

The Anti Climax

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The tinsel town wake up to the levy of service tax on them from 01.07.2012 very late and recently protested against the levy with lots of hue and cry. Rather than the burden of service tax on actors, actresses and other technicians, what bothered them more was the exemption available to producers, lyricists and music composers and they wanted parity. The shrewd Finance Minister, as he is always, has brought in some parity, in a typical movie style!

The earlier exemption, as per S.No. 15 of Notification 25/2012 ST Dated 20.06.2012 read as below:

15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

For ready reference section 13 (1) of the Indian Copyright Act is reproduced below:

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

(a) Original literary, dramatic, musical and artistic works;

(b) Cinematograph films;

As per the above exemption, film producers, who own the copyright over the film would not be liable to pay service tax when they transfer or permit the use of such copyright in favour of distributors or theatre owners. So, when actors, directors, technicians became liable to pay service tax, it would add up to the cost of the producers.

To quote from the budget speech,

180. Last year, at the request of the film industry, full exemption of service tax was granted on copyright on cinematography. The industry has now requested to limit the benefit of exemption to films exhibited in cinema halls. I propose to accept the request.

Now, the above said exemption is amended as below, with effect from 01.04.2013.

"15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-

(a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or

(b) of cinematograph films for exhibition in a cinema hall or cinema theatre;"

It may be observed from the above that the exemption in respect of original literary, dramatic, musical or artistic works is retained as it is. But, the exemption in respect of the copy right over cinematograph films is going to be restricted, only when the same is transferred or permitted to be used "for exhibition in a cinema hall or cinema theatre".

The intention behind this amendment has been explained as below, in the CBEC's letter D.O.F. No. 334/3/2013 TRU Dated 28.02.2013 as,

The benefit of exemption under S. No 15 of the notification in relation to copyrights for cinematograph films will now be available only to films exhibited in a cinema hall or theatre. This will allow service providers to pass on input tax credits to taxable end-users.

Now, when the producer is temporarily transferring his copyright over the film in favour the distributor and permits the distributor to further transfer such rights in favour theatre owners, for exhibition of the movie in cinema theaters, the producers would not be liable to pay service tax. This is because, such a transfer is for "exhibition in a cinema hall or cinema theatre". But when the producers deals with their copyright in any other mode, such as granting rights of DTH release, giving the copyright for TV Channels, etc. the producer would be liable to pay service tax.

Though the CBEC letter suggests that the service tax paid by other service providers such as actors, etc. the producers can be availed as cenvat credit, when the producer is providing both taxable service (giving copyrights for exhibition other than in cinema theatres) and exempted services (giving copyrights for exhibition in cinema theatres), such cenvat credit would also be allowed only in proportion, as per rule 6 of the Cenvat Credit Rules, 2004.

The "heros" who will always emerge victorious in the movies, are duped here, for a change. No exemption for them while their cousins like lyricists, music composers enjoy the exemption.

Before parting...

There is a possibility of another interpretational warfare in this. It may also be argued that only the last leg of the transaction, i.e. the distributor transferring the right / or permitting the use of copyrighted film, in favour of theatre owners, this exemption can be claimed, as such transfer alone is "for exhibition of the film in cinema hall or cinema theatres" and not when producers transfers / permits the use of the copyrighted film in favour of distributors, which is for further distribution down the line. The language of the exemption is capable of being interpreted like this.

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