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Vimal Shah

IMMEDIATE PAST PRESIDENT
Paras Gundecha

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Dharmesh Jain

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Nayan Shah
Deepak Goradia
Boman R. Irani

HON. SECRETARY
Nainesh Shah

HON. TREASURER
Sukhraj Nahar

CEO
S. Shahzad Hussain
I.A.S. (Retd.)

HON. JOINT SECRETARIES
Harish Patel
Ashok Mohanani
Sandeep Runwal
Bandish Ajmera

JOINT TREASURERS
Lakshman Bhagtani
Mukesh Patel

CO-ORDINATORS
Rakesh Kanakia
Jagdish Ahuja
Pujit Aggarwal
Parag Munot

COMMITTEE MEMBERS
Jayesh Shah
Nayan Bheda
Sanjay Chhabria
Rajendra Chaturvedi
Shailesh Sanghvi
Tejas Vyas
Jitendra Jain

INVITEE MEMBERS
Sandeep Raheja
Munish Doshi
Dominic Romell

PAST PRESIDENTS
Sunil Mantri
Pravin Doshi
Mohan Deshmukh
Mofatraj Munot
Niranjan Hiranandani
Rajni S. Ajmera
G. L. Raheja
Lalit Gandhi
Babubhai Majethia

MCHI-CREDAI UNITS

President, Thane
Suraj Parmar

President, Kalyan-Dombivli
Johar Zojwalla

President, Mira Virar City
Ashit Shah

President, Raigad
Vikas Bhamre

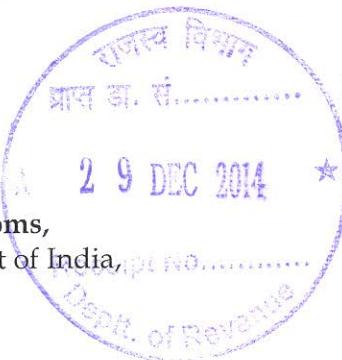
President, Navi Mumbai
Arvind Goel

Ref. No. MCHI/PRES/14-15/097

December 19, 2014

To,
The Chairman,

Central Board of Excise & Customs,
Ministry of Finance, Government of India,
North Block,
New Delhi.



Sub: Clarification on provisions relating to "Completion Certificate by the Competent Authority, as provided in Section 66 (E) (b).

Dear Sir,

1. Our members are engaged in construction and development of residential/commercial complexes for purpose of sale to various prospective buyers.
2. The Section 66 (E) of the Finance Act declares certain services as taxable services. The clause (b) which relates to construction of complex, building for sale to buyers reads as follows:-

(b) 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 purpose 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 remodeling of any existing civil structure;*

It is clear from the above that if the sale of the premise takes place after and issuance of completion certificate by the competent authority, the service tax on such sale is not leviable.

3. The Section 353A of Mumbai Municipal Corporation Act, (MMC), reads as follows:-

MCHI-CREDAI (ISO 9001:2008)

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Website : www.mchi.net

"353A. Completion certificates, permission to occupy or use.

(1) Every person who employs a licensed surveyor or person approved by the Commissioner to erect building or execute any such work as is described in section 342 shall, within one month after the completion of the erection of such building or the execution of such work, deliver or send or cause to be delivered or sent to the Commissioner at his office, notice in writing of such completion, accompanied by a certificate in the form of Schedule-T, signed by the person employed under section 344A, who is hereby required immediately upon completion of the work and upon demand by the person employing him to sign and give such certificate to such person, and shall give to the Commissioner all necessary facilities for the inspection of such building or of such work:

Provided that -

- (a) Such inspection shall be commenced within seven days from the date of receipt of the notice of completion, and
- (b) The Commissioner may, within seven days from the date of commencement of such inspection, by written intimation addressed to the person from whom the notice of completion was received, and delivered at his address as stated in such notice, or, in the absence of such address, affixed to a conspicuous part of the building to which such notice relates-
 - (i) Give permission for the occupation of such building or for the use of the building or part thereof, affected by such work, or
 - (ii) Refuse such permission in case such building has been erected or such work executed so as to contravene any provision of this act or of the bye-laws.

(2) No person shall occupy or permit to be occupied any such building, or use or permit to be used the building or part thereof affected by any such work, until-

- (a) The permission referred to in proviso (b) to sub-section (1) has been received, or
- (b) The Commissioner has failed for twenty-one days after receipt of the notice of completion to intimate as aforesaid his refusal of the said permission".

4. The Development Control Regulations Act, (D.C.Regulations) provides for Completion Certificate, Occupancy Certificate and Part Occupancy Certificate. The provision reads as follows:-

"(6) Completion Certificate: - The owner, through his licensed plumber, shall furnish a drainage completion certificate to the Commissioner in the form in Appendix-XIX. The owner through his licensed surveyor / engineer / structural engineer / supervisor or his architect, who has supervised the construction, shall furnish a building completion certificate to the Commissioner in the form in Appendix -XX. These certificates shall be accompanied by three sets of plans of the completed development. The Commissioner shall inspect the work and after satisfying himself that there is no deviation from the approved plans, issue a certificate of the completion of the work in form in Appendix-XXI.

(7) **Occupancy Certificate** : - On receipt of the acceptance of completion certificate in the form in Appendix-XXI, the owner, through his licensed surveyor / engineer / structural engineer / supervisor or his architect, shall submit to the Commissioner a development completion certificate in the form in Appendix-XVIII with three copies of the completion plan, one of which shall be cloth mounted for record. The Commissioner may inspect the work and after satisfying himself that there is no deviation from the sanctioned plans, issues an occupancy certificate in the form in Appendix XXII or refuse to sanction the occupancy certificate within 21 days from the date of receipt of the said completion certificate, failing which the work shall be deemed to have been approved for occupation, provided the construction conforms to the sanctioned plans. One set of plans, certified by the Commissioner as the completed plans, shall be returned to the owner along with the occupancy certificate. Where the occupancy certificate is refused or rejected, the reasons for refusal or rejection shall be given in intimation of the rejection or refusal.

(8) **Part Occupancy Certificate** : - When requested by the holder of the development permission, the Commissioner may issue a part occupancy certificate for a building or part thereof, before completion of the entire work as per the development permission, provided sufficient precautionary measures are taken by the holder to ensure public safety and health. The occupancy certificate shall be subject to owner's indemnifying the Commissioner in the form in Appendix XXIII".

5. The Section 353A, prescribes the procedure for the purpose of issuing Completion certificate. As per this procedure, licensed surveyor/architect or person approved by the Commissioner who supervises the construction of building shall within one month of completion of the erection of such building furnish a building completion certificate to the Commissioner in form Schedule-T. Such person shall also give all the facilities to Commissioner for inspection of the building. Such inspection shall be commenced within seven days from date of receipt of the notice of completion. Thereafter the Commissioner, if there is no objection, shall grant occupancy certificate for the premise. Thus, occupancy certificate is issued after completion certificate issued by the Architect and issue of acceptance of completion of work by the Commissioner. Similar procedure is prescribed in DC Regulation Act. However, most of the times issuance of certificate of acceptance of completion of work is eliminated and the Commissioner directly issue occupancy certificate for the building.

6. The basic thrust of the Finance Act is that, if the sale takes place after completion of the construction and no further construction activities are to be carried out, the transaction is a sale of immovable property and not provision of any service. Once the occupancy certificate as specified in Section 353A of MMC Act is obtained it signifies that construction of building is completed.

7. This view has also been elucidated in the judgment of M/s K.Raheja Development Corporation V/s State of Karnataka as reported in 2006 (3) S.T.R. 337 (S.C.). The Hon'ble Supreme Court in para 18 of the judgment clarified that: -



"18. Thus the Appellants are undertaking to build as developers for the prospective purchaser. Such construction/development is to be on payment of a price in various instalments set out in the Agreement. As the Appellants are not the owners they claim a "lien" on the property. Of course, under clause 7 they have right to terminate the Agreement and to dispose off the unit if a breach is committed by the purchaser. However, merely having such a clause does not mean that the agreement ceases to be a works contract within the meaning of the term in the said Act. All that this means is that if there is a termination and that particular unit is not resold but retained by the Appellants, there would be no works contract to that extent. But so long as there is no termination the construction is for and on behalf of purchaser. Therefore, it remains a works contract within the meaning of the term as defined under the said Act. It must be clarified that if the agreement is entered into after the flat or unit is already constructed, then there would be no works contract. But so long as the agreement is entered into before the construction is complete it would be a works contract"

Also recently the Hon'ble Supreme Court in case of M/s Larsen & Toubro Limited V/s State of Karnataka, as reported in 2010 19 STR (807), in para 115 clarified that:-

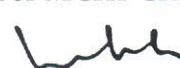
"115. It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government".

Thus, the crux is that if there is no further construction activity to be undertaken, the sale is of immovable property.

8. In view of above, we feel that once the occupancy certificate for the premises/building has been obtained and the sale takes place thereafter, service tax will not be levied.

For the benefit of the trade and industry we request you to kindly issue suitable clarification in the above matter.

Yours faithfully,
For MCHI-CREDAI


Vimal Shah
President

Copy to:

A) The Member (Service Tax), CBEC,
 B) The Joint Secretary (JS-II), Tax Research Unit (TRU),
 C) The Director, Tax Research Unit (TRU)



APPENDIX XX

(Regulations No. 6(6))

**(See sub-section (l) of section 353-A of the Mumbai
Municipal Corporation Act, 1888)**

Building completion Certificate

To

.....
.....

Sir,

The following building work (insert full particulars of the work) has been supervised by me and has been completed to my satisfaction; the workmanship's and the whole of the materials used are good; and no provision of the Act or the Regulations, Byelaws and no requisitions made, condition prescribed or order issued thereunder, has been transgressed in the course of the work.

Yours faithfully,

Signature of Licensed Surveyor/
Engineer/Structural
Engineers/Supervisor or Architect,

Name (in block letters) _____

Address
.....
.....

Date :

Licence No.

APPENDIX XXI

(Regulations 6(6) and 6(7)

Form of Acceptance of Completion Certificate

Municipal Corporation of Greater Mumbai

No.....of

To

.....
.....
.....

Subject :

Reference :

Sir,

The Completion certificate submitted by you onfor the above work is hereby accepted.

Yours faithfully,

Executive Engineer/Asst Engineer.....Dn.
Municipal Corporation of greater Mumbai
Zone

Date :

Office Stamp :

No.of

Copy forwarded to

.....Dn.

The Assistant Engineer/
Executive Engineer,
Development Plan/
Chief Engineer,
Vigilance,

.....For information

Executive Engineer
Zone.....

APPENDIX XXII
(Regulations 6(7))
Form for Occupancy certificate

To

.....
.....
.....

Sir,

The part/full development work/erection/re-erection or alteration in/of building/part building

No.on/in Plot No.

Block No.situated atRoad/

StreetCity S. No.

.....completed under the supervision of

Licensed surveyor/Engineer/Structural Engineer/Supervisor, Architect/Licence No.

.....may be occupied on the following conditions:-

- 1)
- 2)
- 3)
- 4).....

.....
.....
.....

A set of certified completion plans is returned herewith.

Yours faithfully,

Executive Engineer
(Building Proposal)
(.....Ward)
Municipal Corporation of Gr. Mumbai.

Office No.

Office Stamp.....

Date

APPENDIX XXIII
(Regulations 6(8)
Form of Indemnity for Part Occupancy Certificate

To

.....
Municipal Corporation of Greater Mumbai
Mumbai.

Subject :

Sir,

While thanking you for letting me occupy a portion of the above building before acceptance of the Completion Certificate of the whole building for the plans approved in communication No. dated

I, *indemnify the Municipal Corporation of Greater Mumbai against any risk, damage and danger which may occur to occupants and users of the said portion of the building and also undertake to take necessary security measures for their safety.

This undertaking will be binding on me/us, our heirs, administrators and our assignees.

Yours faithfully,

.....
Signature of Owner

.....
Name of the Owner

(in block letters)

Witness

(Signature and name in block letters)

Address :

.....
Date :

*of such value as decided by the Commissioner.