

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
NO.1, WILLIAMS ROAD, CONTONMENT, TIRUCHIRAPPALLI-620 001.

General Circular No.3/2009 S. Tax

Dated: 3-2-2009.

Subject: 1) Circular No. 109/03/2009-ST dated 23-2-2008-
 Service Tax on movie theatres-reg.

Ministry's Service Tax Circular No. 109/03/2009-ST dated 23-2-2009 issued in F.No.137/186/2007-CX.4 on the above subject is enclosed herewith for information, guidance and necessary action.

The contents of this General Circular may be brought to the notice of field formation.

(Issued from C.No.IV/16/813/2009 S .Tax)

Encl.: As above.

Sd./-
 (A. RAJENDRAN)
 ASSISTANT COMMISSIONER

To
 The Mailing list - III.

Copy of Board's Service Tax Circular No. 109/03/2009-ST dated 23-2-2009 issued in F.No.137/186/2007-CX.4 is reproduced below.

Subject: Service Tax on Movie Theatres-Reg.

A query had been raised by the field formation as to whether the activity of screening of film supplied by a film distributor would fall under any of the taxable services and accordingly, whether the theatre owners are required to pay service tax on amount received by them from distributors. Divergent views have been expressed on this issue. One view is that the activity of screening of films supplied by a film distributor falls under the taxable service category of "renting of immovable property"; while an alternative view is that such activity falls under the category of 'Business Support Service'.

2 The matter has been examined. Normally a producer of a movie sells the rights of showing the movies in a region to a distributor. The distributor in turns enters into agreement with theater owners. This agreement can be of different types. Thus it is necessary to examine different types of arrangements under which a movie is screened, in order to determine whether any tax liability arises on the activities undertaken by a theater owner and a distributor. Typical types of arrangements normally entered into between a theater owner and a distributor are as under:-

2.1. Under one type of arrangement, the distributor leases out the hall for screening of the movie. Here, the theater owner gets a fixed rent from the distributor. The profit or loss from exhibiting the film is borne by the distributor. In such a case, the theatre owner provides the taxable service of 'Renting of immovable property for furtherance of business or commerce' and is accordingly liable to pay service tax.

2.2. Another type of arrangement is where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and pre-determined portion i.e. percentage of revenue earned from selling the tickets goes to the theater owner and the balance goes to the distributor. In this case, the two contracting parties act on principal-to-principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax.

2.3. In yet another type of arrangement, the theater owner buys the print/CD of the film on payment of a fixed price and thereafter screens it in his theater. This transaction is also not subject to service tax being in the nature of sale of goods.

2.4. The arrangement most commonly entered into between a theater owner and a distributor is that the theater owner screens the movie for fixed number of days under a contract. The proceeds earned through sale of tickets go to the distributor but the theatre owner receives a fixed sum depending upon the number of days of screening. In this arrangement, the advertisement and display of posters etc. is done by the distributor. Under this arrangement, the fixed amount contracted is given to the theater owner by the distributor irrespective of the fact

whether the movie runs well or not. However, there is no rental arrangement between the theater owner and the distributor as in the arrangement at paragraph 2.1 above. A view has been expressed that in this arrangement, the theater owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theater owner.

2.5. The matter has been examined. By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'. In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'.

3. In the light of above , it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theater and the theater owner get a fixed rent. In such case, the service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theater owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken.

4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.

Yours faithfully,

(Gautam Bhattacharya)
Commissioner (Service Tax)
