

Levy of Service Tax on manufacturing of liquor, beer, Brewing and Bottling on Job work/contract basis

Brief legislative history:

'Business Auxiliary Service' introduced with effect from 10.09.2004. Under 'Business Auxiliary Service' there were seven activities which are made taxable. One of such activities is '**production or processing of goods or on behalf of client**'. Therefore any job work activity was prima-facie covered within the scope of the said terms.

However there was an exclusionary clause to above definition excluding the **activity which amounting to manufacture** in terms of Section 2(f) of Central Excise Act, 1944 from the ambit of tax liability. From exclusionary clause trade understood that the activity which was considered as manufacture of alcoholic beverages for human consumption is also excluded from the scope of taxability under Business Auxiliary Services.

Whereas the revenue department took different stand and demands were raised on the ground that the activities of production of alcoholic beverage, blending, bottling, packaging, labelling, sealing cannot be construed as manufacture under Central Excise in terms of Section 2(f) therefore liable to pay the service tax on these activities.

The matter went up in the judicial process wherein the Tribunal & Courts held that the subject activities are not liable for service tax as the activity is covered under **meaning of 'manufacture'**. One of leading decision is Maa Sharda Wine Traders Vs Union Of India 2009 (15) S.T.R. 3 (M.P.)

As usual to overcome the decisions of Courts & Tribunals, the Parliament amended the exclusion clause in the Business Auxiliary Services definition with effect from 01.09.2009 saying that such exclusion will applies only to activities amounting to **manufacture of 'excisable goods'**. 'Excisable goods' means those goods mentioned in first and second schedule to the Central Excise Tariff Act, 1985 as subject to duty of excise.

Since the Alcoholic beverages for human consumption is specifically kept outside the said first and second schedule to the said Act, it cannot be considered as excisable goods. Accordingly revenue department initiated the proceedings again demanding service tax on the said activity of manufacture undertaken on job work basis. Presently various cases are pending before different judicial forums.

However on introduction of Negative list based taxation, **‘process amounting to manufacture or production of goods’** were put in negative list whereby the same was outside the scope of levy of service tax. The definition given at section 65B(40) for the said phrase specifically covered **“any process amounting to manufacture of alcoholic liquors for human consumption..... on which duties of excise are leviable under any State Act for the time being in force”**. Accordingly there was no levy of service tax on the subject activity in discussion w.e.f. 01.07.2012. This was also for the reason that the same is subject matter of State levy and cannot be taxed by union by virtue of restrictions contained in Entry 97 of Seventh Schedule to the Constitution of India.

Now the Finance Bill, 2015 is proposing to amend section entry in the negative list as well as Section 65B(40), whereby **any process amounting to manufacture of alcoholic liquors for human consumption will go out of negative list by which the same would become taxable service under Finance Act, 1994.**

In view of the paper writers, this amendment would again invite confusion among the tax payers & increase lot of litigation before the Courts for following reasons :

- a. The proposed amendment is contrary to deep principles of constitutional law, allocation of legislative powers in our federal context. Parliament has the competence and jurisdiction to levy “Service Tax” on any subject matter except where items/aspects mentioned List II to Seventh Schedule of Constitution of India.
- b. The activity of manufacture of alcoholic liquor falls in the domain and realm of State levy under Entry-51, List II of the Seventh Schedule to the Constitution. By virtue of Entry 97 of List I ibid, Parliament is debarred to levy service tax on the said activities.
- c. The above legal position was clarified by hon’ble Apex Court in the case of Government of Haryana Vs Haryana Brewary Ltd 2002 (4) SCC 547 & there are other judgments also. Therefore the activities such as bottling, brewing of liquor and sale of liquor fall within the exclusive domain of State list and not covered under the Service Tax Law.

With the above reasons levy of service tax on contract manufacturing, bottling Units and brewers is ultra virus Settled provisions of Constitution of India. Time & again legitimacy of taxing this activity by Parliament should be tested before Court & should pass the judicial scrutiny, till then Assessee has to face the litigation.

Note: The above discussion will applies only in case of alcohol meant for human consumption. If the alcohol is meant for industrial consumption, the above discussion is not relevant.