

Service Tax – Electricity?

Section 66D of the Finance Act, 1994 contains the Negative list of services. In accordance with clause (k) of negative list of services as per Section 66 D introduced w.e.f 01/07/2012, “transmission or distribution of electricity by an electricity transmission or distribution utility is not a taxable service”.

Electricity transmission or distribution utility has been defined under Section 65B(23) as:

“electricity transmission or distribution utility” means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; (36 of 2003.) or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

Para 4.11.2 of the Education Guide issued by the Central Board of Excise and Customs

4.11.2 If charges are collected by a developer or a housing society for distribution of electricity within a residential complex then are such services covered under this entry?

No. The developer or the housing society would be covered under this entry only if it is entrusted with such function by the Central or a State government or if it is, for such distribution, a distribution licensee licensed under the Electricity Act, 2003.

The activity of distribution of electricity within a residential complex is thus a taxable service, not covered within the scope of negative entry, if it is not entrusted with such function by a Central or State government or if it has no distribution license under the Electricity Act, 2003.

Grant of License to transmit/distribute/trade in electricity is governed by Section 14 of the Electricity Act, 2003 and as per the 7 th proviso,

“Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:”

So, all such second stage suppliers are covered under service tax net, being not a licensee under the Electricity Act, 2003.

Thus, electricity generation and distribution service provided by housing society, developer or private contractors are taxable. They are not exempt from service tax, as per the para no 4.11.2 of CBEC , Taxation of Service, Educational Guide published on 20/06/2012.

However, taxes on the consumption or sale of electricity is covered under Entry 53 of list II (state list.) Further, electricity is 'goods'. Hence, service tax indeed cannot be imposed on sale of electricity.