

# **A. N. GAWADE & CO.**

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## **SERVICE TAX ON DEVELOPERS**

As per 2012 negative list, the construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly has been declared to be a service liable to service tax.

### **Sec 66E Statutory Provisions:**

“Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation.—For the purposes of this clause,—

(I) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(B) chartered engineer registered with the Institution of Engineers (India); or

(C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;”

### **Manner of valuation:**

Since the construction activity includes two elements i.e. material and labour element, therefore an abatement/exemption for the material part is required for arriving at the service element. Notification No. 26/2012-ST dated 20.06.2012 provided for similar abatement/exemption. This Notification has also been amended from time to time. Entry No. 12 of the abovesaid Notification provides the percentage of valuation of services in such cases of construction activities.

Earlier, such builders were allowed abatement of 75% when the value of land was part of transaction in respect of construction of building intended for sale to prospective buyers with a condition that CENVAT credit benefit is allowed only in respect of input services and capital goods.

The notification No. 26/2012 has been amended from time to time. W.E.F. 01-03-2013 Notification No. 26/2012 was amended to provide for the reduced rate of abatement for high ended homes and flats from 75% to 70% on the ground that in such cases component of ‘service’ is greater.

Therefore, w.e.f 01-03-2013, exemption of 75% was made applicable only in respect of the residential unit having carpet area upto 2000 square feet or where the amount charged in respect of such unit is less than rupees one crore. Thus if either of the conditions was satisfied, abatement of 75% was available.

However, Again w.e.f 08-05-2013, the Government has amended entry No. 12 Notification No. 26/2012-ST, whereby the percentage of exemption has been retained as it was made applicable w.e.f. 01-03-2013, but now the exemption related to residential unit is made applicable by applying both condition in respect of carpet area and the value of residential unit together.

Thus, now the current position is that to claim exemption at the rate of 75% both the conditions should be satisfied i.e. carpet area of residential unit should be less than 2000 square feet and the amount charged for such unit should also be less than Rs. 1 crore.

It should be noted that the Conditions of CENVAT credit remains unchanged till date.

**The manner of valuation at different times is given as below:**

**1. From 01.07.2012 to 28.02.2013**

Description of taxable service	Abatement (%)	Taxable value (%)	CENVAT availability		
			Capital Goods	Input	Input service
Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	75	25	Yes	No	Yes

**2. From 01.03.2013 to 07.05.2013**

Description of taxable service	Abatement (%)	Taxable value (%)	CENVAT availability		
			Capital Goods	Input	Input service
Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority-					
(i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore;	75	25	Yes	No	Yes
(ii) For other than the (i) above.	70	30			

**From 08.05.2013 onwards:**

Description of taxable service	Abatement (%)	Taxable value (%)	CENVAT availability		
			Capital Goods	Input	Input service
Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority-					
(i) for residential unit having carpet area is less than 2000 square feet and where the amount charged is less than rupees one crore;	75	25	Yes	No	Yes
(ii) For other than the (i) above.	70	30			

It is important to note here that Explanation C has been inserted in the Notification No. 20/2012-ST wherein it has been provided that The amount charged for the service shall include the fair market value of all goods and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services supplied to the service provider, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

**Provided** that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

The implications of the above explanation are that if any goods are supplied by the contractee to the builder-contractor free of cost or at lesser price than the fair market value of such goods, then for the purpose of calculating taxable value, gross amount charged shall include fair market value of such goods supplied after deducting the price charged for such goods and VAT, saes tax if any levied thereon.

**NON-APPLICABILITY OF SERVICE TAX:**

However, if the entire consideration from the prospective buyer is **received after issuance of completion certificate by competent authority** then it is outside the purview of declared service hence not taxable under service tax.

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