

MILLION DOLLAR BABY

(S. Jaikumar, G. Natarajan & M. Karthikeyan)

On a day, when the Hollywood tinsel hero Mr. Clint Eastwood, the architect of the movie "Million Dollar Baby" was presented the coveted Oscar for his directorial skills, the Indian fiscal hero, our beloved Finance Minister, was presenting his "Million Dollar Baby", in the theatre of democracy. And his Million Dollar baby is, undoubtedly, the proposals on the Service Tax.

In the Budget 2005-06, the perimeter of the Service Tax cube has been expanded along its length, breadth and depth. In 1994, when the Service Tax was introduced, very few would have imagined that, some day, this tax would become a "Million Dollar Baby". In its decade-old evolution, the Service Tax, has come a long way and this Budget 2005-06 is a definite benchmark in its overall growth. All along, the Service Tax had all the ingredients of becoming an independent and powerful indirect tax by itself, save few essentials. We have always been advocating for a separate Act for the Service Tax and a threshold exemption limit for the taxpayers. Budget 2005-06, by way of its Notification No.6/2005 – Service Tax dated 01/03/2005 has made good one of the prime deficiencies by way of providing an exemption limit of Rs. 4 lakhs. This exemption limit of Rs.4 Lakhs is a definite and a positive step towards effective tax administration and should be hailed as milestone in the evolution of Service Tax. But this exemption limit is as usual with blowholes. If these blowholes are not rectified immediately, these may mature into a crater.

One of the conditions to avail the exemption from Service Tax under the said notification is that, the service provider should not avail any Credit on Service Tax paid on Input Services, during the period of exemption. Say a case, wherein the service provider, who opts to avail the benefit of this exemption for the year 2005-06, whose value of taxable services is less than Rs.4 Lakhs during the year 2004-05. In 2004-05, he would have availed credit on certain Input Services, which are continuous in nature (i.e., it may be used for rendering output services during the year 2005-06 also). Quantifying such proportion, in respect of such continuing Input Services and reversing the same, will be nothing short of the complexities of Euclidian Mathematics. Similarly, there is a restriction in the exemption notification for inputs and capital goods, by which, the CENVAT Credit on inputs and capital

goods shall not be availed, which are received during the period of exemption. As could be seen from the analogous SSI Notification (8/2003) in Central Excise, there is no embargo on availment of Credit on capital goods, for any person who is availing the said exemption. This is due to the reason that such capital goods would be used for a continuous period even after crossing the exemption limit. Going by the above logic, the Credit on capital goods should not have been barred under the present exemption notification for Service Tax providers also.

There is another mayhem in the said notification by way of computing the exemption limit. It may be observed that, as per explanation B to the said Notification, the "Aggregate Value not exceeding Rs.4 Lakhs" means the sum total on first consecutive payments received during the financial year.

This would lead to an indifferent proposition, as illustrated below:

Let us assume that a service provider has billed for taxable services to the tune of Rs.2.5 Lakhs during the year 2004-05 and also charged Service Tax thereon. As his turnover is less than Rs.4 Lakhs, he is entitled to avail the exemption under the present Notification 6/2005, for the year 05-06. Out of this Rs.2.5 Lakhs, let his realisation in the year 2004-05 be, only Rs. 1 Lakh. If he receives the remaining payment of Rs.1.5 Lakhs along with Service Tax (as it is billed with the Service Tax during 2004-05), the same will eat away the exemption limit of Rs.4 Lakhs, because as per the explanation B, the Aggregate Value for the computation of Rs.4 Lakhs is the sum "total of first consecutive payments received during the Financial Year". In other words, in such cases, the service provider will be deprived of the benefit of the exemption, to the extent of the payments received during the current Financial Year, on which due Service Tax is paid. Instead of defining so, it would have been appropriate to have defined the term "Aggregate Value not exceeding Rs. 4 Lakhs" in explanation B as, " value of taxable services on which the service provider is required to pay / paid Service Tax shall be excluded".

The other significant and salient features in Budget 05-06 are:

- Service Tax is payable even on advances received.
- Taxable Services rendered by a foreign person to an Indian recipient is under the net.

- Adjudication procedures are made *in pari materia* with the Central Excise Act and Rules.
- Centralised registration procedure streamlined.
- Invoices have to be raised by the service provider within 14 days on completion of Services or receipt of payment, whichever is earlier.
- Due date for payment of Service Tax is 5th day of the succeeding month/quarter with effect from 01/04/2005.

There are some fresh levies viz.,

- a) Transport of goods, other than water, through pipeline or conduit.
- b) Site formation and clearance, excavation, earthmoving, demolition,
- c) Dredging of rivers, port, harbour, backwater or estuary.
- d) Survey and map making.
- e) Cleaning services.
- f) Services by clubs or associations.
- g) Packaging – excluding manufacture under CE law.
- h) Mailing list compilation and mailing.
- i) Construction of residential complexes, having more than 12 units.

All the above said levies will come into force after the after the passage of the Finance Act 2005. Surprisingly, there is also a withdrawal of levy on the Services rendered by the various service stations in respect of Light Motor Vehicles.

On the Expansion front, Budget 2005-06 has to be hailed for its acumen. Out of the various proposed explanations, the following assume vital significance:

1. Explanation on the scope of broadcasting services.
2. Services rendered by authorised service stations to cover reconditioning and restorations.
3. Detailed definition as to the scope of Commission Agents under the Business Auxiliary Service.
4. The expression "Productions of Goods on behalf of the client" is now proposed to be replaced with "Production or processing of goods for or on behalf of the client" under the Business Auxiliary Services.

There are varied interpretations across the Nation as to the interpretation of "on behalf of the client". By the present proposed amendment to include "Processing" and also the term "for" in the said clause, Revenue has tried its best to put the issue at rest.

5. Construction of a pipeline or conduit is included under the construction services.
6. Completion of finishing operations services also such as painting, carpentry, flooring, wall covering etc., are included under the Construction activity.
7. The scope of Erection, commissioning and installation services have been widened to cover the installation of specific items like electrical and electronic devices, plumbing, heating, ventilation, air-conditioning, lift, escalator etc.
8. Manpower recruitment services have been extended to include manpower supply also. This shall bring the labour contractors under the levy.
9. Canteens situated within the factory will also be covered under the outdoor catering services.
10. Last but not the least, there is an interesting amendment to the maintenance or repair services. As per the existing definition, maintenance or repair means the services provided by any person under a maintenance contract or agreement. All these days, it has been interpreted that to get into the ambit of this levy, the repair should be taken in pursuance of a maintenance contract or maintenance agreement. In other words, a onetime repair will not get covered under this levy, but repairs under a maintenance contract or agreement such as Annual Maintenance Contract (AMC) will be covered under this levy. Now with the present amendment, the word maintenance has been consciously taken out from the definition. This rendering of repairs, be it one time or continuous, shall fall under the ambit of this levy. This interpretation may lead to a haywire situation. The department may allege that, all repairs, even done by the roadside wallahs (for example, cycle repair, etc.), would fall into this levy, stating that, as per the Contract Act, there emanates an implied

agreement between the two persons (One who gives for repair and one who repairs it) and proceed to demand Service Tax from such persons also, under this levy. At the most, they may benevolently extend the benefit of the exemption under 6/2005 to the said transactions. " Is this the intention?"

Another important exemption is provided for, to the Business Auxiliary Services, by way of Notification No. 8/2005 – ST. As per the said notification, all service providers who are providing taxable services of production of goods on behalf of the client, are exempted from payment of Service Tax, provided the raw materials or semi-finished goods are supplied to them by the client and the goods so produced are returned back to the said client, for use in or in relation to the manufacture of another excisable goods on which appropriate duty of excise is paid. As usual, this notification also evokes certain possible/practical questions viz.,

- What if the job worker also uses his own raw materials/consumables?
- What if the job worker transmits the processed goods to another job worker for further processing?
- What if the job work is done for a SSI unit?

As it is said, whenever you solve a problem, you always create another! True, that too, in tax laws!!!