

UDYOG TAX NEWS FLASH 17th FEBRUARY 2012



Service tax on construction: clarification issued

The CBEC has issued circular no. 15 L/2/2012-ST dated 10 February 2012 on the applicability of service tax to various models of transaction in construction services. Notably, the circular clarifies that if a building was not constructed for commercial or industrial purpose but later its use is changed, no service tax is attracted (paragraph 2.4). The circular also deals with the issues of joint development, re-development, build-operator-transfer models, tripartite agreements, and investment in construction projects. On this last issue of investment, the circular holds that if a person has invested in a construction project with the option of taking a flat, the investment is to be treated as advance paid for construction service and is taxable. If the person exercises his option of exit without taking a flat, and the amount including service tax is returned to him, the builder may take credit of the service tax paid. The circular can be seen at <http://www.servicetax.gov.in/circulars/home.htm>.

Integrate Indian Taxation With Any ERP



Refund: Interest is payable if refund paid after 3 months of claim; Bombay High Court

One would think that the law was clear on the issue of the date from which interest is calculated on delayed refunds, but the department took the issue to the high court. The law [Section 118B of the Central Excise Act 1944, which also applies to service tax refunds, and Section 27A of the Customs Act 1962] provides that if a refund is paid later than three months from the date of application, interest is payable from the date immediately after the expiry of the said three months till the date on which payment is actually made. The date for computing the interest is thus the date immediately after expiry of three months from the date of application for refund. The department, however, took the view that three months are to be counted, not from the date of application, but from the date of the order for refund. This was negated by Bombay High Court in WP 9100 of 2011 in the case of Union of India v Indal Drugs (decided on 30 Jan 2012), reported as 2012-TIOU 509-HC-MUM. The court observed that it is a settled position in law that the liability of Revenue to pay interest commences from the expiry of three months from the date of receipt of application for refund and not on the expiry of the said period from the date on which an order for refund is made. The

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Service Tax Circular For Builders

CL Gary



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