

CCEA powerless to facilitate out-of-court settlement to Vodafone tax dispute: Law Ministry

A new hurdle has cropped up in the attempt by finance minister P Chidambaram to resolve the long-standing tax dispute with Vodafone. The law ministry feels that the cabinet committee on economic affairs might not have the power to allow the government to negotiate with the telecom giant with the intention of resolving the dispute out-of-court.

The ministry's stance is in response to a draft cabinet note, issued by the finance ministry on March 5, detailing the benefits of an out of court settlement with the British telecom giant. "An out of court settlement will give positive signal to foreign investors, particularly with regards to fair and equitable dispute resolution mechanism in India. This is also in consonance with the observations made by the standing committee on finance in its 59th Report.... and in the recommendations of the Expert Committee constituted by the PM," the draft note had argued.

But the law ministry has instead suggested that department of revenue may consider any alternative mechanism - other than an out of court settlement- within the existing tax laws to advance the larger objective of giving a positive signal to foreign investors.

The note floated by the finance ministry seeks the approval of the CCEA for accepting Vodafone's conciliation offer. Defining the scope of conciliation, the note asks the ministry's opinion on three points; is Vodafone liable to pay tax under section 201(1) of the Act as demanded by the assessing officer on October 10, 2010. Is the company liable to pay interest under section 201(1A) and section 220(2) and finally whether it is liable to pay the penalty.

In its response the law ministry has said that given the history of the case, particularly given the fact that Parliament had brought about amendments to certain sections of the Income tax Act 1961 to validate the tax demand on Vodafone International Holdings BV (VIHBV), the route of conciliation appears legally untenable. After losing the Rs 14,000 crore tax liability case to Vodafone in the Supreme Court the government had brought a so-called clarificatory amendment to the Income Tax Act with the specific objective of validating tax demands on Vodafone.

The law ministry then goes on to say that procedure for settlement of tax disputes is well established under the Act and the settlement mechanism proposed by the finance ministry is not in accordance with the established procedure.

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