

Service Tax Levy on Newspapers and Magazines lacks clarity? – Oct 3, 2012



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THE Central Government would seem to have done a major favour to the newspaper industry by continuing to exempt sale of space for advertisement in the print media, from the levy of service tax, with effect from 1-7-2012, by introducing clause (g) in Section 66D under the Negative List, which reads as follows:

(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

Notwithstanding the fact that the sale of space for advertisement in the print media had already been excluded from the levy of service tax, even under the earlier service tax law, in terms of Section 65(105)(zzzm) of the Finance Act, 1994, it is still good to see the insertion of Section 66D(g) under the Negative List.

The Government has also provided an exemption from the levy of service tax, on collecting and providing news, in terms of Item No. 17 of the Mega Notification No. 25/2012, which reads as under :

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

Now, the question that would arise here is this.... is the exemption only available to the services rendered by the PTI, UNI and by an independent journalist? How about the services rendered by way of collecting and providing news by the newspapers and magazines whether or not registered with the Registrar of Newspapers? In the absence of a specific exemption, one can expect some trouble in this area from an over-jealous Department, for sure. And, how about payments made by Indian newspapers and other channels for procuring news from foreign news agencies? In the absence of an exemption for news provided by foreign agencies, payments made by Indian importers could come under the Reverse Charge Mechanism.

Of course, newspapers are treated as goods. In terms of Section 2(d) of CST Act, 'goods' includes all materials, articles, commodities and all kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities. Though, newspapers are goods, they are specifically excluded from the purview of sales tax/VAT in view of entry No. 92A of List I to Seventh Schedule to Constitution of India (Union List) where newspapers are specifically excluded from purview of tax on inter-State sales of goods. It may also be noted that entry 54 of List II (State List) authorises States to levy tax on sale of goods other than newspapers. The Government has been kind enough to exempt, under Item No. 20 of the Mega Exemption Notification, by way of transportation by rail or a vessel from one place in India to another, of newspapers or magazines registered with the Registrar of Newspapers. It is unfortunate that the exemption has not been extended for transportation of newspapers and magazines by trucks, buses etc., which is what is largely used for inter-city transportation of newspapers, etc.

Taking the discussion forward ... as we know, many newsletters and magazines provide electronic access to their online editions for a subscription fee? Are these taxable under the new law? In the absence of a specific exemption, can e-access of newspapers and magazines might attract service tax, under the new law, with effect from 1-7-2012? Though the Department might indeed try out such an adventure, this would be violative of the spirit of the Constitution.

Is the honorarium paid/payable by the newspapers and magazines to contribution authors liable to service tax, in the hands of the authors, post 1-7-2012? Yes, perhaps.

Are newspapers and other agencies, who import news from foreign or international news agencies, liable to pay service tax, under the Reverse Charge Mechanism, with effect from 1-7-2012? Yes, perhaps, as there is no specific exemption given to foreign news agencies.

Before concluding ...

Newspapers, magazines, journals, etc. including their e-cousins should be completely exempted from the levy of service tax, irrespective of whether they are providing or receiving services. Any levy of service tax, directly or indirectly, on these could be seen to violate the freedom of the press. We need to bear in mind, the landmark decision of the Apex Court in the Indian Express case, given in the context of levy of customs duties on import of machinery by newspapers, which, in my view, could also apply to the levy of other taxes and levies.

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