

# Vasai Branch of WIRC of ICAI



## Construction Industries

## Service Tax in Real Estate

By

**CA Manish Gadia**

CA Manish Gadia



# Coverage

- Work Contract Service
- Commercial and Industrial Construction
- Construction of Complex
- Site Formation & Clearance Services
- Special Services provided by Builders
- Renting of immovable Property

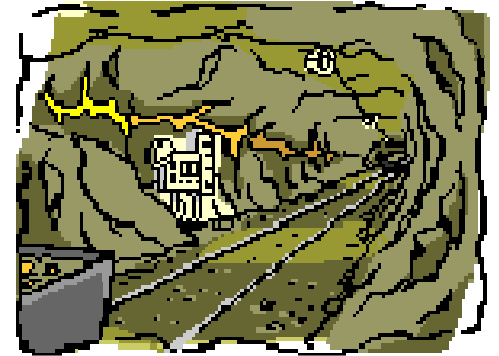


# Work Contract Service



# Taxable Service

(1<sup>st</sup> June, 2007)



- Means
- Any service provided or to provided
- To any person,
- By any other person
- In relation to
- The execution of a works contract,
- excluding works contract in respect of
- roads, airports, railways, transport terminals, bridges, tunnels and dams



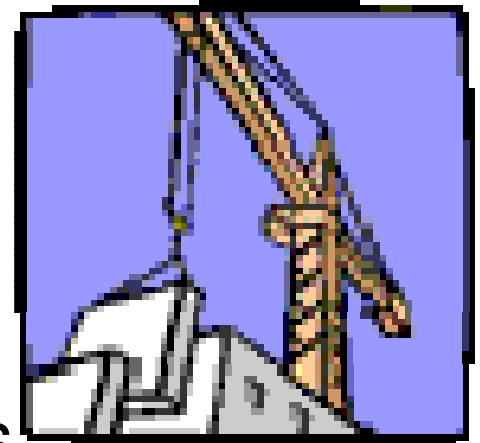
# Work Contract

- means a contract wherein,—
  - transfer of property in goods involved in the execution of such contract
  - is leviable to tax as sale of goods, and
  - such contract is for the purposes of carrying out,—

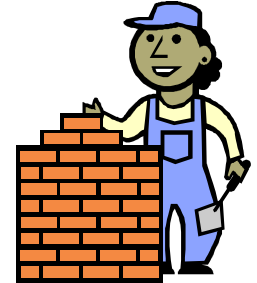




# Work Contract

- **Erection, commissioning or installation of**
  - plant, machinery, equipment or structures, whether pre-fabricated or otherwise,
  - installation of
  - electrical and electronic devices,
  - plumbing, drain laying or
  - other installations for transport of fluids,
  - heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or



# Work Contract



- construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or 
- construction of a new residential complex or a part thereof; or 
- completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

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Daleim Industries  
Co. Ltd. V CCE  
2002 (170) ELT 181



# Commercial or Industrial Construction

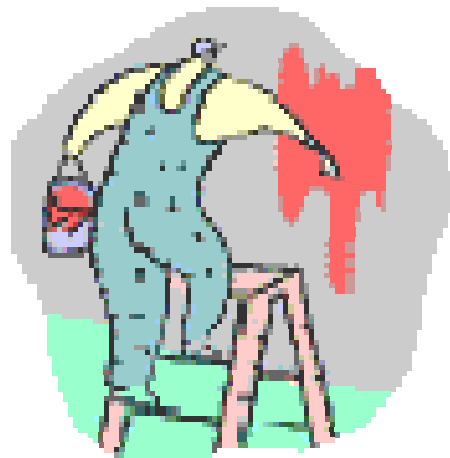
Construction of New Building,  
Civil Structure or part

Construction of Pipeline  
or Conduit

Completion and Finishing service 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*

Repair, alteration, renovation  
or restoration or similar  
services

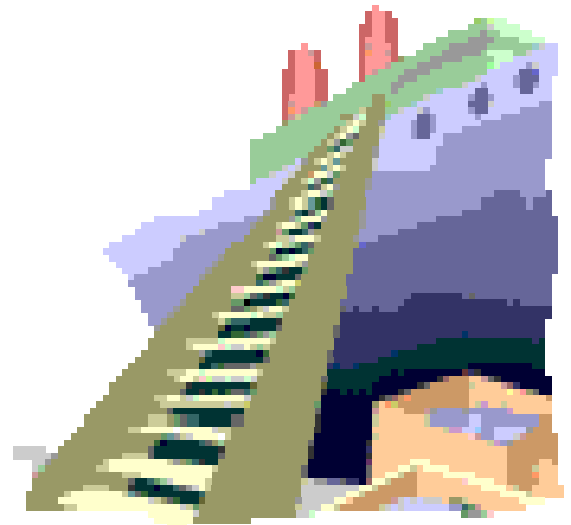
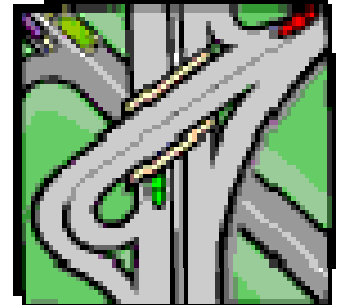
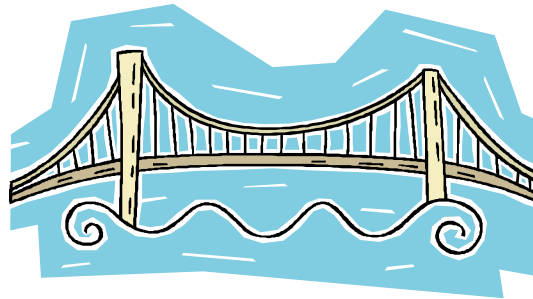
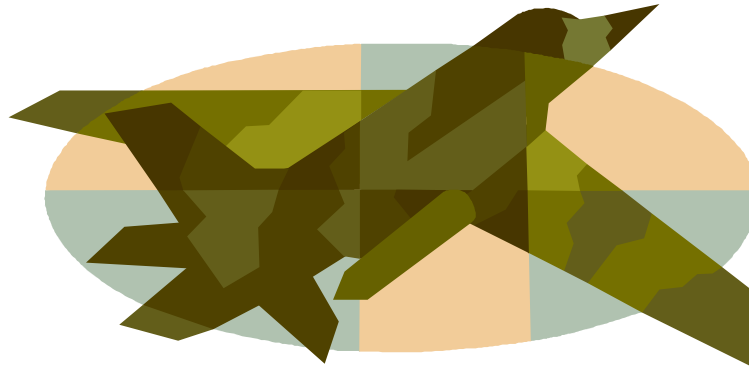






# Exclusions

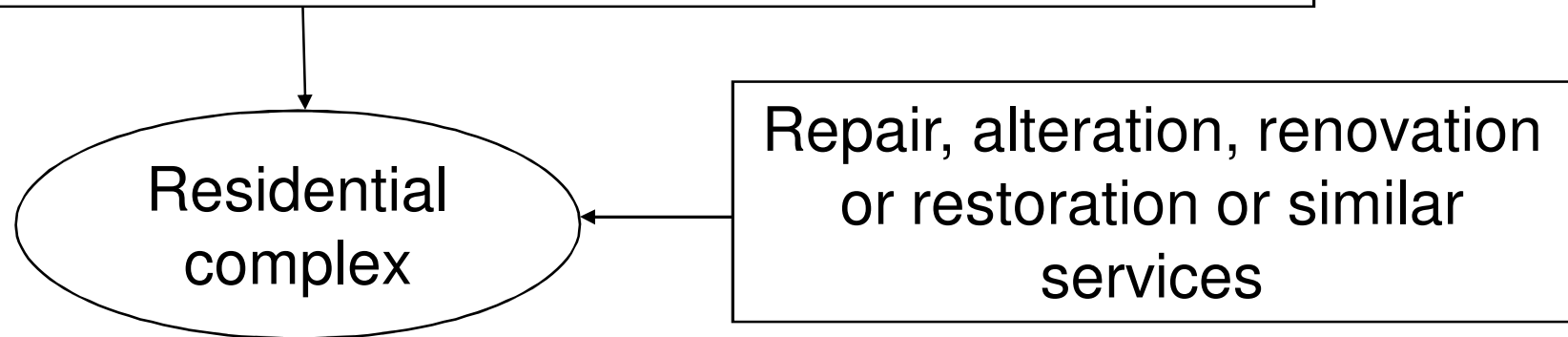
- Roads
- Airports?
- Railways
- Transport terminals
- Bridges
- Tunnels
- Dams and
- Port or other port?
- Canals 116/2009



# Construction of Residential Complex

Construction of New Residential Complex or part

Completion and Finishing service 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





# Residential Complex



Building(s) having more than 12 units

Common area

Facilities such as park, lift, parking space, community hall, common water supply or effluent treatment system located within premises and lay out approved by Authority

## Excluded:

Complex constructed by engaging other person for designing or planning of layout and for personal use as residence (incl. Rented or free)

Residential Unit = Single house or apartment as place of residence

# Service to Self

[Circular No. 96/7/2007 – Dt. 23-08-07]

- If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person

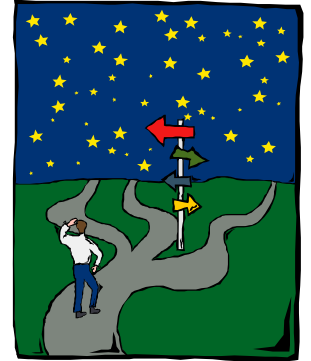
SP & SR does not exist

Self Service

question of providing taxable service  
to any person by any other person

does not arise

# Construction of Complex & Commercial or industrial construction Service



The initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell'. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller. It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax - **Circular No. 108/02/2009 – ST dated 29th January 2009 & MAGUS CONSTRUCTION PVT. LTD. Vs UOI [2008 (11) S.T.R. 225 (Gau.)]**

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# Construction of Complex & Commercial or industrial construction ~~Service~~

- Explanation to Sec 65(105)(zzq)(zzzh) - unless the entire consideration for the property is paid after the completion of construction (i.e. after issuance of completion certificate by the competent authority), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer.
- 65(91a) Explanation – “personal use” includes permitting the complex for use as residence by another person on rent or without consideration
- No ST on advances received prior to 1.7.2010
- WCT?



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# competent authority



- Government Authority
- Architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- Chartered Engineer registered with the institution of Engineers (India); or
- Licensed Surveyor of the respective local body of the city, town, village or development or planning authority.







# Judicial Rulings

- **G.S. Promoters V/s. Union of India & Another (2010-TIOL-813-HC-P&HC-ST)**
  - tax is on service and not on service provider and construction services are certainly provided even when a constructed flat is sold.
- **Maharashtra Chamber of Housing & Industry V/s. Union of India 2010-TIOL-526-HC-MUM-ST)**
  - granted an interim stay in the matter to be Petitioners therein.

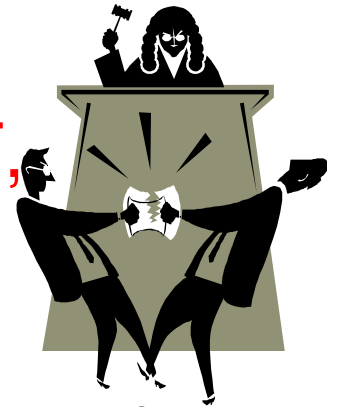
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# Abatement

- Intertouch Metal Buildings Pvt. Ltd. Vs. CST, Chennai 2009(16)STR 175
- No Abatement on completion or finishing Service
- Exemption under notification 12/2003 on value of sale of material available



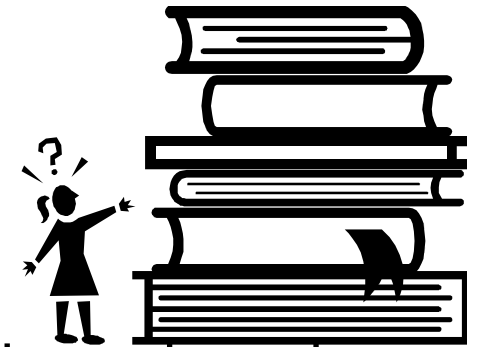
- Santosh associates Vs. CST, Ahmedabad 2009(16)STR 87
- Cenvat of input service available if service rendered before 1<sup>st</sup> March, 2006



- CST, Ahmedabad Vs. Amola Holdings Pvt. Ltd. 2009(16)STR 46
- CENVAT credit wrongly taken reversed on point out with interest abatement available



# Clarification by Board



## ❖ Reclassification of Service is possible?

Classification of a taxable service is determined based on the nature of service provided whereas liability to pay service tax is related to receipt of consideration.

Vivisecting a single composite service and classifying the same under two different taxable services depending upon the time of receipt of the consideration is not legally sustainable.

[Circular No. 98/1/2008 – Dt. 04-01-08]

‘works contract’ describes the nature of the activity more specifically and, therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that

date. [Circular No. 128/10/2010 – Dt. 24-08-10]

# WCT Vs. Construction

- Soma Enterprises Vs. CC,CE & ST, Hyderabad II 2009(15)STR 559
  - Composite Contract **not** liable before 1.6.07
- Sunil Hi-Tech Engineers Ltd. Vs. CCE, Nagpur (2009-TIOL-1867-CESTAT-MUM)
  - Composite Contract liable before 1.6.07
  - After 1.6.07 it will be taxable under WCT

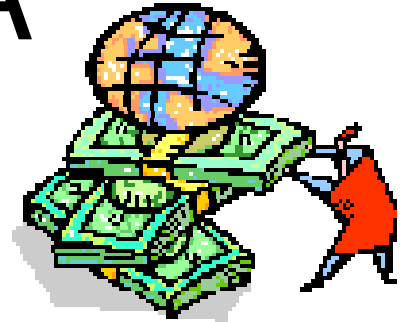


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# Valuation- Rule 2A



- **Excludes:**

- Value of transfer of property in goods
- VAT/sales tax paid

- **Includes**

- Labour charges
- sub-contractor for labour
- planning, designing and architect's fees
- hire Charges of machinery and tools
- Cost of consumables such as water, electricity, fuel,
- Cost of establishment of the contractor
- Other similar expenses relatable to supply of labour
- Profit earned relatable to supply of labour and services

Gannon Dunkerley & Co.  
v. State of Rajasthan  
[1993] 66 Taxman 229(SC)

# Optional Composition Scheme

4%

Rate of Tax: ~~2%~~ on the gross amount charged



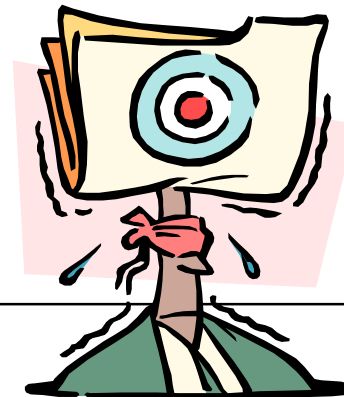
Gross amount Charged =  
Gross Amount – VAT/CST

State of Kerla v. Builders  
Association of India  
(1997) 2SCC 183 (SC)

**CENVAT**

Inputs: No  
Input Service: Yes  
Capital Goods: Yes  
Rule 6(5)

- Option to be exercised before making Payments of tax
- can not be altered thereafter
- Option is qua contract



# Road – Construction / Repair & Maintenance



- **Repair & Maintenance**

- Resurfacing
- Renovation
- Strengthening
- Relaying
- Filling of potholes

- **Construction**

- Laying of a new road
- Widening of narrow road to broader road
- Changing road surface (graveled road to metalled road/ metalled road to blacktopped/ blacktopped to concrete etc)

# Issues

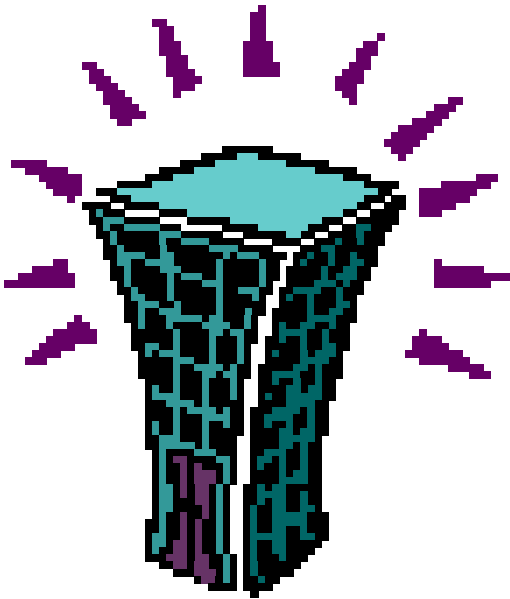
- ABC Ltd. is constructing a huge factory which has been spread over 15 acres. It had given separate Contract to construct the internal road within the factory to Construction Ltd. Construction Ltd. has to use its own material for construction of internal road. Whether Construction Ltd. is liable to pay Service Tax on the same?





# Issues

- ACL had taken contract to construct a Mall on 15th January, 2007. ACL had also taken advance on the same date and paid the service tax under Commercial or Industrial Construction service after taking abatement of 67%. The actual construction work started on 16th June, 2007. Whether ACL can pay service tax under Work Contract Service for the said Contract?



# Site Formation & Clearance Services

- Taxable w.e.f. 16.06.2005. [section 65 (105) (zzza)]
- Following pre-construction services are liable to service tax under this category:

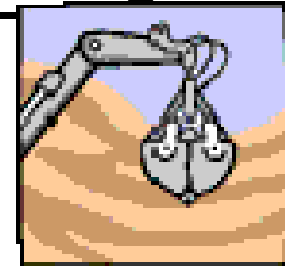
i) Site formation, clearance services, earth moving and excavation services such as:

Rock cutting and earth filing road	Land leveling
Rock cutting and earth filing	Clay removal
Blasting and rock removal	Debris removal
Removing mangroves, grass, trees	Fencing, etc.

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Soil stabilization

Drilling and boring

Horizontal drilling for laying cables & drainage pipelines



Land reclamation

Contaminated top soil striping

Demolition & wrecking of building, structure & road

Commercial and industrial buildings and structures.  
Residential complex irrespective of number of units.  
Non-commercial buildings

Covered

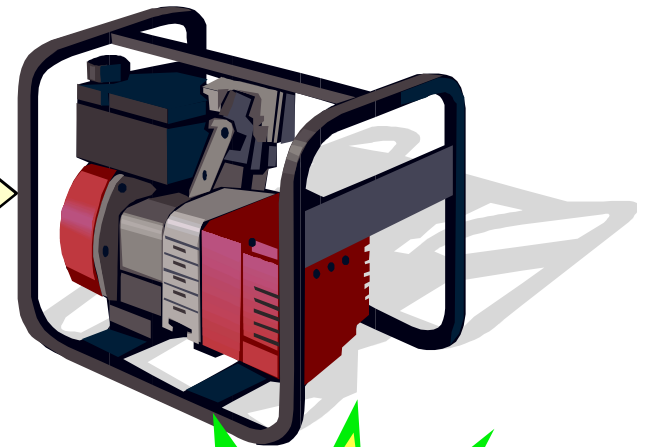
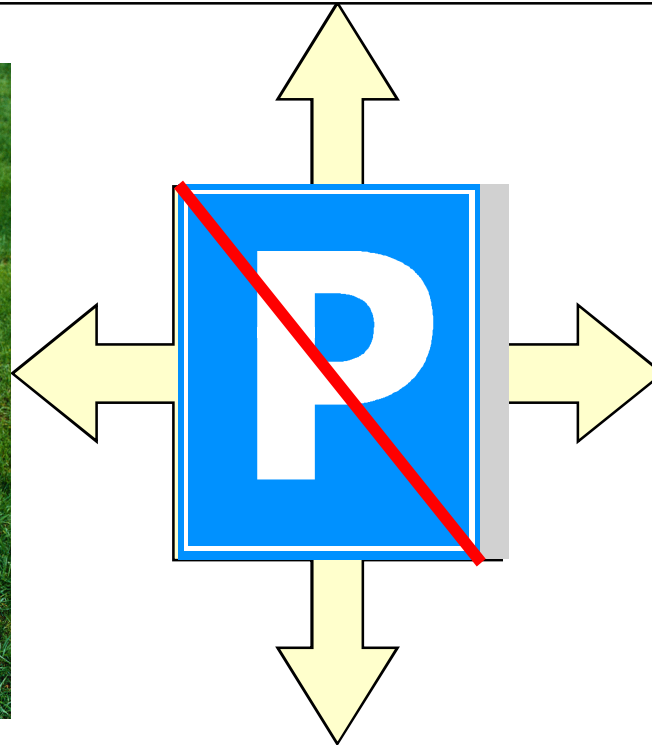
agriculture, watershed development and drilling  
irrigation, digging, repairing, renovating or restoring  
of water sources or water bodies

Excluded



# Special Services provided by Builders

Internal or external development charges

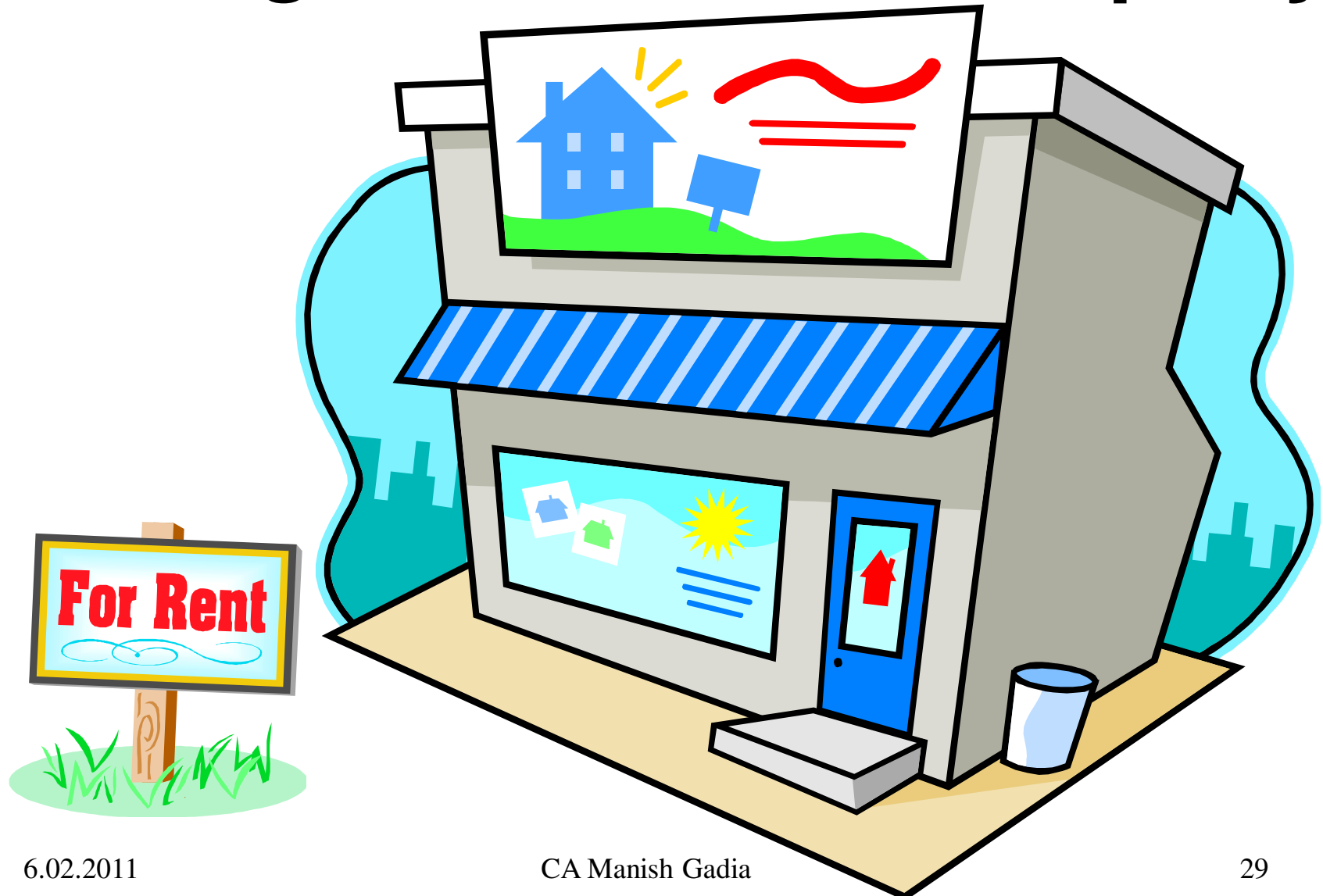


No Abatement



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# Renting of Immovable Property



# Renting of Immovable property

(1<sup>st</sup> June, 2007)

**Includes:** renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce

**Explanation 2:** allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property

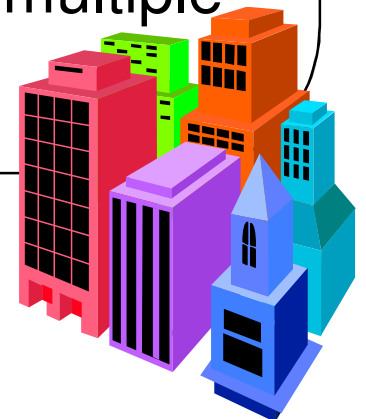
**•Excludes:**

- To / by religious body
- **To** an educational body


**•for use in the course or furtherance of business or commerce” includes:**

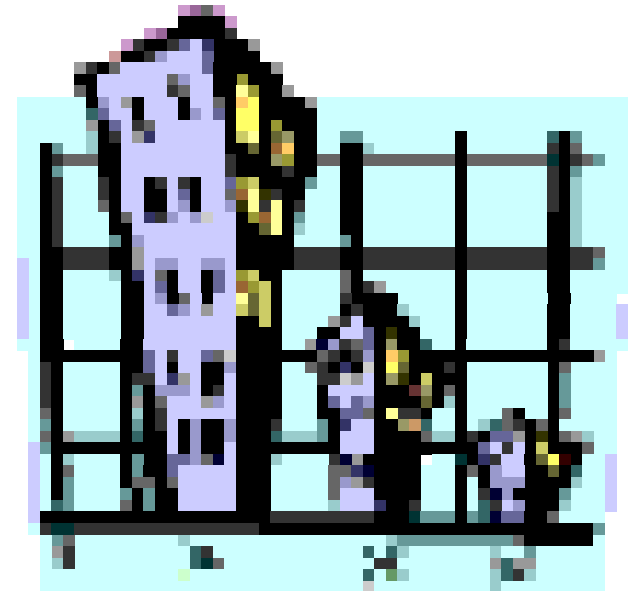
use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls & multiple-use buildings

**2008**



# Taxable Service

- Means
- any service provided or
- to provided to any person,
- by any other person
- **in relation to** 
- renting of immovable property
- for use in the course or furtherance of business or commerce



# Renting of Immovable Property

SSIPL  
Retail Ltd  
Vs UOI  
18-12-09

***by renting of immovable property or any other services***



➤ in relation to renting of immovable property

the Hon'ble HC of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others vs. UOI has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce **does not involve any value addition and therefore, cannot be regarded as service** - D.O.F. No.334/1/2010-TRU Dt 26<sup>th</sup> February, 2010  
Annexure B Para 9.1



# Shubh Timb Steels Ltd. Vs UOI

## (2010-TIOL-765-HC-P&H-ST)


- Entry 49 of List II relates to tax on land and building and not any activity relating thereto.
- An independent aspect covered under Entry 92C read with Entry 97 of List I
- Renting of property for commercial purposes is certainly a service and has value for the service receiver



# Immovable Property



## Includes:

- building and part of a building, and the land appurtenant thereto
- land incidental to the use of such building or part of a building
- the common or shared areas and facilities relating thereto; and
- in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate
- vacant land, given on lease or license for  construction of building or temporary structure at a later stage to be used for furtherance of business or commerce

# Immovable Property



- **Does not includes**

- vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
  - vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
  - land used for educational, sports, circus, entertainment and parking purposes; and
  - building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.
- Immovable property partly for business or partly for other purpose – Deemed to be for business

# Renting of Immovable property Services



Gross Rent Received

Less: Proportionate Property Tax paid

**Assessable Value**

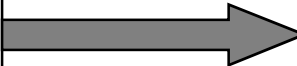
Interest/Penalty

**Adjustment under Rule 6(4C)**

Property Tax paid after payment of ST



Adjust Property Tax paid



Intimate within 15 days to superintendent

# CENVAT

(Circular No. 98/1/2008-ST dated: 4<sup>th</sup> January, 2008)



- Right to use immovable property
- output namely immovable property
- neither subjected to central excise duty nor to service tax
- input credit cannot be taken
- setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises



# Movie Theater

(Circular No. 109/03/2009-ST dated: 23<sup>rd</sup> February, 2009)



- Theater owner gets a fixed rent from the distributor
- profit or loss from exhibiting the film is borne by the distributor
- Liable under Renting of Immovable property
- Any other type of arrangements by theater owner other than above is not covered under Renting of immovable property Service

# Issues

- Immovable property given on lease to Central Excise department or Income tax department?
- Commercial Property is owned by Minor and such property is leased out. Whether rentals would be clubbed with parents?
- If a person is owner of 10 different property at 10 different location. Is he require to register all the premises?



# Business Support Service

- **Infrastructure Support Service includes**
- providing office along with
- office utilities,
- lounge,
- reception with competent personnel to handle messages,
- secretarial services,
- internet and telecom facilities,
- pantry and
- security







**Opinions or  
views are like  
wrist watches.**

**Every watch  
shows different  
time from others.**

**But every one  
believes that their  
time is right!**



CA Manish Gadia

***GMJ & Co***

Ph : (022) 61919293

Email: [manishgadia@gmjca.com](mailto:manishgadia@gmjca.com)