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"Associated Enterprises" – the lopsided amendment

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In the last budget, Section 67 of the Finance Act, 1994 has been amended to the effect that in case of transactions between "associated enterprises", the term "gross amount charged" shall also include book adjustments. Similarly, Rule 6 of the Service Tax Rules, 1994 has also been amended to the effect that in case of transactions between associated enterprises, any payment received towards the value of taxable service, "shall include any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax".

Often, actual payment and realization of money would not happen in case of transactions between such associated enterprises and only book entries would be made. Being associated to each other, the time at which actual payments would happen, can also be decided by themselves, till which time, the Government is deprived of getting its service tax revenue. It is to obviate this, the amendments have been made.

So far so good.

Availment of cenvat credit of service tax on input service is possible, only after the value of taxable service and service tax paid to the service provider, by the person claiming cenvat credit. This is to ensure that appropriate service tax should be paid, before any credit thereof is allowed to the recipient of service, as payment of service is subject to realization, in the hands of the service provider.

When the service providing "associated enterprise" is made to pay service tax, even without actual realization of value of taxable service, as a corollary, the service receiving "associated enterprise" shall also be allowed to take cenvat credit of such service tax paid on such input services, rendered to it by the "associated enterprise", irrespective of whether the value of taxable service and service tax has actually been paid to the service provider (associated enterprise) or not.

But, though the Government was shrewd enough to protect its interest in case of transactions between "associated enterprises" it has not been reasonable in not amending the condition of payment for availing cenvat credit on input services, under Cenvat Credit Rules, 2004, in case of transactions between "associated enterprises".

Will the shrewd FM would also be reasonable?