipt of BCC. The remaining 10 flats would be sold as completed flats.

Issue under deliberation:

- Whether a developer is entitled to full Cenvat of service tax paid on all project related expenses and also administrative expenses?
- If one takes a view that the developer is not entitled to Cenvat attributable to completed flat, how to knock off / reverse such Cenvat?

Case Study 6:

Facts & Background:

- M/s Elegant Builders (‘EB’) is developing a residential complex of 14 units (one on each floor) on or after **01.07.2012**
- For each floor rise, the flat price will be higher by Rs.500/- per square feet. The floor rise premium is embedded in the agreement value of the flat. Stamp duty as well as service tax at applicable rate is paid on agreement value.

- EB collects following amounts from prospective buyers:

Sr No.	Particulars	Amount (Rs)
1	Society membership fees	1
2	Share Capital Contribution	250
3	Electricity Meter – Deposit	10,000
4	Water meter deposit	5,000
5	Society formation and legal charges	10,000
6	Contribution towards construction of swimming pool	10,00,000
7	Contribution / one time membership fees for Club	7,51,000
8	Allotted parking space in stilt	5,50,000
9	Allotted parking space in open compound	1,00,000
10	Advance towards maintenance and municipal taxes till formation of society	3,60,000

Issues under deliberation:

- Whether EB is liable to service tax on floor rise? If yes, at what rate?
- Whether the service tax authorities can vivisect the agreement consideration and levy service tax at applicable rate on floor rise premium?
- Service tax implications of above referred amounts collected by EB from flat owners?
- Whether EB is liable to service tax on swimming pool construction in following circumstances where he collects:
 - Additional consideration on separate document not forming a part of sales agreement.
 - Additional consideration as part of the sales agreement consideration.

Case Study 7

Facts & Background:

Virani Power Limited ('VPL') has awarded a turnkey contract to a non-corporate entity for construction and setting of a plant on or after 01.7.2012. As per terms of contract, VPL will supply steel free of cost to the contractor.

Issue under deliberation:

- a. Whether steel supplied free of cost is to be added in the value of works contract for payment of service tax by contractor?
- b. Whether VPL is liable to pay service tax on value of steel under reverse charge mechanism?

Case Study 8

Facts & Background:

A builder (corporate entity) awarded following contract (with material) to different contractors for its new buildings:

- Plastering contract
- Tiling contract
- Electrical contract
- Plumbing contract
- Glass cladding contract

Issue under deliberation:

Whether all above contracts are "Original works" to be valued @ 40% (effective tax rate 4.944%) or "Other works" to be valued @ 70% (effective Tax rate 7.416%) for discharging service tax liability under Reverse charge?