

Good, Bad and the Ugly!

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Last Year we all witnessed plush hoardings and bill advertisements thrown and blown all over the nation, in a promotional drive to publicise the Service tax. We were all puzzled about the relevance of the “meditative” and “yogic” postures of the muscular models appearing in such ads and to that of Service tax. Now with the proposed Section 87 of the Finance Act, 1994, in the Finance Bill 2006, we could comprehend that, it is only an indicator of the future of the Indians! Yes! Our beloved readers! Beware! If this Section 87 is enacted and implemented in its letter and spirit, then every one of us may have to resort to only such postures, for the rest of our lives!

It is always claimed that service tax is a “friendly” levy. It is often stated that since it is a new levy, any contravention shall also be viewed leniently. Today, having emerged as the potential of future taxation, the Government would have thought that this “friendly” image is no longer required. Leave alone being friendly, it proposes to treat the defaulters like how Mr. Bush would treat Mr. Osama Bin Laden! But does the recovery mechanism is limited only to the defaulters? Strangely, it appears that the Revenue tentacles are seeking much more, with this new proposed Section 87 of the Finance Act, 1994!

Section 87 of the Finance Act, 1994 deals with the recovery of service tax dues payable by a service provider. The said Section is reproduced below:

“87. Where any amount payable by a person to the credit of the Central Government under any of the provisions of this Chapter or of the rules made thereunder is not paid, the Central Excise Officer shall proceed to recover the amount by one or more of the modes mentioned below:—

(a) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs;

(b) (i) the Central Excise Officer may, by notice in writing, require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

ii) every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the

like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in a case where the person to whom a notice under this section is sent, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and all the consequences of this Chapter shall follow;

(c) the Central Excise Officer may, on an authorisation by the Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(d) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.”;

According to sub section (a), the Service Tax Officer (Central Excise officer administering service tax over the service provider) may deduct the service tax amount payable by such service provider, from any money payable to him by the Government. If any refund claims under Central Excise, Customs and Service tax are sanctioned to such service provider, the service tax dues of such person can be deducted from it. Further, the officer may also write to all his counterparts, to deduct such service tax dues, from any money payable to the service provider.

Good!

But, the danger looms large under sub section (b). According to this sub section, the Central Excise Officer may require “any other person” who are / will be liable (either at present or in future) to pay any amount to the service provider, who is liable to pay service tax to the Government, to pay the said amount owed by him to the Service provider, to the Government. In other words, the department may get hold of the debtors ledger of the service provider and write to all such debtors to pay the money to the Government, to the extent of the service providers’ liability to the Government. Banks / Post offices / Insurance Companies are also not spared and they cannot refuse to honour such demand, on the flimsy (!) ground that the documents like pass book, deposit receipt and policies have not been produced! If such person, refuses to comply with such order, he will be deemed as an assessee in default, and his debtors would be proceeded against. A chase behind the debtors, debtors’ debtors, debtors’ debtors’ debtors.....**Bad!**

According to sub section (c) thereof, any movable or immovable property belonging to or **under the control** of such service provider can be detained and sold, to realize his service tax dues. If your friend wishes to take your car for a ride, please ensure that he does not have any service tax arrears. Otherwise, when the car is under his control, the Central Excise Officers, may pounce and attach it for his Service Tax dues! **Ugly!**

Sub section (d) deals with the mundane Certificate action. When more thrilling, James Bond actions are suggested under this Section, who will opt for this Charlie Chaplin certificate action?

It is pathetic to observe that that no safeguards have been provided with regard to the implementation of these provisions. When the disputed service tax liability is a subject matter of an appeal, the officers may still go ahead with this Goondas recovery measures and the hapless service providers have to run from pillar to post. Even the time tested Central Excise and the Customs Acts do not have such draconian recovery mechanism, it is highly surprising to understand the need of such cruel guillotine for the so-called "friendly" levy!

Before Parting...

A Googly! Will the Government be candid enough and provide that if any refund amount is not sanctioned within a period of three months, or if the pre-deposit is not returned immediately after a favorable appellate order, the claimant can detain the belongings of the concerned officers, who are the reason for such delays?