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Finance Act, 2010

Chapter V - Service Tax

In the Finance Act, 1994,--

(A) in section 65, save as otherwise provided, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,--

(1) in clause (19), in sub-clause (ii), the Explanation shall be omitted;

(2) after clause (19a), the following clause shall be inserted, namely:--

'(19b) "business entity" includes an association of persons, body of individuals, company or firm but does not include an individual;';

(3) in clause (25b), for the words "commercial or industrial construction service", the words "commercial or industrial construction" shall be substituted;

(4) for clause (77c), the following clause shall be substituted, namely:--

'(77c) "passenger" means any person boarding an aircraft in India for performing domestic journey or international journey;';

(5) for clause (82), the following clause shall be substituted, namely:--

'(82) "port service" means any service rendered within a port or other port, in any manner;';

(6) in clause (105),--

(a) for sub-clause (zn), the following sub-clause shall be substituted, namely:--

"(zn) to any person, by any other person, in relation to port services in a port, in any manner:

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within the port;";

(b) in sub-clause (zzc), the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2003, namely:--

'Explanation.--For the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre

or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed! accordingly;';

(c) for sub-clauses (zzl) and (zzm), the following sub-clauses shall be substituted, namely:--

"(zzl) to any person, by any other person, in relation to port services in other port, in any manner:

Provided that the provisions of section 65A shall not apply to any service when the same is rendered wholly within other port;

(zzm) to any person, by airports authority or by any other person, in any airport or a civil enclave:

Provided that the provisions of section 65A shall not apply, to any service when the same is rendered wholly within the airport or civil enclave;";

(d) in sub-clause (zzq),--

(i) the word "service" shall be omitted;

(ii) the following Explanation shall be inserted, namely:--

"Explanation.--For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorised by the bulkier before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;";

(e) in sub-clause (zzzh), the following Explanation shall be inserted, namely:--

"Explanation.--For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to

issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;";

(f) for sub-clauses (zzzn) and (zzzo), the following sub-clauses shall be substituted, namely:--

"(zzzn) to any person, by any other person receiving sponsorship, in relation to such sponsorship, in any manner;

(zzzo) to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey;";

(g) in sub-clause (zzzr), the following Explanation shall be inserted, namely:--

'Explanation.--For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "auction by the Government" means the Government property being auctioned by any person acting as auctioneer;';

(h) in sub-clause (zzzz),--

(i) for the portion beginning with the words "to any person" and ending with the words "business or commerce", the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of June, 2007, namely:--

"to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or for furtherance of, business or commerce.";

(ii) in Explanation 1, after item (iv), the following item shall be inserted, namely:--

"(v) vacant land given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;";

(i) in sub-clause (zzzze), the words "for use in the course, or furtherance, of business or commerce," shall be omitted;

(j) in sub-clause (zzzzf), in the Explanation, for clauses (ii) and (iii), the following clause shall be substituted, namely:--

"(ii) the gross amount charged by the insurer from the policy holder for the said service provided or to be provided shall be equal to the maximum amount fixed by the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and

Development Authority Act, 1999(41 of 1999), as fund management charges for unit linked insurance plan or the actual amount charged for the said purpose by the insurer from the policyholder, whichever is higher;";

(k) Explanation to sub-clause (zzzzm) shall fee omitted;

(l) after sub-clause (zzzzm), the following sub-clauses shall be inserted, namely:--

'(zzzzn) to any person, by any other person, for promotion, marketing, organising or in any other manner assisting in organising games of chance, including lottery, Bingo or Lotto in whatever form or by whatever name called, whether or not conducted through internet or other electronic networks;

(zzzzo) by any hospital, nursing home or multi-specialty clinic,--

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-speciality clinic; or

(ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance, company directly to such hospital, nursing home or multi-speciality clinic;

(zzzzp) to any business entity, by any other person, in relation to storing, keeping or maintaining of medical records of employees of a business entity;

(zzzzq) to any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event.

Explanation.--For the purposes of this sub-clause, "brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or, business entity;

(zzzzr) to any person, by any other person, by granting the right or by permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage organised by such other person;

(zzzzs) to any person, by an electricity exchange, by whatever name called, approved by the Central Electricity Regulatory Commission constituted under section 76 of the Electricity Act, 2003(36 of 2003), in relation to trading, processing, clearing or settlement of spot contracts, term ahead contracts, seasonal contracts, derivatives or any other electricity related contract;

(zzzzt) to any person, by any other person, for--

(a) transferring temporarily; or

(b) permitting the use or enjoyment of,

any copyright defined in the Copyright Act, 1957(14 of 1957), except the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act;

(zzzzu) to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorised by such builder, for providing preferential location or development of such complex but does not include services covered under sub-clauses (zzg), (zzq), (zzzh) and in relation to parking place.

Explanation.--For the purposes of this sub-clause, "preferential location" means any location having extra advantage which attracts extra payment over and above the basic sale price;';

(B) in section 66, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the word, brackets and letters "and (zzzzm)",; the brackets, letters and word ",(zzzzm), (zzzzn), (zzzzo), (zzzzp), (zzzzq), (zzzzr), (zzzzs), (zzzzt) and (zzzzu)" shall be substituted;

(C) in section 73, in sub-section (3), the Explanation shall be numbered as Explanation 1 thereof and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:--

"Explanation 2.--For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made thereunder shall be imposed in respect of payment of service tax under this sub-section and interest thereon.";

(D) in section 95, after sub-section (1F), the following sub-section shall be inserted, namely:--

"(1G) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2010, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2010 receives the assent of the President.".

Section 77 - Validation of action taken under sub-clause (zzzz) of clause (105) of section 65

Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, 1994(32 of 1994), at any time during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in sub-clause (zzzz) of clause (105) of section 65, by sub-item (i) of item (h) of sub-clause (5) of clause (A) of section 76 of the Finance Act, 2010 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,--

(a) any action taken or anything done or omitted to be taken or done in relation to the levy and collection of service tax during the said period on the taxable service of renting of immovable property, shall be deemed to be and deemed always to have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the levy and collection of such service tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;

(c) recovery shall be made of all such amounts of service tax, interest or penalty or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

Explanation.--For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.

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