

CIRCULAR NO.116/10/2009-ST, DT: 15-09-2009

Sub: *Leviability of service tax on construction of canals by Government agencies - Reg.*

On a reference being received by the Board, two following issues were examined for a clear understanding of facts. The first is regarding leviability of service tax on construction of canals for Government projects.

1. As per section 65 (25b) of the Finance Act, 1994 "commercial or industrial construction service" means -

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

which is -

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

2. Thus the essence of the definition is that the "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

3. The second issue is about Government taking up construction activity of dams, irrigation projects buildings or infrastructure construction etc. through turnkey or EPC (Engineering Procurement & Construction) mode. The said service is covered under section 65 (105) (zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, tunnels, canals of irrigation projects, road, airports, railways, transport terminals & bridges executed through such turn-key or EPC mode. Hence works contract in respect of above works even if done through turn-key or EPC mode are exempt from payment of service tax.