

**POINTS ON BEHALF OF BIHAR INDUSTRIES ASSOCIATION, PATNA FOR DISCUSSION WITH
MEMBER (SERVICE TAX-CUM ZONAL MEMBER CBEC)**

1. As per Sl. No. 14 of Mega Exemption Notification No.25 / 2012 –ST dated 26.06.2012 as amended by Notification No. 44 / 2012 – ST dated 07.08.2012, Services by way of Construction, Erection, Commissioning, or Installation of “Original” works pertaining to an Airport, Port or Railways, including Monorail or Metro is exempted from Service Tax.

Further, as per Explanation 1 under Rule 2 A (ii) of Service Tax (Determination of Value) Rules, 2006 (Notification No.12/2006-S.T. dated 19.04.2006 as amended), “Original” works means –

- (i) all new constructions;
 - (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
 - (iii) Erection, Commissioning or Installation of Plant, Machinery or Equipment or Structures, whether pre-fabricated or otherwise.
- (a) In view of the above, we would like to know, if someone carries out the work of construction of Railway Track which involves various activities such as preparation of the ground, spreading the ballast, laying the sleepers and fitting & fixing the new Rail Tracks on the same after getting the Rail Tracks elongated by the method of Flash Butt Welding, whether such work will fall under the definition of “Original” work as per the above Notification and whether the same shall be exempted from the preview of Service Tax or not.
- (b) Further, whenever, the Repairing and Re-installation of Railway Track is done by cutting & removing the damaged portions and replacing the same with new Railway lines and joining the same by the method of Flash Butt Welding, whether the same will again be falling under definition of “Original” work pertaining to Railways and whether the same will also be exempted from Service Tax on the basis of aforesaid Notification.
- (c) It may also be clarified that if some portion of the above work are got done by the executants/ tenderer through Sub-Contractors e.g. if the welding work got done through a Sub-Contractor, the laying of sleepers and tracks is got done through another Sub-Contractors, preparation of ground and spreading of Ballast is got done through another sub-contractor, whether such activities will still be treated as part of the final “Original” work of construction of Railway Track and exempted from Service Tax or whether the same will be treated as individual activities not forming the part of “Original” work as defined in the above Mega Notification and shall attract Service Tax.

2. An Indian Company is acting as an agent of foreign company (not having its establishment in India) and obtains an order from an another Indian Company for certain equipment to be supplied by the said foreign company.

If the said Indian company is paid commission by the foreign company in convertible currency for such orders for supply made from outside India, whether such services shall get classified under “export of services” and shall be free from liability of Service Tax ?

