

ST on manpower supply services under reverse charge – more clarity required..... – July 6, 2012

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JULY 06, 2012 By S Sivakumar, CA

IN terms of Notification No. 30/2012-ST dated June 20, 2012, the partial reverse charge mechanism is applicable, inter alia, to services provided or agreed to be provided by way of supply of manpower for any purpose, by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate located in the taxable territory. As we know, under the old service tax law, we had a taxable service under “Manpower Recruitment or Supply Agency services”, under Section 65(105) (k) of the Finance Act, 1994. The definition of “manpower recruitment or supply agency”, under the old law, meant and covered any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person .

Under the new dispensation, only the supply of manpower is covered and not the recruitment of manpower, for purposes of the reverse charge mechanism. Under the old law... the definition of ‘security agency’, under Section 65(94), meant any person engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel. Hence, under the old law... the services of providing security personnel by security agencies was included under the Security Agency services and not under the Manpower Recruitment or Supply Agency services. It is not clear as to whether the supply of security personnel including security guards, etc. by the security agencies, most of which are run by non-corporates, are covered under the reverse charge mechanism, as they were not classified under ‘Manpower Recruitment or Supply Agency’ services, under the new law. It is also not very clear, whether the reverse charge mechanism would cover temporary deployment of manpower, which is also known as ‘temp staffing’ services, in the IT sector. My personal view is that, this is also covered under the reverse charge mechanism, though.

There could be several transactions, which could get covered under the reverse charge mechanism, in respect of supply of manpower, under the new law. Many individual professionals, who work on a full time basis in companies, in terms of a practice that is widely prevalent in the IT Sector, could get treated as supplying manpower, requiring their clients, to pay service tax on the reverse charge mechanism, despite that, these professionals might be availing of the exemption limit.

It would be good if the Board can come out with a detailed clarification on this subject, as, in the absence of a clarification, payments by a business entity to every driver and other similar individuals including small time workers could trigger the service tax liability, under the reverse charge mechanism.

(The Author is Director, S3 Solutions Pvt Ltd, Bangalore)