

## **Negative Blues – X**

### **Employee recoveries**

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The definition of service under Section 65 B (44) of the Finance Act, 1994 specifically excludes "a provision of service by an employee to the employer in the course of or in relation to his employment". But what about the services provided by the employer to their employees? Sounds strange?

The employer might be having a canteen in his factory / office premises. The caterer who provides the catering service would be rendering outdoor catering service to the employer and he would be liable to service tax and there is no doubt about it. If the employer is charging any amount from the employees towards provision of food, what will be the service tax liability in the hands of the employer for such amounts recovered from the employees?

It may be noted that as per Section 66 E (i) of the Act, the following is a declared a service.

*"service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity".*

This is the clause by which the restaurants selling food items are also made liable to the levy of service tax. So, strictly speaking, the employer would be liable to pay service tax on such recoveries. But the following exemption is available under S.No. 19 of Notification 25/2012.

*Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages.*

Though, it is difficult to cherish that the canteen in the workplace is a restaurant, it is so. Hopefully, none of the employers would be having a licenced bar facility in their canteen (What about Mr. Vijay Mallaya?). Hence, they can claim the above exemption and need not pay any service tax for the amounts collected from their employees towards cost of food supplied in canteen.

Many employers also charge their employees towards providing transportation facility for them from their home to work place. They would have engaged the services of a rent a cab operator for this purpose, who would be charging service tax and there is no dispute about it. Subject to specified conditions, the employer may also be liable to discharge a part of the rent a cab operator's liability under reverse charge and there is no confusion in this regard also.

But, when the employer is collecting some amount from the employees for the facility of such transport, the employer is providing a service to their employees and strictly speaking the employer would be liable to pay service tax. But, the following exemption under S.No. 23 (b) of Notification 25/2012 can be claimed in such cases.

*23. Transport of passengers, with or without accompanied belongings, by -*

*(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire.*

Like the above, there may be many other amounts collected by the employers from their employees. Recovery of part of the cost towards undergoing medical treatment in the hospital run by the employer, would be exempted under S.No. 2 of Notification 25/2012. Any recovery towards providing residential accommodation would be covered under the negative list entry – Section 65D (m).

What about the employer providing telephone facility to the employee and recovering some amount towards personal use of such telephone? What amount the employee providing a car (not being a contract carriage) to the employee and recovering some amount towards its personal use? It remains to be seen whether there are any other recoveries which may throw up a service tax liability in the hands of the employer.