

NO MORE NOBLES

(By S. Jaikumar & G. Natarajan, Advocates, Swamy Associates)

Last year in our Budget Run- up article “TAX ME”, we strongly recommended that the legal profession be brought under the service tax net, despite the so – called – school – of - thought that the advocates don’t render “service” to their clients! But our former FM, himself and his better half being legal luminaries themselves, spared law from service tax claws, till he was at the helm!

To us, one of the few hot proposal in an otherwise very lukewarm budget, is the imposition of service tax on the legal fraternity. While imposing the tax, our FM has been very cautious in introducing the levy only to that segment of the fraternity, by and large, who will not hesitate to get into the groove. To us it appears only as a tip of the ice berg and, sooner or later, this tax would be spread across the bar!

As on date, the levy is on “business entities” giving any service in relation to “advice, consultancy or assistance” in any branch of law to any other business entity. It has been explained that the term “business entity” would include an association of persons, body of individuals, company or firm but does not include an individual. Further, any appearances before any court, tribunal or authority have been put out of the scope of the levy.

With the above, the various possibilities are addressed as under:

- Individuals practising on their own name or under the name and style of a proprietorship firm / concern are out of the levy, as a proprietorship firm is no different from an individual.
- Any other structure of association of persons, body of individuals, company, firm etc are under the scope of the levy.
- Any service provided to an individual is out of the levy. In other words, even if it is a “business entity”, if it provides service to an individual, the same is not taxable because, to attract the levy, the recipient shall also be a “business entity”.
- Drafting of replies, appeals, writs etc as well as giving opinions would be under the scope of the levy. Advice on “tax savings” would also be subjected to tax!
- Appearances before the Courts, Tribunals as well as statutory authorities (though it is mentioned as a bald “authority” in the Bill, the TRU letter explains it as “statutory authority”), in any manner, be it personal hearing, cross – examination , examination – in – chief etc are out of the scope.

- Not only advocates, but a “business entity” rendering any service in relation to any advice, consultancy or assistance in any branch of law, comprising of any person, is under the net. There is no qualification or competence prescribed. In other words, any person, including consultants and authorised persons are under the tax net, provided they satisfy the other requirements.
- Services rendered in any branch of law, be it IPR or IPC, would be under the net.
- Cenvat credit can be availed on all eligible inputs (eg. Excise duty paid on laptops) , input services (eg. Service tax paid on TIOI subscription) and can be set off against the service tax payable.
- Rule 6 of Cenvat Credit Rules, 2004 may come into play as there are definite possibilities of existence of both taxable services (consultancy, drafting replies, appeals etc) as well as non – taxable services (appearances).
- Clients can avail the Cenvat credit of the tax paid by their counsels/consultants provided they are manufacturers of dutiable goods or provider of taxable services and provided that such consultancy / opinion / advice / assistance has any relation to such manufacture of goods or provision of taxable services.
- Service tax on the fees paid on fighting the excise cases are also eligible input services. Maybe, if the fees is paid for succeeding in clandestine removal cases, the department would object!
- Government pleaders, though having private practice, will be out of the levy to the extent of their government practice, as government is not a “business entity”.

Before parting...

Most of the cases are negotiated, in such a manner, where there would be a host of composite services, namely, drafting the reply / appeal as well as appearances. In such cases, there is an existence of both taxable service (drafting replies, etc) as well as a non – taxable service (appearance). In such cases, if the fees is negotiated separately for drafting and appearances and segregate them, then there is no issues. Or otherwise, another “**Daelim**” is in the offing!!!