

F.No.354/311/2015-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

20th January, 2016

To,

Principal Chief Commissioners of Customs and Central Excise (All)
Principal Chief Commissioners of Central Excise & Service Tax (All)
Principal Director Generals of Goods and Service Tax/System/CEI
Director General of Audit/Tax Payer Services,
Principal Commissioners/ Commissioners of Customs and Central Excise (All)
Principal Commissioners/Commissioners of Central Excise and Service Tax (All)
Principal Commissioners/Commissioners of Service Tax (All)
Principal Commissioners/Commissioners LTU/Central excise/Service Tax (Audit)

Sub: - Report of the High Level Committee; recommendation regarding valuation of flats for levy of Service Tax – reg.

Madam/Sir,

The undersigned is directed to say that, as announced by the Finance Minister in his Budget Speech 2014-15, the Ministry of Finance has set up a High Level Committee (HLC) to interact with trade and industry and ascertain areas where clarity on tax laws is required. It has been pointed out by the HLC that there is a divergence of view between Para 6.2.1 of the Education Guide 2012 and the CBEC Circular No. 151/2/2012-ST dated 10.2.2012 on how flats handed over to land owners are to be valued for the purpose of levy of service tax. The two views need to be reconciled. The HLC has opined that the guidelines communicated by the said Circular are more appropriate.

2. The issue has been examined. In a tri-partite construction business model, there are 3 parties involved:

- i. The land owner;
- ii. The builder/developer; &
- iii. The contractor (who undertakes the construction).

Typically, in such a model, the land owner enters into an agreement with the builder, whereby, the land owner gives either land /development rights (to construct/develop a residential complex and sell flats/houses of such complex to buyers) to the builder. The

builder/developer, in turn, agrees to assign a portion of the constructed area, in the form of flats in favour of the land owner. The remaining flats are sold by the builder/developer to various buyers. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers:

- i. from landowner, in the form of land /development rights; and
- ii. from other buyers, normally in the form of money.

3. According to the CBEC Education Guide on Taxation of Services, 2012 value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly. However, Circular No. 151/2/2012-ST dated 10.2.2012 states that value of land / development rights in the land may not be ascertainable ordinarily and therefore, value, in the case of flats given to first category of service receiver, that is, the land owner, is determinable in terms of section 67(1)(iii) read with rule 3(a) of Service Tax (Determination of Value) Rules, 2006. Accordingly, the value of these flats would be equal to the value of similar flats charged by the builder/developer from the second category of service receivers. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument(e.g. allotment letter).

4. The Circular dated 10.2.2012 is in accordance with the provisions relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006. As regards the Education Guide, it has been clearly stated in the Education Guide, 2012 that it is merely an educational aid based on a broad understanding of a team of officers on the issues. It is neither a "Departmental Circular" nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to be binding on either side in any manner. The guide was released purely as a measure of facilitation so that all stakeholders could obtain some preliminary understanding of the new issues for smooth transition to the new regime. Hence, Circulars such as the present one would prevail over the Education Guide, 2012.

5. In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/development rights to builder, for getting, in return, constructed flats/dwellings from builder/developer, the Service Tax

assessing authorities should be guided by the said Board Circular dated 10.2.2012 and not the Education Guide.

6. All concerned are requested to acknowledge the receipt of this instruction.

Yours faithfully,

(Abhishek Verma)
Technical Officer (TRU)