

LEAKING PIPELINES

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"Rain, rain, go away,
Come again during May!

- A recent nursery rhyme of Chennai

Water! Eventhough more than two thirds of this planet is surrounded by water; it still remains to be the scarcest commodity on Mother Earth! Most of the countries in the World suffer from acute scarcity of drinking water and our beloved Nation is no exception! Every year, India witness an ironical scene that, simultaneously, one part of the country demanding "Flood relief" and the other part of the nation claiming "Drought relief". To countervail this paradox, the best of the Indian brains are always working overtime. "Water Resources Management" has assumed greater importance and gathering momentum that it has become the electoral agenda of many political bandwagons! Even tinsel "Super Stars" talk about Interlinking of Indian Rivers!

"Drinking water Pipelines" have become the Central Nervous System of this country, running across the length and breadth. Considering the significance of water management, the Ministry of Finance has also issued several Notifications, exempting payment of duties in connection with such laying of such pipelines. But, a careful analysis of the taxing policy relating to such pipelines, would highlight lot of pitfalls and potholes, which are more than the size of diggings made on roads to lay these pipelines!

Let us run through the pipeline.

Central Excise:

As per Serial No. 196 A (Serial No. 196 A is repeated twice in the Notification) of Notification 6/2002 CE Dated 01.03.2002, the following items are exempted from payment of duties of excise, subject to production of the requisite certificate from the District Authorities.

- (1) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components / parts required for setting up of **water treatment plants**;
- (2) Pipes needed for delivery of water from its source to the plant and from there to the storage facility.

The following Explanation is also appended there under.

Explanation: For the purposes of this exemption, water treatment plants includes a plant for desalination, demineralization or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal consumption, but does not include a plant supplying water for industrial purpose.

From the above, it may be observed that the following items are exempted from payment of duties of excise, namely,

- (1) Machineries, etc. required for setting up **water treatment plants**, other than those water treatment plants supplying water for industrial purpose.
- (2) Pipes needed for delivery of water from its source to the plant (presumably, water treatment plant, referred to above) and from there to the storage facility.

Further, Notification 3/2004 CE has been issued on 08.01.2004, exempting the following from payment of duties of excise, namely,

- (1) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components/parts required for setting up of **water supply plants**; and
- (2) Pipes needed for delivery of water from its source to the plant (presumably, water supply plant, referred to above) and from there to the storage facility.

The following Explanation has also been appended to this Notification.

Explanation - For the purpose of this notification, water supply plant includes a plant for desalination, demineralization or purification of water or for carrying out any similar process or processes intended to make the water fit for agricultural or industrial use.

From the above, it may be observed that the Explanations under the both the Notifications for "Water Treatment Plant" and "Water Supply Plant", are similarly worded. In effect, **what is sought to be excluded under Notification 6/2002 has been specifically included under Notification 3/2004**. This "*cut and paste*" drafting makes one to believe that as to whether the Notifications are drafted by "Data Entry Operators!"

Now to the second part of the Notifications. The sub clause (b) of both the Notifications exempt pipes needed for delivery of water from its source to the plant and from there to the storage facility. But, for the reasons best known to the law makers, the benefit of the Notification is not allowed for the "pipes" intended for transmission of water from storage facility to the consumption points. As discussed above, the intention behind exempting the Pipelines are in accordance with the fundamental infrastructural development. Even after burning gallons of midnight oil we are not able to understand the reasoning behind such restrictions. Can the water distribution be complete without such transmission of water to the consumption points?

Going by the notification, as on date, the exemption *per se* is available to the pipes used in transmission of water from the source to the ultimate storage point. In water distribution, it is a common feature that, the water is drawn from the source to the treatment plant and after treatment, such treated water is transmitted to a main storage facility. Subsequently, such water will be transmitted to multiple distribution points, which are also nothing but "storage facilities". Going by the letter and spirit of the notification, the pipes intended for carriage of water from the source to the treatment plant, from the treatment plant to the main storage facility and from the main storage facility to various distribution points, are eligible for the exemption. In other words, the term 'storage facility' mentioned in the said notification is not restricted only to the main storage facility but shall include all the distribution points, as long as, such distribution points are used to store such water.

But now comes the worst leakage. Even though the CBEC has clarified vide its Circular No. 659/50/2002 dated 06.09.2002 that the exemption under the above notifications would be applicable in respect of the pipes used from the source to the storage place, it is learnt that the learned TRU has further clarified vide its letter F. No: 354/129/2005 Dated 28.10.2005 that the exemption for pipes would be available only from the plant (water treatment plant / water supply plant) to the storage point and not in respect of the pipes used for delivery of water from one storage point to another storage point.

Let us imagine a situation. "A" is the plant. "B" is the main storage point and "C" is the second storage point or distribution point. The pipeline runs from "A" to "C", through "B". The TRU says that the exemption for pipes would be admissible, only in respect of "A" to "B" and not from "B" to "C". Why not the pipes between "A" and "C" be viewed together, as representing "from plant to storage place", with an intermittent storage point "B"?

In water supply projects, the water has to be taken through difficult terrains, stored sensibly, managed meticulously and distributed diligently, before it ultimately reaches the

destination. The present TRU Circular has clearly thrown the noble intentions into the wind and exhibits nothing but revenue bias.

When the ultimate aim is to provide a pot full of water to the rural folk or a bottle full of water to the urbanite, why not the pipes be exempted, upto the place of consumption? Is the department going to once again dig the roads to measure the length of pipes used beyond the storage point, so as to demand duty of excise? Often, such water projects are planned for multiple use (irrigation, industrial as well as drinking needs), which require complex pipelines, storage points, etc. Why not such practical issues be properly appreciated by the Revenue Bapus?

Service Tax:

If the situation under Central Excise is a crack, the situation under service tax is a fissure.

When levy of service tax was introduced with effect from 10.09.2004, in respect of "construction service (pertaining to commercial or industrial construction)", long distance pipelines were specifically excluded from the ambit of the levy, by virtue of its definition.

When the scope of this levy was expanded with effect from 16.06.2005, construction of pipeline has been specifically included under "commercial or industrial construction". Since the levy would be attracted only in case of "commercial or industrial construction", various water supply projects of the Government, involving laying of pipelines, are still outside the ambit of this levy.

There is another taxable service known as "erection, commissioning and installation service" and the laying of pipeline involves erection of certain civil structures, commissioning of the pipelines, installation of pumping stations, etc. Interestingly, no distinction as to "commercial or industrial purposes" is made out under "erection, commissioning and installation service". Further, while expanding the scope of this service, with effect from 16.06.2005, "installation of plumbing, drain laying or other installations for transport of **"fluids"** has been specifically included in its scope. Fluids mean liquids and gases and accordingly water is also a fluid (being a liquid). Even though the activity of erection, commissioning and installation in the above said water management projects are very minimal and only the laying of pipelines is the major service activity, there is a hidden threat that the department would allege that such laying of pipes would fall under the levy of service tax under Erection, Commissioning and Installation services.

Since, the laying of pipes *per se* being a construction activity of non-commercial nature, it gets totally excluded from the ambit of "commercial or industrial construction service", and hence the said activity is not at all a taxable service. What remains as a taxable service is only the miniscule activity of erection, commissioning and installation. But the department may allege that the entire activity including laying of pipes would fall under Erection, Commissioning and Installation services, by taking recourse to Section 65A of the Finance Act, 1994 for classification. Since, breaking up the consideration for the said erection, commissioning and installation is not practically possible, the agencies would end up paying service tax on the whole amount *sans* abatement, which would be cruel and insane! But in law enforcement, that too in taxation, who is bothered about sanity or sanctity!

Whether the taxing policy relating to drinking water should be so complex? Will there be some light at the end of the pipe, nay, tunnel?