

TAXLAWSCOPE

— beyond the scope —

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Profession of law- whether economic activity ?

In a recent ruling (*Cabinet de Avocat UR Vs. Administrația Sector 3 a Finanțelor Publice Case C-424/19*), while interpreting Article 9(1) of Council Directive 2006/112/EC of 28 November 2006, in context of service of lawyers, ECJ has held that a person practicing the profession of a lawyer must be regarded as a 'taxable person'.

The dispute arose when a law firm established in Romania, requested the Public Finance Authority for cancelling their name from register of 'taxable persons' under VAT and asked for refund of VAT already collected.

The appellant, law firm, contended that lawyers does not engage in any economic activity and hence cannot be regarded as carrying out transactions for supply of goods or services. Their contracts with clients are for legal assistance and not contract for provision of service.

ECJ, while deciding the issue against the Appellant , has considered following:

- The definition of taxable person which read as any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.
- The definition of economic activity' as any activity of producers, traders or persons supplying services, including, inter alia, activities of the professions. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.'
- ECJ relied on the interpretation given to the expression 'taxable person and held that *the term 'any person who', give the notion of 'taxable person' a broad definition focused on independence in the pursuit of an economic activity to the effect that all persons, natural or legal, both public and private, even entities devoid of legal personality, which, in an objective manner, satisfy the criteria set out in that provision, are regarded as being taxable persons for the purposes of VAT. (relied on :Gmina Wrocław, C-276/14 EU:C:2015:635 decided on 29 September 2015 AND Christine Nigl and Others Christine Nigl and Others)*

It has therefore been held , since the profession of lawyer is a liberal profession, it follows from Article 9(1) of Directive 2006/112 that a person practising that profession carries out an economic activity and must be regarded as a 'taxable person' within the meaning of that provision.

INDIAN GST

The definition of 'business' has captured any trade, commerce, manufacture, **profession**, vocation etc, whether or not it is for pecuniary benefit. The scope of supply includes any service made for consideration in course or furtherance of business. Therefore, there is no exclusion for lawyers from levy of GST. But however, the services are made liable for Reverse Charge (recipient of service to pay GST).

GST law also provides the following exemptions :

- Legal services by individual advocate/firm/senior advocate to any person other than a business entity;
- Legal services by individual advocate/firm/senior advocate to a business entity with an 'aggregate turnover' (T/o) up to 20 lacs (10 lacs in special category states) in preceding financial year (FY).

Challenges to levy in India :

Though the levy of service tax on legal profession was challenged in **PC Joshi Vs Union of India 2015 (37) S.T.R. 6 (Bom.)**, the levy was **upheld** on ground that the levy has neither interfered with role and function of advocate nor interfered in constitutional guarantee of justice to all. The Highcourt also justified the reasonableness of levy by pointing out that the Services provided to individual client by individual advocate continues to be exempted as legislature was aware that legal advice, aid and assistance should be available to poor and needy section of population, at times immediately and cheaply, and they should not be burdened with tax. In making this distinction, legislature was reasonable and did not overlook constitutional guarantee as envisaged in preamble, and Articles 14, 21 and 39A of Constitution of India.

Interesting facts:

It is interesting to note that, a part of historians argue that lawyers never existed as a distinct category within legal system of ancient India since as per scriptures it was duty of king or judge to examine the evidence and do justice. Therefore, the profession is attributed its origin to advent of British rule in India. When English Common law and British Statutory laws became part of Indian legal systems and members of British Bar were recruited as Judges, Indian laws were interpreted giving them overtones of common law. At that point of time, a bar which could effectively assist in the transformation was required and this paved the beginning of 'legal profession' in the Country.

But ever since, the profession has gone through judicial lens several times, in context of income tax, labour service and other laws. It is quite surprising to see the tones of interpretation depending on the context. When it comes to examining issue relating to bar on advertisements by lawyers, the profession has been viewed as a 'noble profession' having distinct traits from 'business or commerce' and hence not to be corrupted or demoralized by advertising. But when it comes to questions involving taxation, the profession was in all sense interpreted as an economic activity having all attributes of business. So, is it not time, that there should be an end to the identity crisis of the legal profession and to settle it for all purpose once and for ever?

References:

Link to ECJ Ruling :

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=228676&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9792277>)

Law commission of India : 131st report on Role of Legal Profession in administration of justice

<https://indiankanoon.org/doc/83788453/?type=print>

Sakharam Narayan Kherdekar vs City Of Nagpur Corporation on 25 September, 1962 <https://indiankanoon.org/doc/625132/> contains a detailed discussion regarding why legal profession is not a commercial activity.

Also see Dhanraj Singh Chowdhary Vs. Nathulal Vishwakarma

<https://indiankanoon.org/doc/45131480/>