

Clarification regarding applicability of service tax on laying of cables under or alongside roads and similar activities

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Disputes have arisen in some parts of the country regarding applicability of service tax on certain activities such as shifting of overhead cables to underground on account of renovation/widening of roads; laying of electrical cables under or alongside roads/railway tracks; between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, traffic lights, flood-lights. This clarification takes into account the taxability of different activities taking into account the scope of all services (such as site formation/excavation/ earth moving service, commercial or industrial construction services; erection, commissioning or installation services; or works-contract service) that are presently taxable as well as those which are covered under the Finance Act, 2010.

2. Scope of certain taxable services in brief;

(i) 'Commercial or industrial construction services', in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.

(ii) Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.

(iii) 'Works Contract' incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of 'works contract' if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.

(iv) 'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road

3. The taxable status of various activities, on which disputes have arisen

Based on the foregoing, the following would be the tax status of some of the activities in respect of which disputes have arisen,-

S.No.	Activity	Status
1.	Shifting of overhead cables/wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service, namely Erection, commissioning or installation services [section 65 (105) (zzd)].
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service, namely 'commercial or industrial construction' or 'construction of complex' service [section 65(105) (zzq)/(zzzh)], as the case may be.
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service, namely Erection, commissioning or installation services [section 65 (105) (zzd)].
8.	Railway electrification, electrification along the railway track	Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994

4. The conclusions drawn above are essentially general in nature and would have to be applied in an individual case depending upon its facts and circumstances. The pending disputes /cases may be decided based on the clarifications contained in this circular.