

**Education and Service Tax – Back to first standard?
(G. Natarajan, Advocate, Swamy Associates)**

When service tax was imposed on commercial coaching or training service, with effect from 01.05.2003, the relevant definitions stood as under.

Section 65 (26) - "commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre;

*Section 65 (27) - "commercial training or coaching centre" means 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 but **does not include preschool 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;***

Section 65 (105) (zxc) Taxable service means any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching.

So, if a college or school or an Institution, imparts any coaching which leads to issue of any recognised diploma or degree, such institution goes out of the definition of "commercial training or coaching centre" and even any other training or coaching provided by them would not be liable to service tax. This is also clarified so in Circular No. 59/8/2003 Dt. 20.06.2013. To quote,

Whether service tax is leviable on institutes providing commercial coaching in addition to recognized degree courses : *Some institutes like colleges, apart from imparting education for obtaining recognized degrees/diploma/ certificates, also impart training for competitive examinations, various entrance tests etc. It is clarified that by definition, such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of "commercial training or coaching institute". Thus, even if such institutes or establishments provide training for competitive examinations etc., such services rendered would be outside the scope of service tax.*

In 2011 budget, the definition of commercial training or coaching centre has been amended as below.

Section 65 (27) - "commercial training or coaching centre" means 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.

Exemption has been separately provided for the below, vide Notification 33/2011 ST Dt. 25.04.2011

- i) *any pre-school coaching and 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;*

The purpose of this amendment is explained as below in CBEC's letter F.No. 334/3/2011 TRU Dt. 28.02.2011.

3. Commercial Training or Coaching Service [section 65(105)(zzc)] :

3.1 The levy in its present form keeps outside its purview unrecognized education which is imparted by an institute that issues any certificate or diploma or degree or any educational qualification recognized by law. Thus two identical courses may be treated differently merely because one of the institutes also conducts another course that is recognized by law. This anomaly is proposed to be corrected by subjecting all such unrecognized education to tax.

3.2 In the Finance Bill the definition of 'commercial training coaching centre' has been amended. Suitable exemption will be given after the enactment of the Finance bill to preschool coaching and training and to coaching or training relating to educational qualifications that are recognized by law.

(It took 8 years to rectify an anomaly!)

When negative list based levy of service tax was introduced from 01.07.2012, the above position continued and only the following activities were kept in the negative list, under section 66 D.

services by way of—

- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course;*

Certain "auxiliary educational services" were also exempted vide S.No. 9 of Notification 25/2012 ST Dt. 20.06.2012, when provided in relation to education exempted from service tax.

Now, this exemption under Notification 25/2012 has been amended as below.

"9. Services provided,-

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,-

- (i) *transportation of students, faculty and staff;*
- (ii) *catering, including any mid-day meals scheme sponsored by the Government;*
- (iii) *security or cleaning or house-keeping services performed in such educational institution;*
- (iv) *services relating to admission to, or conduct of examination by, such institution;"*

The term "Educational institution" is also defined in the notification as

"educational institution" means an institution providing services specified in clause (1) of section 66D of the Finance Act, 1994 (32 of 1994).

The effect of the above amendments is –

Once an Institution provides any of the services as mentioned in the negative list (Section 66 D), say *"education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force"*, then any services provided by such educational institution to its students is exempted. For example, a swimming coaching provided by a school / college is also out of the levy of service tax, whereas similar swimming coaching provided by a swimming academy is liable to service tax.

So, we are back to the so called anomalous 2003 position!