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**OFFICE OF THE COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & SERVICE TAX,
48, ADMINISTRATIVE AREA, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL**

F.No. IV(16)30/TN/ST/BPL/2013

Bhopal, Dated 28.11.2013

TRADE NOTICE NO. 07/2013/SERVICE TAX

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

Attention of the field formations, service providers, trade & industries, the public in general and all concerned is invited that 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

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. All the Trade Associations, Chambers of Commerce and Industries, Members of Regional Advisory Committee and field formations are requested to bring the contents of this Trade Notice to the notice of the members, trade and industries, public and all other concerned.

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(Dr. D.K. Verma)
COMMISSIONER

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