

## ET TU, BRUTE

( By S. Jaikumar, Advocate, Swamy Associates)

Today morning, a close pal of mine, who is a practising advocate in the Supreme Court of India, wished me "Good Morning, Brutus".

In the year 2008, when I wrote an article "TAX ME" in the "TIOL's Budget Run up column, wherein, I had suggested that Service Tax shall be levied on advocate fraternity also, I got this pet name. In that article, I had advocated that Service Tax shall be levied on advocates, doctors, software professionals and film stars. Of the four, first software was brought under the net followed by advocates and now the doctors.

In the last year Budget, vide clause (zzzm) of Section 65(105) the Finance Act, 1994, the services rendered by a business entity to other business entity, in relation to advice, consultancy or assistance, in any branch of law, in any manner had been brought under the Service Tax. The representational services were kept out of the levy.

In this Budget, as predicted by many, the scope of this levy has been expanded to include the services rendered by a business entity to any person in relation to advice, consultancy or assistance, in any branch of law, in any manner and the representational services before any court, tribunal or authority, by any person to any business entity as well as the services rendered by an arbitral tribunal to any business entity, in respect of arbitration, has been included.

The following table would make the situation lucid and clear about the tax liability:

| Service Provider | Service Recipient | Consultancy | Representational |
|------------------|-------------------|-------------|------------------|
| B                | B                 | ✓           | ✓                |
| B                | I                 | ✓           | X                |
| I                | B                 | X           | ✓                |
| I                | I                 | X           | X                |

- B – Business Entity ; I – Individual

In fine, as on date, the consultancy provided by an individual to a business entity as well as to any other individual and the representational service provided by an individual or a business entity to an individual are alone kept out of levy and remainder are under the service tax net.

In this Budget, the Hon'ble Finance Minister has also given a heart attack to the other noble profession, namely, doctors. Vide sub-clause (zzzzo) of Section 65(105) of the Finance Act, 1994, services rendered to any person by a "clinical establishment" or by a doctor who is not an employee of such clinical establishment

but provides service from such clinical establishment are brought under the service tax net.

For this, the term, "Clinical Establishment" has been defined under clause (25a) of Section 65 of the Finance Act, 1994 which excludes establishments owned or controlled by the government as well as local authorities.

With the IT Sector having already been brought under the Service Tax net, the only left over to be taxed today are stars of the tinsel world. My daughter is constantly asking me, "When will be the mighty Khans and Kapoors become your client papa?" and I always tell her, "Very soon darling!"