

Sub: Reference from Commissioner Nashik seeking clarification in respect of levy of service tax on Repair/ renovation/ widening of roads - Reg.

Representations have been received by the Board pointing out divergent practices being followed by field formations with regard to levy of service tax on maintenance and repair of roads.

2. Commercial or industrial construction service [section 65(105) (zzq)] specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105) (zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads etc. Reading the definitions of these two taxable services in tandem leads to the conclusion that while construction of road is not a taxable service, management, maintenance or repair of roads are in the nature of taxable services, attracting service tax.

3. The next issue requiring resolution is the types of activities that can be called as "construction of road" as against the activities which should fall under the category of maintenance or repair of roads. In this regard the technical literature on the subject indicate that the activities can be categorized as follows,-

(A) Maintenance or repair activities:

- I. Resurfacing
- II. Renovation
- III. Strengthening
- IV. Relaying
- V. Filling of potholes

(B) Construction Activities:

- I. Laying of a new road
- II. Widening of narrow road to broader road (such as conversion of a two lane road to a four lane road)
- III. Changing road surface (graveled road to metalled road/ metalled road to blacktopped/ blacktopped to concrete etc)

4. The cases may be decided/ revenue should be protected based on the above classification. Suitable Trade and Public notices may be issued for information of the trade and field formations.

5. Receipt of this Circular may please be acknowledged.

6. Hindi Version will follow.