

New Circular makes Government's intention clear..... – July 2, 2012

New Circular makes Government's intention clear ... JULY 02, 2012 By S Sivakumar, CA WITH Mr Vijay Kumar's call to the Heavens for a divine intervention, for a much desirable postponement of the introduction of the new service tax law (DDT dated June 29) failing to make an impact on powers that be, we are already into the new service tax era. In a seminar that we had yesterday in Bangalore, on the new service tax law, one of the queries that came from an enlightened participant was whether praying to the Heavens is an 'activity' with non-monetary consideration, requiring the person praying, i.e the service recipient, to pay service tax under the 'Reverse Charge Mechanism'. Be that as it may....the new Board Circular dated 29 th June 2012 does make an interesting reading.

There are a few direct and subtle messages that are contained in this very important Board Circular, coming as it did, on the last working day of the erstwhile service tax regime... Firstly...the one para which caught my attention was this one... 13. In general any case resulting in taxation of an activity that is not liable to tax under the present regime should at least receive the attention of the Commissioner in charge before it is taken up for any further action. The intention on revenue generation seems very clear from this Para... while hundreds of new services would come into the service tax net from 1-7-2012, the Board also seems to have a strong view that, no 'activity' that was taxed under the erstwhile law can get out of the net, under the new law.

This is a strong message to the Departmental officials that, they should not only look for covering new cases but also ensure that, no existing activity which suffered service tax under the old law, gets missed out. Assesseees would be well advised of this clear focus that would determine the manner in which the new law would be implemented. Secondly...Para 7 of the Circular, drawing reference to the Education Guide, makes a further interesting reading. 7. The successful implementation of this reform requires an involved approach at all levels, in particular in the initial months. It is necessary that these changes are well understood by the tax payers as well as our staff. To this end CBEC has released an elaborate Educational Guide...

That the Education Guide would be the guiding spirit, in terms of the understanding of and the implementation, of the new service tax law, becomes clear from this para, subtle though. This should be worrying, as, the Education Guide is seen to give a restricted understanding to many activities covered under the mega Exemption Notification. Be that as it may... We are already into the new law... I am great fan of Aamir Khan. Let's all say 'ALL IS WELL' and welcome the new law. Before concluding... The smart brains in the Board must be congratulated for invoking the General Clauses Act, to justify the glaring omissions to Section 66B in the new law.

This does seem to be a good defence. One of the senior lawyers practicing indirect tax for decades told me that, it is a very tough thing to go through the negative list, the mega exemption notification and the voluminous Education Guide to try and see why an activity is not taxable... the easy thing to do, he continued, is to simply pay service tax.. To those of us who were fortunate to attend the post Budget talks of the legendary Nani Palkhiwala...in his talk on the 1994 Budget, Mr Palkhiwala sarcastically made a reference to 'disservice tax'... given the fact that, service tax was first levied on telecommunication services, general insurance services and on stock broking services. His comment was perhaps based on the quality of services provided by BSNL. One would wonder as to what Mr Palkhiwala would have commented on the new law...had we been fortunate to have this genius living amongst us. The Board Circular makes a reference to an approach based on HUG – representing the spirit of Helpfulness, Understanding and Guidance. My pessimistic friend however hopes that, the new service law should not be one based on H arassment, U ndermining (the rights of the taxpayers) and G affe.

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