The in"tax"icating story.

(G. Natarajan, Advocate, Swamy Associates)

When the ambit of levy of service tax on Business Auxiliary Service was expanded from 01.07.2004, "production of goods on behalf of the client" was included in its definition under section 65 (19) of the Finance Act, 1994. The said phrase was later amended as "production or processing of goods for, or on behalf of the client" from 16.06.2005. There was an exclusion for "any activity, amounting to manufacture within the meaning of section 2 (f) of the Central Excise Act, 1944".

Alcoholic liquor for human consumption, due to its various licence controls, is broadly manufactured by engaging the services of licence holders (commercially known as Contract Bottling Units / Contract Manufacturers) by the leading brand owners. It may be noted that the said alcoholic liquor is not covered in the Central Excise Tariff and hence not excisable goods. A doubt arose, as to whether the manufacture of alcoholic liquor by the CBUs, for the brand owners would attract the levy of service tax under business auxiliary service or, the exclusion of "manufacture as defined in section 2 (f) of the Central Excise Act, 1944" would apply.

A draft circular was issued by the CBEC in November 2006, seeking comments from the stakeholders. It was stated in the draft circular that since alcoholic liquor is not excisable goods, the provisions of Central Excise Act and the definition of manufacture thereunder are not applicable for the same and hence the said activities could be taxable under business auxiliary service. But this view was not made legal. In CBEC's letter No. 249/1/2006 Dt. 27.10.2008, it has been clarified that though alcoholic liquor is not excisable goods, the definition of manufacture under Central Excise Act, can be applied to it and when they are manufactured by CBUs, the same shall not attract the levy of service tax under business auxiliary service.

As the alcoholic liquor is an enticing commodity, inviting preys all the time, the service tax department is also not exception. In 2009, the definition of business auxiliary service has been amended. The exclusion for "manufacture" was limited only to "excisable goods". So, the CBUs, manufacturing alcoholic liquor for brand owners have become liable to pay service tax from 01.09.2009.

May be the de-addiction efforts worked well, that when negative list based service tax levy was introduced from 01.07.2012, the CBUs, went out of the levy of service tax. "Any process amounting to manufacture or production of goods" was kept in the negative list, under Section 66 D (f) of the Finance Act, 1994. The term "process amounting to manufacture or production of goods" has been defined in Section 65 B (40) of the Act, specifically covering "any process amounting to manufacture of alcoholic liquors for human consumption, on which duties of excise are leviable under any State Act for the time being in force". If

the process does not amount to manufacture, there is an exemption under S.No. 30 of Notification 25/2012, if Central Excise duty or State Excise duty is paid on the final products. Thus alcoholic liquor has been kept beyond the reach of service taxmen.

And now, the lure has once again got it way.

In the Finance Bill, 2015, in Section 65 B (40) of the Finance Act, 1994, defining process amounting to manufacture or production, the reference to alcoholic liquors for human consumption" is proposed to be deleted. In the negative list entry also manufacture or production of alcoholic liquor for human consumption is proposed to be kept outside the ambit of the negative list. The reference to alcoholic liquor for human consumption is also proposed to be deleted from S.No. 30 of Notification 25/2012.

Thus from a date to be notified after the Finance Bill, 2015 is passed, the CBUs would become the service taxmen's haven.

When the levy was in force from 01.09.2009 to 30.06.2012, as per Notification 39/2009 ST Dt. 23.09.2009, the value of inputs used by the CBUs are excluded from the value of taxable service. But no such similar exemption has been provided now. Though we can expect the same would be issued after the Finance Bill is passed and the levy takes effect, when certain other exemption (S.No. 47 of Notification 25/2012 as sought to be introduced by Notification 6/2005 ST Dt. 01.03.2015) are introduced now itself, to take effect from an appointed date after the Finance Bill is passed, why not similar exemption for excluding the value of goods for CBUs also could not have been issued now?