

BUDJET-2010

By **Mohan R Lavi**

There is a famous dialogue from the Telugu block-buster that goes “ఒక్క సారి కమిట్ అయితే నా మాట నేనే వినను” - which translates as once I give a commitment, I shall not hear myself. It appears that Finance Ministers' gave a commitment to collect Service Tax in 1994 which they are fulfilling even today. Service tax provisions in Budget 2010 are but an reenactment of the Budgets over the last 15 years.

New Services

Revenue collections from Service Tax for 2009-10 were revised to Rs 58000 crores from Rs 65000 crores mainly due to the reduction in the rates of service tax as a part of the stimulus packages. Estimates for 2010-11 have been pegged at Rs 68000 crores with no increase in rates. There is no need to guess where this increase is coming from - a number of services have been added to the service tax net and there have been amendments to the scope of services too. Probably the most significant amendment has been to levy service tax on renting of property thereby negating the decision of the Delhi High Court in Home Solution Retail vs Union of India and making the appeal in the Supreme Court a mere formality. We had predicted this in STJ since Finance Ministers in the past have done this- BCCI and Google are cases in point. However, by applying this retrospectively from 01.06.2007- a neat ploy to augment revenue- administrative hassles are bound to increase. Leaving no stone unturned, tax is to be levied even on rent of vacant land where there is an agreement or contract between the lessor and lessee for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease. This levy is probably going to be tested in Tribunals and Courts- would a levy that is applicable to a building wherein one resides or works be applicable to a vacant piece of land where nothing occurs. The temptation to tax medical services continues - cosmetic surgery last year has been succeeded this year by health check up undertaken by hospitals or medical establishments for the employees of business entities and health services provided under health insurance schemes offered by insurance companies with a rider that the tax on these health services would be payable only if the payment for such health check up or preventive care or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment. Entities with a large work-force would no hesitate much to ask the employees to pay for the check-up and claim a reimbursement- a double whammy since there is no Service Tax and Fringe Benefit Tax has been consigned to the Recycle Bin. By inserting such clauses, the Department seems to be veering away from the basic concept of Service Tax- to tax the service and not who pays for the service. Service provided for maintenance of

medical records of employees of a business entity would also be taxed. Service of permitting commercial use or exploitation of any event organized by a person or organization, copyrights on cinematographic films and (b) sound recording, additional services provided by a builder to the prospective buyers such as providing preferential location or external for internal development of complexes on extra charges (except parking charges), service of promoting of a 'brand' of goods, services, events, business entity and Service of promoting of a 'brand' of goods, services, events, business entity all come under the levy as do services provided by electricity exchanges.

Expansion of scope

Domestic and international air travel is bound to become costlier thanks to service tax being applicable irrespective of the place and mode of travel, while construction activity would also be deemed to be a service unless the consideration is paid in one-lumpsum after the completion of construction. The scope of information technology service is being widened to include any service provided and all services provided in airports and ports would also be taxed. A major relaxation is that pre-packaged I.T. software, with the license for right to its use, is being exempted from service tax, subject to specified conditions. The FM has decided to clear the confusion prevailing on commercial training or coaching service- an explanation is being added to clarify that the word commercial in the context of this service would mean any training or coaching which is provided for some consideration whether or not for profit while sponsoring of sports also become a taxable service. Some amendments have been made to the Export and Import of Service Rules the most significant of which is the removal of the provision regarding service being provided from India and used outside India. Continuing with the proclivity to pick and choose exemptions, the present FM has chosen to exempt erection, commissioning and installation services for mechanized food grain handling systems, equipment for setting up or substantial expansion of cold storage and machinery/equipment for initial setting up or substantial expansion of units for processing of agricultural, apiary, horticultural, dairy, poultry, aquatic, marine or meat products. The incongruity of the law becomes apparent when services provided by electricity exchanges is sought to be taxed while the transmission of electricity is exempt. On the administrative side, the law makes it clear now that no penalty would be levied if the tax and interest have been paid before the notice from the Department is received- as innumerable case-laws have held.

Move to GST

The title to this article was prompted by comparing the

amendments to the Finance Bill 1994 over the years with the present provisions- nothing much has changed as far as the pattern of Budget provisions to the tax on services is concerned. The Budget has made an unequivocal statement about moving to GST wef 1.4.2011. While the Budget has made allocations for IT infrastructure and systems for GST and the revenue-sharing with the States is only a matter of negotiations, it is a moot point whether the existing provisions of Service Tax would morph into Central GST seamlessly given the differences in the nature of the levy between the two. Copying and pasting the existing

provisions of the Finance Bill 1994 into GST would not assist much since the tax would be the same with a new name while there seems to be little time to enact a new law. It would be interesting to see how this transition is managed. The Finance Minister has missed an opportunity to develop a negative list of services and tax the rest, modify the amendments regime, formulate a Service Tax Act since it would compel him to define a service and minimize exemptions within services- all prerequisites for a seamless transition to GST. ■
