LETTER [F. NO. 137/132/2010 - SERVICE TAX]

DATED 11-5-2011

Representations have been received seeking clarification regarding leviability of service tax on the Flying Training Institutes providing training for obtaining Commercial Pilot Licence (CPL) and on Aircraft Engineering Institutes for obtaining Basic Aircraft Maintenance Engineer Licence (BAMEL). CPL and BAMEL are granted by Directorate General of Civil Aviation after conducting required examinations. These institutes have sought to cover-their activity under the exemption clause provided in the definition of "commercial training or coaching centre", as laid down in section 65(27) of the Finance Act, 1994, as it stood prior to the amendment in Budget of 2011. As per this definition, commercial training or coaching centre 'does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force. Their contention is that the certificates issued by them are recognised by DGCA and also the course conducted by them are as per the provisions of The Indian Aircraft Act, 1934, the Indian Aircraft Rules, 1937 and are in accordance with Civil Aviation Requirements.

2. The matter has been examined. The following observations are pertinent :-

2.1 The flying institutes/academies are approved by the DGCA and in fact figure in the website of the DGCA as well. But that does not automatically translate into the courses being conducted by them getting the status of 'recognized by law', since for that to happen, there has to be a statutory backing which is not the case here. The fact that the training imparted by the academies is taken into consideration by the DGCA does not make the course certificate statutory in nature.

2.2 The procedure for granting of a CPL (Commercial Pilot License) entails clearing of an exam that is conducted by the CEO (Central Examination Authority) of the DGCA. The test has a proper syllabus that is laid down in the DGCA website. The license is granted as per Aircraft Act, 1934 read with Aircraft Rules (Rule 38 of the Rules ibid lay down the Licensing Authority for granting of the licenses shall be the Central Govt.). Thus, there is no statutory recognition of the course being provided by the flying academies.

2.3 In fact the closest that the relationship between the academies and the DGCA comes is something that has been outlined in Notification No. 10/2003, dated 20th June, 2003. It exempts the taxable services being provided by a commercial coaching/training centre in relation to commercial coaching that forms an essential part of a course or a curriculum being offered by any other institute or establishment leading to issue of a degree or qualification recognized by law for the time being in force. However, the said exemption is subject to the condition that the exemption shall not be applicable if the charges towards the course are being paid directly to the coaching centre in question. Thus, in the current case, it can be argued that the flying academies are providing coaching that ultimately

culminates in issuing of the CPL by the DGCA (even though that is not a guarantee inasmuch as it is subject to clearing the exam). This, CPL is definitely recognized by law. Thus, it may appear that the exemption is operative; however the flying academies are hit by the exclusion clause of the above notification since the charges are paid by the trainees the coaching academies directly.

2.4 Also relevant is the Circular No. 107/01/2009 – ST, dated 28th Jan., 2009 issued by the Commissioner (Service Tax) which clearly says:

"As all these institutions or establishment are either created or recognized in terms of the power conferred by statutes, they would fall in the category of institutes/ establishments which issues diploma or certificate recognized by the law for the time being in force.,. " In the current case, the institutes in question do not fulfil this criterion, as neither are they created nor recognised by the statute.

3. Thus, the course certificates given by these academies cannot be held as "recognized in law" for the purposes of service tax exemption unless and until the course per se is specifically recognized by law which is not so in the current case. It may be added that there are several judicial pronouncements that lay down that the specific wording of law have to be interpreted strictly. Thus, the term "recognized by law" has to construe a direct nexus only between the degree/certificate being awarded by the Coaching centre and the statute. Accordingly, the said institutes/academies would clearly come in the category of coaching centres as laid out in the pre-amended section 65(27) of the Finance Act ibid (prior to Budget 2011) and therefore would be taxable.

4. In the Finance Act, 2011, w.e.f, 1-5-2011, the definition of Commercial Training or Coaching service as provided under section 65(27) has been amended to mean – "any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes". The exclusion clause available earlier on is now gone. However, vide Notification No. 33/2011 – ST, dated 25-4-2011. Exemption has been provided to two categories which are –

(i) any pre-school coaching or training;

(ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

4.1 It is to also clarify that that the coaching being provided by Flying Training Schools and Aircraft Maintenance Engineering Institutes would also not come under the scope of the exemption provided under the second category of the exemption notification mentioned above for the same reasons as mentioned in paragraphs 2 and 3 above. It is also pertinent to mention that the intent of the changes in the definition of Commercial Training or Coaching service as made in Budget of 2011 is evident on perusal of the explanatory letter of JS (TRU -II) D.O.F. No. 334/3/2011 – TRU, dated 28-2-2011 wherein at Para 3.3 it has been mentioned that – "The scope of the service is proposed to be expanded to include all

the coaching and training that is not recognised by law, irrespective of whether the institute is providing any other course(s) recognised by law." Thus, the scope of the service has in fact been expanded.

5. In addition, it may also be observed that the institutes do not fall under the exemption Notification No. 24/2004 (as amended), as the institutes courses do not directly enable the trainee getting the requisite employment.

6. Therefore, the said institutes/academies would clearly come in the category of coaching centres as laid out in the section 65(27) of the Finance Act ibid (either prior to or after Budget 2011) and therefore would be taxable. It is clarified that the contents of this instruction shall not override any statutory provisions. It is accordingly requested that immediate action may please be taken to safeguard revenue.