



केन्द्रीय उत्पाद शुल्क एवं सेवा कर आयुक्त का कार्यालय
नं.1, विल्लियम्स रोड, कन्टोनमेंट, तिरुच्चिरापल्लि - 620 001
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
NO.1 WILLIAMS ROAD, CANTONMENT, TIRUCHCHIRAPPALLI - 001.

Trade Notice No. 04/2013- S Tax

Dated 28.04.2013.

**Sub:- Service Tax - Tax on service provided by way of erection of
pandal or shamiana- Reg.**

Copy of the letter F.No.356/2/2013 TRU (Circular No. 168/3/2013
- ST dated 15.04.2013 received from Central Board of Excise and
Customs, Tax Research Unit, New Delhi is enclosed herewith for
information.

The contents of the Trade Notice may be brought to the knowledge
of the constituent members of the Trade Associations and Chamber of
Commerce.


(Issued in File C.No.IV/16/956/2012 - STC)


(A.CLETUS)
JOINT COMMISSIONER

Encl. As above.

To,

The Mailing List I/II/III


प्रेषित DESPATCHED
दिनांक DATED 30/4/13

yc 52/2013

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,

Subject: Tax on service provided by way of erection of *pandal* or *shamiana* - regarding.

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
Tel: 011-2309 2037