



Dt. 27-04-2012

To,
Shri Pranab Mukherjee,
The Hon. Finance Minister,
Government of India,
NEW DELHI

Honourable Sir,
Good Wishes.

Sub. : " Levy of Service Tax in case of Works undertaken for
Police Housing Corporations "

I wish to draw your attention to various show cause notices being issued against the contractors for the works allotted by Police Housing Corporations in various states. The point has been brought to my notice by Gujarat Contractors Association who have already made a submission at Commissionerate of Service Tax, Ahmedabad. The notices seem to have certain anomalies which have created significant difficulties for the government contractors in terms of meeting the unforeseen demands. In some cases the demands raised are beyond the financial capacity of the individual concerned.

I respectfully request you to look into the submission attached herewith with this letter and if the arguments of the Contractors Association find favour, do the needful for appropriate correction.

Thanking you in anticipation of a prompt reply.

Sincerely,

(VITHALBHAI H. RADADIYA)
Member of Parliament
Porbandar (Gujarat) Constituency

Attached : Representation for Non-levy of Service Tax submitted at COS, Ahmedabad

c. c. to :-

- 1) Chairman, CBEC, North Block, NEW DELHI
- 2) Joint Secretary, TRU-II, North Block, NEW DELHI
- 3) Commissioner of Service Tax, North Block, NEW DELHI
- 4) Commissioner of Service Tax, AHMEDABAD

Reel : 7, Harish Chandra Mathur Lane, New Delhi - 110 001. Tel. : 011-23324020



GUJARAT CONTRACTORS ASSOCIATION

Nirman Bhavan, Nr. Law Garden, Law College Road, Ellisbridge, Ahmedabad-380006. (Guj.) India
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VINOD GAMDIWALA
CHAIRMAN

ANIL R. ZINZUWADIA
HON. SECRETARY

G.C.A. Letter No. 19/ 2012-13

Dt. 9th. March, 2012

To,
Smt Lipika Majumdar Roy Chaudhury
Chief Commissioner
Custom and Excise,
Ahmedabad

Dear Madam,

Sub: **Representation in the matter of non-leviability of Service Tax in the case of
construction of Residential Complex for Gujarat Police Department**

Your kind attention is requested towards the following few points in the matter of Show Cause Notices recently sent to various contractors regarding payment of service tax on construction of residential complex for works awarded by Gujarat Police Housing Corporation Ltd (GPHCL).

It is submitted that various works are being awarded by GPHCL on behalf of the state government to the contractors for construction of residential complexes for the Gujarat Police Department. Such residential complexes are for providing residential accommodation for the employees of the Gujarat Police Department.

Attention is drawn to the definition of the construction of complex services given under Clause (30a) of Section 65 which provides that the term "residential complex" (for service tax purposes) does not include a complex which is constructed by a person directly engaging any other person for designing/ planning/ construction and is intended for personal use as residence by such person. The definition also explains that personal use includes promoting use of such property as residence by another person on rent or even without consideration.

*Received by
Smt Lipika Majumdar
Roy Chaudhury
9/3/12*



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(2)

TRU clarification issued vide F.No.332/16/2010-TRU dated 24.05.2010 in the matter of leviability of service tax on construction of residential houses by National Building Construction Corporation Limited (NBCC) for Central Government officers clarifies that when the Ministry of Urban Development (GOI) has directly engaged NBCC for constructing residential complex for central government officers; the residential complexes so built can be said to be intended for the personal use of the GOI which includes promoting the use of complex as residence by other persons (i.e. the Government officers or the Ministers). As such when NBCC is providing services directly to the GOI for its personal use it was clarified that service tax is not leviable.

It has, however, been pointed out in this clarification that if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay service tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use. However with due respect this circular may not be bringing out the true intention behind the provisions.

It is submitted that the tenders to such contractors have been raised by Gujarat Police Housing Corporation on behalf of Police Department, Gujarat Government. Further, total funding of Gujarat Police Housing Corporation is received from Government and the ultimate ownership of Gujarat Police Housing Corporation is with the Government of Gujarat. It is basically one government body taking the help of another to get the work done. As such, the services provided by such contractors should also stand excluded from the definition of construction services in terms of the aforesaid exclusion clause.



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(3)

Further it is to be seen that some of the states are in the practice of directly issuing work orders to the contractors. In such a case the exemption would be clearly available. Thus if a case like GSPHC is to be made taxable, it would lead to the same activity being taxable in one state and being exempt in another leading to inequity.

Our submission also finds support from the decision of Ahmedabad Bench of CESTAT in the case of M/s Khurana Engineering Ltd vs. CST, Ahmedabad reported at 2011 (21) S.T.R. 115 (Tri. - Ahmed.).

We, therefore, request you to kindly look to the issue and provide suitable directions to field functionaries not to take any coercive enforcing measures against the contractors concerned.

Further please grant us a suitable time for a personal meeting with your goodself to properly present our case on the above issue.

Thanking you.

Yours sincerely,

For Gujarat Contractors Association

Chairman / Secretary

OFFICE OF THE CHIEF COMMISSIONER OF CENTRAL EXCISE
7TH FLOOR, CENTRAL EXCISE BHAVAN, AMBAWADI
AHMEDABAD - 380 015

BY SPEED POST

F. No: IV/16-35/CCO/S.Tax/2011-12

Date: 15.03.2012

To,
The Chairman
Gujarat Contractors Association,
Nirman Bhavan,
Nr. Law Garden,
Law College Road,
Ellisbridge,
Ahmedabad : 380 006

Sir,
Subject: **Representation in the matter of non-leviability of
Service Tax in the case of construction of Residential
Complex for Gujarat Police Department - reg.**

Kindly refer to your letter No. 19/2012-13 dated 9th March, 2012 on the above captioned subject.

The receipt of above letter is acknowledged. The issue mentioned in your letter is being examined and appropriate action will be taken accordingly.

Yours faithfully,

(Anil Kuria Sanyal)
Additional Commissioner CCO

16/3/12