

## Good Bye, dear Notification No. 12/2003... – July 10, 2012

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**By S Sivakumar, CA**

IF I were asked to mention the most important notification in service tax law, I would unhesitatingly refer to Notification No. **12/2003**. The benefit of Notification is no longer be available from 1-7-2012.

The 'golden notification' has done a great deal of service, to Industry. Under this Notification, the value of goods and materials sold is exempted from the levy of service tax, subject to documentary evidence being adduced. Notwithstanding certain Tribunal decisions, which to my mind, are based on faulty reasoning, the benefit of this Notification has been made available to even the Realty Players, in terms of exclusion of the value of goods, in deemed sale transactions. In fact, except for the value of goods and materials consumed in the process of rendering services, Notification No. **12/2003** has always come to the rescue of the service provider and has provided exemption, in respect of the value of the goods sold/ transferred .

The benefit of Notification No. **12/2003** has been held to be available even to Commercial Training and Coaching Institutes, in respect of the value of the standard text books sold ([2012-TIOL-714-CESTAT-MUM](#)). Under the current law, the various benches of CESTAT have held that, the service provider is entitled to the benefit of Notification No. **12/2003**, in preference to Notification No. 1/2006, in as much as, the benefit of cenvat credit is available in cases falling under Notification No. **12/2003**.

With the withdrawal of this Notification, a lot of confusion is bound to arise, on the levy of service tax on composite transactions. The Central Government has now taken a view, based on the BSNL decision of the Supreme Court, that the levy of service tax would be based on the 'dominant intention' of the composite transaction.

But, the issue is this.... who will determine the 'dominant intention' of the composite transaction. Let's take the case involving Commercial Coaching Institutes, especially, the modern ones using Net based training, etc. Is the dominant intention one of providing service or one of sale of the coaching manuals, books, etc.? Under the current dispensation, in terms of Notification No. **12/2003**, service tax cannot be levied on the value of the books, etc. sold by these Institutes. However, under the new law.... the Central Government could possibly take the view that the dominant intention of the composite transaction is one of 'service'. But, where is the guarantee that this view will be accepted by the States, who can hold on to the view that, the dominant intention here, is one of a 'sale'.

Composite transactions are a way of modern life with customers requiring service providers to also supply goods, as part of a composite contract. It would be very difficult to determine the 'dominant intention' on many composite transactions and it is quite possible that the Centre and the States would seek to levy service tax and VAT, on the same transaction, taking divergent views on what is the 'dominant intention'.

The levy of service tax on composite transactions is bound to generate a lot of litigation, under the new service tax law, for sure.

**Before concluding ...**

Under the new definition of 'service', under the new law, only 'an activity which constitutes merely transfer of title in goods or immovable property, by way of sale, gift or in any other manner, is excluded. This would mean, *per se* , that, all sales transactions involving an element of service, would have to treated as composite transactions, under the new law. How would these transactions be subjected to the service tax levy, is anybody's guess.

Valuation of composite transactions would pose a huge challenge, under the new law, for sure.

One cannot, but lament, the non-availability of the golden Notification No. **12/2003**, under the new service tax law.

So... good bye, dear Notification No. [12/2003](#) (I am trying hard to hide my tears....)  
(The Author is Director, S3 Solutions Pvt Ltd, Bangalore)