

Service Tax on Yoga – different asanas (postures) by two Ministries : 05-11-2015



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As per the renowned Indologist Max Mueller, yoga is one of the six systems of the Hindu philosophy. The PM's love for Yoga is well known and he succeeded in even getting the UN General Assembly to adopt June 21 as the international yoga day. While almost the whole world now knows yoga, thanks to the PM's efforts, our great tax Babus continue to be in a state of confusion insofar as the levy of service tax on yoga related activities is concerned.

The Central Government issued Notification No. 20/2015-ST dated October 21, 2015 and amended paragraph 2, Clause 2(k)(ii) of the Mega Exemption Notification No. 25/2012-ST dated 20-6-2012, in terms of which, for the words "religion or spirituality", the words "religion, spirituality or yoga" shall be substituted. The direct impact arising out of this amendment is that, yoga related activities when rendered by charitable institutions which are registered under Section 12AA of the Income tax Act, 1961 would be exempted from the levy of service tax. By implication, our great Babus in the Finance Ministry hold the view that, the benefit of exemption from levy of service tax would not be available to service providers who are not charitable institutions registered under Section 12AA.

This is what the entry in Mega Exemption notification 25/2012-ST looks after the amendment -

...it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

...

4. Services by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) by way of charitable activities;

2. **Definitions.** - For the purpose of this notification, unless the context otherwise requires, -

(k) "charitable activities" means activities relating to -

(ii) advancement of [religion, spirituality or yoga];

It would also be useful to take a look at the following Press release by the Ministry of Youth Affairs and Sports which clearly recognizes yoga as a Sports discipline.

*Press
Government
Ministry of Youth Affairs and Sports*

*Information
of*

*Bureau
India*

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Categorization of sports disciplines – Sports Ministry recognizes 'Yoga' as a sports discipline

The categorization of various Sports disciplines was reviewed and the revised categories of sports disciplines and the scale of financial assistance admissible to each category was conveyed to IOC and all recognized National Sports Federations on 23rd March, 2015. It was also conveyed that 'General' category of sports disciplines shall be retained. Criteria for inclusion in this category and financial assistance to be provided will be separately issued.

it has now been decided by the Ministry of Youth Affairs and Sports that sports disciplines included in the multidiscipline mega events like Olympics, Asian Games, Commonwealth Games etc and which have obtained a ranking upto 8th in individual events and upto 10th in team events in Olympics/Asian Games/CWG or their respective Asian and World Championships shall be placed in 'General' category. Financial assistance for this category will be as under:-

- i. National Championships are to be funded.
- ii. One international event in India in a year, can be funded.
- iii. Maximum of one foreign exposure each in Senior & Junior categories can also be funded during a year.

Based on the past performance in major international events, it has been decided to upgrade the sport of Fencing from 'Others' to 'General' category.

It has also been decided to place 'University Sports' in the 'Priority' category.

It has further been decided to recognize 'Yoga' as a sports discipline and to place it in the 'Priority' category.

Thus, while for the Sports Ministry, yoga is sports, it is not so for the all-powerful Babus in the Finance Ministry. To treat yoga as sports has significant ramifications, in terms of Sl No. 8 of the Mega Exemption Notification No. 25/2012-ST dated 20-6-2012, which *exempts services by way of training or coaching in recreational activities related to arts, culture or sports.*

Thus, a legally sustainable view can be taken by any service provider who is providing training in yoga, that the **activity is covered by Sl. No. 8 of the Mega Exemption Notification, in the light of the press release of the Ministry of Youth Affairs and Sports Ministry reproduced above.** However, it would be better if the Finance Ministry can follow the view taken by the Sports Ministry and declare yoga as a sport so that, the benefit of the exemption from levy of service tax is available to all those who teach and propagate this great discipline, which originated in India.

Before concluding....

The word 'sport' has not been defined in service tax law. As per the Oxford Dictionary, 'sport' is a competitive activity involving physical effort and skill.

The Oxford English Dictionary defines yoga as a system involving breathing exercises and the holding of particular body positions, based on Hindu philosophy. Thus, it would seem that, the decision of the Sports Ministry to treat yoga as a sports discipline is well founded, unlike the decision of the Finance Ministry to club yoga with religion and spirituality. In my view, in the light of the Sport Ministry circular, yoga is clearly covered under SI No. 8 of the Mega Exemption Notification.

While on the subject... it would seem that, the Finance Ministry's decision to extend the benefit of exemption from the levy of service tax in respect of activities related to 'yoga' only to charitable institutions could go against Article 14 of the Constitution, as the Government could be seen to be discriminating between charitable institutions and non-charitable institutions, insofar as yoga is concerned.A