Regulator at receiving end
This Watchdog may be Bitten With Service Tax

CBEC says Sebi liable to pay as its services are not exempted from taxation

Foreign portfolio investors, or FPIs, may have gotten off the taxman's hook on the issue of minimum alternate tax, but their regulator isn't going to be as lucky if the tax authorities have their way. The Central Board of Excise & Customs has backed the view of the tax authorities that the Securities & Exchange Board of India is liable to cough up service tax, in what will be seen as an odd spectacle of a regulator being asked to stump up money.

In a clarification to a report put up before it by field officers, the government's apex indirect taxes body has given the go-ahead for a formal investigation in the matter, in the process backing the view that because services provided by the stock market regulator were not specifically exempted from taxation or kept in the negative list, they were liable to be taxed.

Service tax officials will now closely examine Sebi's books to ascertain its total tax liability, which they reckon, based largely on back-of-the-envelope calculations, to be around 500 crore. “The board has clarified that services provided by Sebi were taxable, “said one government official familiar with the matter.

Sebi provides a range of recurring and non-recurring services, for which it charges a fee. In fiscal year 2014, it had a fee income of Rs 175 crore, up nearly 18% from Rs 148.7 crore it earned in the previous fiscal. Recurring fees includes those levied for registration of intermediaries, sundry regulatory fees and fees from mutual funds while non-recurring ones include those levied on offer documents filed by companies and on foreign funds. A spokesperson for Sebi said: “The matter has been legally examined by Sebi and the legal opinion is that service tax is not applicable to Sebi. Sebi has also represented to service tax authorities accordingly.“

NEGATIVE LIST REGIME

The government had switched to negative list regime for service tax in July 2012, which meant that all services barring those specifically exempted or included in the list were liable for taxation. Service tax is levied at 14%.

Service tax authorities contend that Sebi collects fees on certain transactions and for processing of public offers for equity, corporate debt and mutual funds, and these charges are also based on the value of the transaction and are not a fixed amount as is the case with most other regulators, thereby making the collections eligible for taxation. Legally, these services have neither specifically been exempted nor included in the negative list, making them liable to be taxed.

In its Budget for 2015-16, the government had pruned the negative list to exclude services such as the auction of spectrum and mining rights and leasing of government land and buildings. However, this change in law is yet to be notified.

This curious case of taxing services provided by a regulator puts to test the negative list regime at a time when the country is proposing a transition to a unified goods & services tax regime with minimal exemptions. The prospect of Sebi having to pay up service tax could once again put the spotlight on tax department after the controversy over minimum alternate tax. Earlier this year, its notices to FPIs asking them to stump up MAT dues for earlier years following a verdict of the Authority of Advance Rulings drew criticism from investors and analysts.

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