



कार्यालय आयुक्त
Office of the Commissioner
केंद्रीय उत्पाद शुल्क आयुक्तालय, चंडीगढ़ - I
Central Excise & Service Tax Commissionerate, Chandigarh-I
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व्यापार सूचना सं. 04/ST/2013 TRADE NOTICE NO. 04/ST/2013

विषय/SUB:- Tax on service provided by way of erection of pandal or shamiana -reg.

- 1) उपर्युक्त विषय पर केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड, राजस्व विभाग, वित्त मंत्रालय, भारत सरकार की फा.सं. 356/2/2013-TRU से जारी परिपत्र सं. 168/3/2013-ST, दिनांक 15.04.2013, की प्रति व्यापार एवं क्षेत्रीय संगठन को सूचना एवं मार्गदर्शन हेतु इसके साथ संलग्न की जाती है। उक्त परिपत्र स्वतः स्पष्ट है

A copy of **Circular No. 168/3/2013-ST**, dated 15.04.2013, from F. No. 356/2/2013-TRU issued by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India, on the above subject matter, is enclosed herewith for information and guidance for the trade and field formation. The said **Circular** is self – explanatory.

- 2) सभी व्यापार संघ/वाणिज्य मण्डल एवं क्षेत्रीय सलाहकार समिति/ लोक शिकायत निवारण समिति के सदस्यों से अनुरोध किया जाता है कि वे इस व्यापार सूचना की अंतर्वस्तु को अपने सदस्यों / संघटकों की सूचना एवं आवश्यक कार्यवाही हेतु उनके ध्यान में लाएँ / प्रचार करें।

All the Trade Associations / Chambers of Commerce and the members of the RAC/PGRC are requested to bring/publicize the contents of this Trade Notice amongst their Members/Constituents for their information and necessary action.

संलग्नक Encl. यथोपरि As above.

[S.J. SINGH]
COMMISSIONER

फा.सं. F.No. V(MISC)30/STC/HQ/Trade Notice/10/2010/Pt

दिनांक Dated: 03 /05/ 2013

Trade Notice is being uploaded on our website www.cexchd1.gov.in

Superintendent (S.Tax)

Circular No. 168/3/2013 - ST

F. No. 356/2/2013-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
Tax Research Unit

North Block,
New Delhi, 15th April, 2013

To,

Chief Commissioners of Central Excise and Customs (All),
Director General (Service Tax), Director General (Systems), Director
General (Central Excise Intelligence), Director General (Audit),
Commissioners of Service Tax (All), Commissioners of Central
Excise (All), Commissioners of Central Excise and Customs (All)

Madam/Sir,

Sub: Tax on service provided by way of erection of pandal or shamiana -reg

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 [2002] 126 STC 0114. 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* [2006] 3 STT 245 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.

(S. Jayaprahasam)

Technical Officer, TRU

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