

CIRCULAR NO 168/3/2013- ST.

Dated: April 15, 2013

Subject: **Tax on service provided by way of erection of pandal or shamiana** - regarding.

Several representations have been received seeking clarification on the levy of service tax on the activity of preparation of place for organizing event or function by way of erection/ laying of pandal and shamiana . The doubt that has been raised is that this may be a transaction involving "transfer of right to use goods" and hence deemed sale.

2. The issue has been examined. "Service" defined in section 65B (44) of the Finance Act, 1994, includes a 'declared service'. Activity by way of erection of pandal or shamiana is a declared service, under section 66E 8(f). The process of erection of Pandal or shamiana is a reasonably specialized job and is carried out by the supplier with the help of his own labour. In addition to the erection of pandal or shamiana the service is generally coupled with other services like supply of crockery, furniture, sound system, lighting arrangements, etc.

3. For a transaction to be regarded as 'transfer of right to use goods', the transfer has to be coupled with possession. Andhra Pradesh High Court in the case of Rashtriya Ispat Nigam Ltd. Vs. CTO [1990 77 STC 182] held that since the effective control and possession was with the supplier, there is no transfer of right to use. This decision of the Andhra Pradesh High Court was upheld by the Supreme Court subsequently. In the matter of Harbans Lal vs. State of Haryana " [1993] 088 STC 0357 [Punjab and Haryana High Court], a view was taken that if pandal, is given to the customers for use only after having been erected, then it is not transfer of right to use goods.

4. In the case of BSNL Vs. UOI Hon'ble Supreme Court held that to constitute the transaction for the transfer of the right to use the goods, the transaction must have the following attributes:-

- a. There must be goods available for delivery;
- b. There must be a consensus ad idem as to the identity of the goods;
- c. The transferee should have a legal right to use the goods and, consequently, all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee;
- d. For the period during which the transferee has such legal right, it has to be the exclusion of the transferor : this is the necessary concomitant or the plain language of the statute, viz., a "transfer of the right to use" and not merely a license to use the goods;
- e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

5. Applying the ratio of above judgments and the test formulated by Hon'ble Supreme Court, the activity of providing pandal and shamiana along with erection thereof and other incidental activities do not amount to transfer of right to use goods. It is a service of preparation of a place to hold a function or event. Effective possession and control over the pandal or shamiana remains with the service provider, even after the erection is complete and the specially made up space for temporary use handed over to the customer.

6. Accordingly services provided by way of erection of pandal or shamiana would attract the levy of service tax.

7. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

F. No. 356/2/2013-TRU

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