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SUBJECT INDEX

APPELLATE TRIBUNAL

Condonation of delay

- Assessee filed appeal belatedly after delay of 388 days - Assessee sought condonation thereof contending that time was lost in internal decision-making and communication with advocate - *HELD* : 'Sufficient cause' for condonation is construed liberally so as advance substantial justice, however, a liberal view is required only if delay was not on account of any deliberate acts, want of *bona fide,* deliberate inaction or negligence on part of assessee - In this case, delay had occurred not on account of any substantial and sufficient reasons but on account of negligence of assessee - Application for condonation of delay was rejected - *Bharat Sanchar Nigam Ltd.* v. *CC&CE* (New Delhi - CESTAT) **538**

Rectification of Mistakes

- Dictation of order, which was given in another case, got copied as order in present appeal - Revenue applied for rectification of mistake - Assessee argued that rectification would amount to reconsideration of entire order and was impermissible - *HELD* : No review can be sought for, in garb of application for rectification of mistake - However, in this case, a wrong order got issued (as mistake happened in hands of Steno) without noticing facts of present case, hence, replacement of said order cannot be considered to be a review of same - In this case, entire order was a clerical mistake, requiring rectification of same - Mistakes required to be rectified does not depend upon length of said mistake or does not relate to one or two words in order, when entire order which got issued was not relatable to matter under dispute, entire order was a mistake - Hence, rectification of mistake application was allowed and earlier order was withdrawn - *Paramount Communication Ltd.* v. *CCE* (New Delhi - CESTAT) **487**
- Rule that application for rectification is to be heard by Bench who had heard matter earlier, is not without exception - If member(s) who had heard matter originally are not available, matter can be heard by a Bench comprising of different members - *Jai Timber Co.* v. *CCE* (Mum. - CESTAT) **516**
- Tribunal's Final Order dated 16-11-2006 was received by Department on 22-1-2007 - Department filed application for rectification of mistake on 5-6-2007 - Tribunal dismissed application as time-barred as application was not filed within 6 months from date of order of Tribunal - *HELD* : Tribunal's order holding rectification application as barred by limitation was in consonance with judgment of Supreme Court in *CCE* v. *Hongo India (P) Ltd.* 2009 (236) ELT 417 and was valid in law - *CCE* v. *GE Medical Systems* (Kar.) **536**

Restoration of appeal

- Assessee remained absent from hearing and assessee's application for rectification was dismissed - Assessee claimed that such absence was because his friend informed on telephone that Bench, which passed original order would not be available on date of hearing - *HELD* : Assessee could not remain absent merely on assumption that Bench would not hear matter - No litigant can presume that adjudicating authority would adjourn matter merely because litigant carries certain impression that for some reason matter would not be heard by Bench - If litigant wants to raise any objection that matter should not be heard by a particular Bench, litigant should appear before Tribunal and point it out - Assessee's ground of absence could never be a justifiable ground - Application for condonation of absence and restoration was rejected - *Jai Timber Co.* v. *CCE* (Mum. - CESTAT) **516**

APPLICATION OF CERTAIN PROVISIONS OF EXCISE ACT

Appeal to High Court

- High Court cannot go into an issue, which was not contended before Tribunal and on which no finding has been given by Tribunal - *CCE* v. *EID Parry (I) Ltd.* (Mad.) **484**

- When a judgment of Tribunal favouring another assessee had become final and conclusive, Revenue cannot contest very same issue in respect of another assessee - If an issue is decided in favour of any party and had attained finality and accepted by parties, said affected party in that case is certainly precluded from questioning its correctness in an another case - Revenue cannot pick and choose between assessees of same nature to file appeal in respect of very same issue - *CCE* v. *EID Parry (I) Ltd.* (Mad.) **484**

- Revenue alleged that order of Tribunal was non-speaking order on classification and rate of duty issues involved and therefore, appeal could be filed before Tribunal - *HELD* : Though there was no finding recorded by Tribunal to indicate applicable rate of duty, but, in absence of a finding, present appeal filed by Revenue was only to elucidate a finding from Tribunal - For said purpose, High Court would have to look into rate of duty applicable and classification issue, which can be made a subject-matter of appeal before Supreme Court - High Court could not entertain such appeal in absence of jurisdiction - Appeal was dismissed as not maintainable without prejudice to options of Revenue to have recourses to remedy before Supreme Court - *CCE* v. *GE Medical Systems* (Kar.) **536**

- Revenue challenged question of setting aside of penalty imposed on assessee - *HELD* : Penalty is only a consequential action pursuant to redetermination of duty - Parties may take their stands for sustainability or otherwise of penalty depending upon sustainability or otherwise of levy of additional duty - If so, question will be directly linked to an additional duty being sustained or otherwise - Therefore, High Court could not entertain such appeal in absence of jurisdiction - Appeal was dismissed as not maintainable without prejudice to options of Revenue to have recourses to remedy before Supreme Court - *CCE* v. *GE Medical Systems* (Kar.) **536**

- While it is not incumbent upon appellant to indicate substantial question of law in memorandum of appeal itself and it is for High Court to formulate such questions, but, High Court can show its satisfaction as to involvement of substantial question of law only if question is rightly shown by appellant - *CCE* v. *GE Medical Systems* (Kar.) **536**

- Order passed by Tribunal dealt with question of limitation - Department challenged such order of Tribunal up to extent it didn't allow invocation of extended period of limitation - *HELD* : No appeal would lie to High Court from an order passed by CESTAT if such an order relates to, among other things, determination of any question having a relation to valuation of taxable service - Section 35G has nothing to do with issues sought to be raised in appeal but it has everything to do with nature of order passed by CESTAT - Question raised in appeal doesn't determine whether appeal would be maintainable before High Court or not; nature of order of CESTAT, determines said issue - Even though department was only raising question of limitation, however, since order passed by Tribunal related also to determination of value of taxable service, no appeal could be filed thereagainst before High Court - Hence, appeal was dismissed as not maintainable - *CST* v. *Bharti Airtel Ltd.* (Delhi) **539**

Deposit, pending appeal, of duty demanded or penalty levied

- Assessee pleaded that its financial condition would simply not enable pre-deposit and if such condition is insisted upon strictly, their appeal would be dismissed without hearing - *Held* - Balance-sheet of assessee suggests that there is no manufacturing or other activity being undertaken by company and with each successive year, accumulated loss swell - All these would demonstrate that assessee had have no means of fulfilling pre-deposit condition - If no respite is granted to assessee, their first appeal would be rendered infructuous - In special facts and also looking to stand of assessee that they were not seeking any stay against duty and penalty demands, but requesting for appeal being heard on merits without any pre-deposit, entire pre-deposit requirement was waived - It was clarified that in meantime during pendency of appeal, there would be no stay against duty and penalty demand and it would be open for authorities to recover same in accordance with law - *Bhavya Apparels (P.) Ltd.* v. *Union of India* (Guj.) **496**

- Assessee sought dispensation of pre-deposit claiming financial difficulty - *HELD* : Income-tax return of assessee showed that it had invested in equity shares amounting to more than Rs. 4.7 lakhs - Since demand of service tax was of Rs. 2.31 lakhs, it could not be said that assessee was in such a financial position that it cannot pay service tax - Nobody can make a claim that investment in equity shares should be kept intact while service tax liability should be deferred by exercising discretion of Tribunal - Pre-deposit was ordered in full - *Trivedi Associates* v. *CST* (Ahd. - CESTAT) **505**

- Stay cannot be granted merely on *prima facie* case being shown - Balance of convenience must be clearly in favour of making of interim order - There should not be slightest likelihood of prejudice to interest of public revenue - Tribunal cannot ignore statutory guidance while exercising powers of interim stay - *Life Care Medical Systems* v. *CST* (Mum. - CESTAT) **532**

Revision by Central Government

- Order passed by Central Government under section 35EE is not an executive order - Since order is passed on an application by aggrieved party *viz.* assessee or Commissioner of Central Excise questioning legality and propriety of order passed by Commissioner (Appeals), it has to be necessarily viewed as a quasi-judicial order - *Union of India* v. *Ind Metal Extrusions (P.) Ltd.* (Delhi) **416**

BROADCASTING SERVICES

- Assessee used to conduct live telecast of horse races taking place in its premises - Assessee received consideration for granting such telecast rights to other persons - Department sought levy of service tax under 'Broadcasting Services' or 'Intellectual Property Rights Services' - *HELD* : It was not Intellectual Property Rights Services, as no Intellectual Property Right recognized by law in India was involved - It was also not broadcasting service, as assessee had not done any dissemination/broadcasting, which was done by persons whom assessee had granted right to broadcast - It was grant of right of 'commercial use or exploitation of an event' taxable under section 65(*105*)(*zzzzr*) with effect from 1-7-2010 only - Demand for prior period set aside - *Royal Western India Turf Club Ltd.* v. *CST* (Mum. - CESTAT) **546**

BUSINESS AUXILIARY SERVICE

- Assessee was engaged in activities of VISA facilitation and providing customer care services to Diplomatic Mission Embassies/Consulates and VISA applicants - Department sought levy of service tax thereon - *HELD* : In view of Circular No. 137/6/2011-ST, dated 20-4-2011, said activity were not liable to service tax under any category of service - *VFS Global Services (P.) Ltd.* v. *CST* (Mum. - CESTAT) **531**

BUSINESS SUPPORT SERVICES

- Assessee, a turf club, allowed bookies of horse race and caterers to operate in assessee's premises - Department sought levy of service tax under Business Support Services - *HELD* : Mere renting of office space is not business support services - There was no outsourcing of any function by bookies/caterers to assessee - Since there was no allegation that assessee provided any infrastructural support services, hence, such activity was not taxable under Business Support Services - It was mere renting covered under 'Renting of Immovable Property' Services - *Royal Western India Turf Club Ltd.* v. *CST* (Mum. - CESTAT) **546**

CARGO HANDLING AGENCY SERVICES

- Assessee was engaged in palletizing/packing of export goods - Department sought levy of service tax under packaging services - Assessee argued that it was cargo handling services and not liable to service tax, being in relation to export cargo - *HELD* : Packing covered by clause (*76b*) is basic packing of products either in course of manufacturing or subsequent to manufacturing for marketing - This work was not done by assessee because assessee was not a manufacturer or packer for manufacturers of goods - Since assessee was engaged only in bulk packing in form of palletizing which was only for loading, shipment and for transport of export cargo, said activities were not covered by section 65(*76b*) - Packing done by assessee was group packing in a rough form just for easy loading into containers or ships - Said pack-

ing was covered by cargo handling services but was excluded therefrom being in relation to export cargo - Said services were not liable to service tax - *Beena Pradeep* v. *Government of India* (Ker.) **502**

CENVAT CREDIT RULES, 2004

CENVAT Credit

General

- Assessee, a partnership firm, formed for setting up a telemarketing company, took credit of inputs and input services used for setting up business of company - Thereafter, business so set up was transferred to company - Department denied such credit on ground that assessee's only output transaction was business transfer to company to be established, which transfer was not deemed to be a taxable supply - *HELD* : A person who acquires goods/services for purposes of an activity within meaning of section 65B(*44*), does so as a taxable person, even if goods/services are not used immediately for such activities - In this case, assessee did not even intend to effect itself taxable operations, its sole object being to prepare activities of company - Input credit claimed by assessee relates to supplies acquired for purpose of effecting taxable transactions, even though those transactions were only planned transactions of company - In order to ensure neutrality of taxation, recipient-company was to be treated as successor to assessee and transferor-assessee was entitled to take account of taxable transactions of recipient-company so as to be entitled to deduct tax paid on inputs/input services which had been procured for purposes of recipient's taxable operations - ***Finanzamt Offenbach am Main-Land* v. *Faxworld Vorgründungsgesellschaft Peter Hünninghausen und Wolfgang Klein GbR*** **(ECJ) 458**

- There is no requirement to reverse input credit on inputs written off prior to 11-5-2007 when provision for reversal of credit in such cases was introduced by way of rule 3(*5B*) - *ADC India Communications Ltd.* v. *CCE* (Bang. - CESTAT) **525**

Input service

CATERING SERVICES

- Outdoor catering services received by assessee for providing food to their employees is input service - Moreover, rent-a-cab service received for transportation of employees from home to factory and back to home are input services - *Paramount Communication Ltd.* v. *CCE* (New Delhi - CESTAT) **486**

CLEARING AND FORWARDING AGENT'S SERVICES

- Clearing and Forwarding Agent carries out all activities in respect of goods right from stage of their clearances from premises of principal to its storage and delivery to customers - Place where such goods are stored by such agent amounts to 'place of removal' under section 4(3)(*c*)(*iii*) of Central Excise Act, 1944 - Services of such agent fall under 'clearance of final products from place of removal' as it stood for period prior to 1-4-2008 and are eligible for input service credit - Such services would not amount to sales promotion and would not be eligible as input service in that sense - *CCE* v. *Cadila Healthcare Ltd.* (Guj.) **473**

COMMISSION AGENT'S SERVICES

- Position prior to 1-4-2008 - Commission paid to agents causing sale of final product cannot be termed as expenditure on sales promotion - Such commission cannot be stated to be a service used directly or indirectly in or in relation to manufacture of final products or clearance of final products from place of removal - Activity of commission agent did not also fall under 'activity relating to business such as . . .', as it did not have any similarity to illustrative activities *viz.,* 'accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security' in any manner - Hence, CENVAT credit would not be admissible in respect of commission paid to foreign agents - *CCE* v. *Cadila Healthcare Ltd.* (Guj.) **473**

- Commission paid to overseas agents causing sale of export goods, which falls under 'Business Auxiliary Services', is an input service, as it is sales promotion - Credit thereof was allowable - *Ajay Industries* v. *CCE* (New Delhi - CESTAT) **544**

COURIER SERVICES

- Period from 1-2-2007 to 30-9-2007 - 'Clearance of final products from place of removal' is an input service as defined in rule 2(*l*) - Hence, for period prior to amendment with effect from 1-4-2008, courier services availed by assessee whereby courier collects parcel from factory gate for further transportation/export would fall within ambit of 'input service' - *CCE* v. *Cadila Healthcare Ltd.* (Guj.) **473**

FINANCIAL SERVICES

- Expenditure incurred by a holding company in respect of various services which it purchases in connection with acquisition of a shareholding in a subsidiary forms part of its general costs and, therefore, has, in principle, a direct and immediate link with its business as a whole - Thus, if holding company carries out both taxable and non-taxable transactions, it may deduct only that proportion of service tax which is attributable to taxable services - ***Cibo Participations SA* v. *Directeur régional des impôts du Nord-Pas-de-Calais*** **(ECJ) 394**

GENERAL

- Services listed in rule 6(*5*) are input services within meaning of rule 2(l), otherwise there would be no necessity for specifically providing that CENVAT credit would be admissible in respect of services specified in rule 6(*5*) even if partly used for exempted goods - Services provided by interior decorator, commercial and industrial construction services would be eligible as input service - Further, repair and maintenance of copier machine, air conditioner, water cooler, etc., would also be eligible as input service, as such equipment are necessary for factory buildings as well as for activities relating to business and are integrally connected with business of assessee - Hence, impugned services were eligible for input service credit - *CCE* v. *Cadila Healthcare Ltd.* (Guj.) **473**

- Under meaning part of definition of input services, only services after input stage or services used in relation to manufacture of final product are eligible as input service - Under inclusive part, in relation to input, only procurement of inputs and inward transportation of inputs are eligible as input service - Storage up to place of removal covers storage of final product and not storage of input - Therefore, services in relation to erection, commissioning and installation of storage tank for storage of inputs outside factory are not eligible as input services - *Deepak Fertilizers & Petrochemicals Corpn. Ltd.* v. *CCE* (Mum. - CESTAT) **488**

- Pest control services, AMC of plant related to sewage disposal, AMC of AC in testing rooms, AMC of computers and online auction services in relation to sale of scrap were eligible input service - However, outdoor catering and air travel agent's services for travel of employees was not input service - Issue of levy of penalty was remanded - *ADC India Communications Ltd.* v. *CCE* (Bang. - CESTAT) **525**

INSURANCE SERVICES

- Period prior to 1-4-2011 - Assessee paid service tax on insurance in respect of vehicles owned and used by it for transportation of goods and employees - Department denied credit contending that it had no relation with manufacture - *HELD* : Definition of 'input service' covers a gamut of activities relating to business undertaken by manufacturer or service provider - Since assessee had used vehicles owned by them either for transportation of their employees or for transportation of goods which is an integral part of business of assessee, hence, service tax paid on insurance premium of such vehicles was an 'input service' - *Manikgarh Cement* v. *CCE&C* (Mum. - CESTAT) **529**

RENT-A-CAB/TRANSPORTATION SERVICES

- Assessee availed credit of transport services used for clearance of goods from its place of removal *viz.* factory to customer's premises - *HELD* : For period prior to 1-4-2008, such ser-

vices were eligible as input services in view of judgment in *CCE* v. *ABB Ltd.* [2011] 32 STT 141/ 12 taxmann.com 57 (Kar.) - On and from 1-4-2008, in view of specific provisions restricting definition of input service to mean clearance of final product 'up to' place of removal, transportation services used after place of removal, *viz.,* factory to customer's premises were not eligible for credit - *Madras Cements Ltd.* v. *CCE* (Bang. - CESTAT) **530**

STORAGE AND WAREHOUSING SERVICES

- Assessee took credit of services used in relation to erection, commissioning and installation of storage tank for storage of inputs *viz.* imported ammonia outside factory - *HELD* : As per rule 3(*1*) of CENVAT Credit Rules, 2004, input services may be received anywhere and credit is available if they are received by manufacturer - Hence, credit could not be denied on ground that services were received outside factory - Further, since storage and use of imported ammonia was an intrinsic part of process of manufacture of final products, services in question were used directly or indirectly in relation to manufacture of final product - Accordingly, assessee was eligible for credit - *Deepak Fertilizers & Petrochemicals Corpn. Ltd.* v. *CCE* (Bom.) **425**

TECHNICAL INSPECTION AND CERTIFICATION SERVICE

- Inspection and checking of instruments which are used for measuring size: gauges and vernier calipers, measuring weight: scales, and measuring temperature: temperature indicators, and instruments like thermo hygrometers for measuring humidity and temperature, etc. is input service - Such instruments are used in or in relation to manufacture of final products - Further, it is a requirement of Drugs and Cosmetics Act and rules framed thereunder that such instruments/equipment be properly calibrated and checked from time to time - Further, such services are listed in rule 6(5) of CENVAT Credit Rules, 2004 - Hence, said services are eligible for input service credit - *CCE* v. *Cadila Healthcare Ltd.* (Guj.) **473**

TECHNICAL TESTING AND ANALYSIS SERVICES

- Period from 1-2-2007 to 30-9-2007 - Technical Testing and Analysis services availed by assessee in respect of clinical samples tested by various agencies prior to commencement of commercial production is 'input service' - Goods removed for testing and analysis are liable to excise duty, hence, tax paid on such testing must be eligible as input service - Further, unless such testing and analysis is carried out, it would not be possible to produce final product as approval/drug license can be obtained only after such testing - Such services have nexus with manufacture and are eligible as input services - *CCE* v. *Cadila Healthcare Ltd.* (Guj.) **473**

Obligation of a manufacturer or producer of final products and a provider of output service

- Since receipt of dividends does not fall within scope of service tax, dividends paid must be excluded from denominator of fraction used to calculate pro rata amount of Cenvat credit reversible under rule 6(3) read with rule 6(*3A*) - ***Cibo Participations SA* v. *Directeur régional des impôts du Nord-Pas-de-Calais*** **(ECJ) 394**

- Period from April 2008 to November 2009 - Assessee was engaged in manufacture of exempted crude oil/natural gas at Mumbai Offshore and also in manufacture of dutiable refined oil, etc. at Uran plant out of use of crude oil/natural gas - Assessee took credit of input services at Mumbai Offshore facility, which was engaged in manufacture of crude oil/natural gas - Department denied credit relying on rule 6(1) - *Held* - Merely because assessee manufactures exempted goods, it cannot be denied benefit of availing of credit on that quantity of input service which is utilised in or in relation to manufacture of dutiable final products - Input services utilized in or in relation to process of manufacture that takes place at Mumbai Offshore was also used in or in relation to manufacture of dutiable final products at Uran Plant because manufacture at Uran Plant was fundamentally premised upon manufacturing process at Mumbai Offshore - Manufacture of dutiable final products at Uran Plant could not take place without process in question - However, Cenvat Credit would not be available on that quantity of input services, which were used in manufacture of exempted crude oil/

natural gas sold to purchasers directly from Mumbai Offshore - *Oil & Natural Gas Corpn. Ltd.* v. *CCE, ST&C* (Bom.) **430**

- Turnover relating to transactions outside scope of service tax (e.g., dividends) must be excluded from calculation of Cenvat Credit reversal under rule 6(3) and 6(3A) of CENVAT Credit Rules, 2004 - ***Empresa de Desenvolvimento Mineiro SGPS SA (EDM)* v. *Fazenda Pública* (ECJ) 444**

- Assessee, a manufacturer of sugar and Denatured Ethyl Alcohol, was also manufacturing Bio-compost fertiliser, which was exempt from duty - Bio-compost fertiliser was manufactured out of waste/by-products 'Press mud' and 'Spent Wash' emerging in course of manufacture of sugar and Denatured Ethyl Alcohol respectively - Department sought reversal under rule 6 at specified percentage of value of Bio-compost fertiliser - *HELD* : Rule 6 applies only if cenvated inputs (*i.e.*, inputs on which credit was taken) are used in or in relation to manufacture of both dutiable and exempted final products - In this case, cenvated inputs were brought into factory for use in manufacture of sugar and Denatured Ethyl Alcohol - Once, such cenvated inputs were used at initial stage and final products as well as wastes such as 'press mud' and 'spent wash' were obtained, there was no further application or usage of those inputs either in or in relation to manufacture of final products once again - Commencement of journey of those cenvated inputs used either in or in relation to manufacture of final products ended with emergence of those final products along with inevitable wastes - Their usage cannot be traced beyond first degree and same inputs cannot be considered to have been utilised or used even indirectly in manufacture of bio-compost fertiliser - Merely because 'press mud' and 'spent wash' contained trace of original inputs, that itself cannot be taken to mean that product emerged out of those wastes was also manufactured by using those cenvated inputs - Hence, no payment under rule 6 was to be made on value of exempted bio-compost fertiliser - *CCE* v. *EID Parry (I) Ltd.* (Mad.) **484**

Refund of

- In view of Notification No. 5/2006-C.E. (N.T.), dated 14-3-2006 issued under rule 5 of CENVAT Credit Rules, 2004, time-limit of section 11B of Central Excise Act, 1944 is applicable for grant of refund of Cenvat Credit under rule 5 *ibid* - Application for refund must be made within one year from 'relevant date' - Though no specific relevant date is prescribed in said Notification, 'relevant date' must be date on which final products are cleared for export - Thus, 'relevant date' should be date on which export of goods was made and refund claim should be filed within one year therefrom - Refund claims filed beyond said period were rejected - *CCE* v. *GTN Engineering (I) Ltd.* (Mad.) **410**

Utilization of

- Assessee utilized credit of basic excise duty for payment of education cess - Department denied such utilization and demanded payment in cash along with interest and penalty - *HELD* : Tribunal had rightly allowed benefit of utilization of basic excise duty for payment of education cess - No substantial question of law arose and, therefore, appeal was liable to be dismissed - *CCE, C&ST* v. *Madura Industries Textiles* (Guj.) **541**

CENVAT CREDIT RULES, 2004

- Rule 2(*l*) **394, 425, 473, 474, 486, 488, 525, 529, 530, 544**
- Rule 3 **458, 525, 541**
- Rule 5 **410**
- Rule 6 **394, 430, 444, 484, 543**

CHARGE OF SERVICE TAX

- Assessee, a manufacturer, cleared coal ash generated during generation of electricity at its unit - Coal was loaded in buyer's truck by assessee - Assessee collected charges for supply for coal ash - Assessee paid service tax on such charges - *HELD* : Loading was done within factory

for clearance of ash - Loading was a self-service and was not liable to service tax - *Sangam India Ltd.* v. *CCE* (New Delhi - CESTAT) **521**

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- Circular No. 59/8/2003, dated 20-6-2003 **493, 545**
- Circular No. 67/16/2003, dated 10-11-2003 **493**
- Circular No. 80/10/2004-ST, dated 17-9-2004 **546**
- CBEC Circular 334/4/2006-TRU, dated 28-2-2006 **546**
- Circular No. 111/5/2009-ST, dated 24-2-2009 **532**
- CBEC Circular 334/1/2010-TRU, dated 26-2-2010 **546**
- Circular No. 137/6/2011-ST, dated 20-4-2011 **531**
- Circular No. 141/10/2011-TRU, dated 13-5-2011 **532**
- Circular No. 967/01/2013-CX, dated 1-1-2013 **497**

Notifications

- Notification No. 6/99-ST, dated 28-2-1999 **533**
- Notification No. 12/2003-S.T., dated 20-6-2003 **493, 545**
- Notification No. 21/2003-ST, dated 20-11-2003 **533**
- Notification No. 5/2006-ST, dated 1-3-2006 **410, 520**
- Notification No. 9/2009-ST, dated 3-3-2009 **513**
- Notification No. 15/2009-ST, dated 25-5-2009 **513**
- Notification No. 24/2009-ST, dated 27-7-2009 **472**

COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE

- Stay Order - Period from September, 2004 to October, 2005 - Assessee was engaged in construction of petroleum outlets - Department demanded service tax on such construction services - Assessee argued before Tribunal that said activity amounted to works contract service liable to service tax only with effect from 1-6-2007 - *HELD* : Claim for treatment of service under works contract has never been made and it was too late for making such claim before Tribunal - Hence, *prima facie*, demand was valid - *Trivedi Associates* v. *CST* (Ahd. - CESTAT) **505**

COMMERCIAL TRAINING OR COACHING SERVICES

- Assessee-institute provided study materials to students undertaking coaching with it - Value of such study materials was not included in value of taxable service claiming exemption under Notification No. 12/2003-ST - Department denied exemption contending that exemption was available only in respect of standard text books, not in respect of study materials provided as a part of service - *HELD* : In view of judgment in *Pinnacle* v. *CCE* [Final Order No. ST/423/2011(PB), dated 30-8-2011], since study materials were purchased by assessee from another person and supplied to students, exemption was admissible under Notification No. 12/2003-ST - *Chate Coaching Classes (P.) Ltd.* v. *CCE* (Mum. - CESTAT) **545**

COMMISSIONER (APPEALS)

Condonation of delay

- Assessee's son, managing partner of their partnership firm, received adjudication order on 7-2-2009 - Assessee's son committed suicide on 23-6-2009 - Assessee claimed that it came to know of adjudication order on 22-9-2009 and filed appeal thereagainst on 5-10-2009 - Com-

missioner (Appeals) dismissed appeal as time-barred and beyond his permissible condonation period - *HELD* : Assessee's son had participated in proceedings as managing partner of firm - There was enough time to prefer appeal - Knowledge of assessee's son, who was a partner, could be attributed to knowledge of assessee himself and, therefore, it could not be said that assessee was not aware of order - Assessee's explanation was unacceptable - Since assessee's appeal was beyond permissible period of condonation, *viz.,* 3 months, appeal was rightly dismissed as time-barred - *Siddramappa S. Yelamali* v. *CCE* (Kar.) **540**

Orders of

- On very same issue and in case of different assessees, Commissioner (Appeals) passed two separate orders, one favouring assessee and another against assessee - *HELD* : Commissioner (Appeals)/Department is not justified in taking different stand for different assessees in respect of same issue - Certainly there must be some consistency - They are entitled to take a different view or stand only when there is change of law or any other binding decision of superior forum warranting such change of view - *CCE* v. *EID Parry (I) Ltd.* (Mad.) **484**
- Commissioner (Appeals) found that certain input services availed by assessee had nexus with output service exported by assessee - Commissioner (Appeals) sent case back to adjudicating authority for quantification of amount of refund in respect of eligible services - Department alleged that Commissioner (Appeals) had no power of remand - *HELD* : Sending case back for quantification of amount was obviously not a remand - *CST* v. *Swiss Re-Shared Services (India) (P.) Ltd.* (Bang. - CESTAT) **520**

Powers of

- In view of amendment carried out in section 35A of Central Excise Act, 1944 *vide* Finance Act, 2001 and in view of judgment in *MIL India Ltd.* v. *CCE* 2007 (210) ELT 188 (SC), in case of service tax also, Commissioner (Appeals) is not empowered to remand matter, he has to decide matter by himself - *CST* v. *Devansh Exports* (Kol. - CESTAT) **528**

CONSTITUTION OF INDIA

Writ petition

ALTERNATIVE REMEDY

- In case of an order passed by an authority who has no jurisdiction to pass such order, High Court can intervene and set things right exercising power conferred under article 226 - However, writ petition alleges that tax liability has been wrongly calculated by including non-taxable sums in value of services and penalty has been wrongly levied, which are matters of merit, such matter can be looked into by appellate authority only - In such cases, writ petition is not maintainable in view of effective alternate remedy available under Act - This was more so, as writ petitioner had himself filed appeal - Present writ petition was dismissed as not maintainable with a direction to appellate authority to dispose of appeal on merits - *Commissioner, Salem Municipal Corpn.* v. *CCE* (Mad.) **491**

MAINTAINABILITY OF

- An assessee who feels aggrieved by an order passed by Central Government under section 35EE may challenge same in writ proceedings - But, Central Excise Department (*viz.* Central Government itself) cannot challenge orders passed by it - *Union of India* v. *Ind Metal Extrusions (P.) Ltd.* (Delhi) **416**
- Department filed revision application before Central Government under section 35EE of Central Excise Act, which was dismissed - Department filed writ petition against such dismissal - *HELD* : Joint Secretary in Ministry of Finance does not pass revision order in his individual capacity or as a functionary under Act; his orders are those of Central Government itself - Order passed by Central Government under section 35EE cannot be challenged or questioned by a functionary of Central Government - One cannot be said to be aggrieved by one's own order - Contention that writ petition was filed against a decision of Joint Secretary acting as revisionary authority was untenable, as order of Joint Secretary was order of Central

Government - There is finality attached to order which cannot be questioned by functionaries under Act since order is passed by Government *i.e.*, Union of India, itself - Hence, writ filed by Department was dismissed as not maintainable - *Union of India* v. *Ind Metal Extrusions (P.) Ltd.* (Delhi) **416**

CONSTITUTION OF INDIA

- Article 226 **416, 491**

EXEMPTIONS FROM SERVICE TAX

Refund of tax paid on Services received by Special Economic Zones/Developers

- Assessee paid service tax on input services wholly consumed in SEZ, though not payable, and claimed refund thereof - Department denied such refund and also denied refund of other input services contending that there was no nexus of such services with authorized operations in SEZ - *HELD* : When approval committee comprising of jurisdictional Commissioner of Central Excise had indicated various services received by assessee and justification for use of such services in relation to authorized operations, adjudicating authority had no power to go into such question and come to its own findings - Further, even though no service tax was payable on services wholly consumed in SEZ, but, if any tax is paid by mistake, such tax can be claimed as refund under section 11B of Central Excise Act, read with section 83 of Finance Act, 1994 - Assessee's refund claim allowed - *Tata Consultancy Services Ltd.* v. *CCE&ST* (Mum. - CESTAT) **513**

Refund of tax paid on services used for export goods

- Assessee claimed refund under Notification No. 41/2007-ST of service tax paid on services such as Terminal Handling Charges, DOC Charges, Bill of lading charges, etc. used for export of goods - Refund claim was rejected on ground that such services were ineligible and further invoices thereof did not bear shipping bill number showing export - *HELD* : Terminal Handling Charges, DOC Charges, Bill of lading charges, etc. were eligible for refund under Notification No. 41/2007-ST - Non-mention of shipping bill number was a curable defect and could be rectified and was, actually, rectified subsequently by assessee and his service providers - Refund was admissible - *Akanksha Overseas* v. *CST* (Ahd. - CESTAT) **523**

EXPORT OF SERVICES RULES, 2005

Export of taxable service

- Stay order - Period from 1-7-2003 to 19-11-2003 and 15-3-2005 to 5-12-2007 - Assessee was engaged in promoting, marketing and distributing, various medical equipment manufactured by US based manufacturer - Payment was received in foreign exchange - Said service was classified as 'Business Auxiliary Service' - *HELD* : For period from 1-7-2003 to 19-11-2003, since payment was received in foreign currency, it was export of service in view of Circular No. 56/5/2003 dated 25-4-2003 - However, for period thereafter, since service was used in India and its effective use and enjoyment was not outside India, *prima facie*, it was not export of service - Pre-deposit of Rs. 25 lakh ordered - *Life Care Medical Systems* v. *CST* (Mum. - CESTAT) **532**

EXPORT OF SERVICES RULES, 2005

- Rule 3 **532**

FINANCE ACT, 1994

- Section 65(*16*) **546**
- Section 65(*19*) **531**
- Section 65(*23*) **502**
- Section 65(*25b*) **505**
- Section 65(*27*) **545**
- Section 65(*64*) **472**

- Section 65(*82*) **492**
- Section 65(*90a*) **492**
- Section 65(*104c*) **546**
- Section 65B(*44*) **361, 379, 394, 444**
- Section 66 **521**
- Section 66D(*n*) **444**
- Section 67 **372, 379, 386, 454, 463, 466, 507**
- Section 73 **422, 507, 511, 532**
- Section 73A **521**
- Section 80 **511**
- Section 82 **542**
- Section 83 **485, 416, 496, 506, 532, 537, 539**
- Section 85 **485, 520, 528, 540**
- Section 86 **487, 516, 536, 538**
- Section 87 **497**
- Section 93 **513, 523**

INTERPRETATION OF STATUTES

- Statute must be read as a Whole **474**

MANAGEMENT, MAINTENANCE OR REPAIR SERVICES

- Period from 2005-06 to 2010-11 - Assessee, Central Railways Department, carried out maintenance and repairs of railway sidings owned by private parties - Department sought levy of service tax thereon under management, maintenance or repairs services - *Held* - In view of Notification No. 24/2009-ST, as amended on 21-12-2010, management, maintenance or repair of railways was exempted - Hence, *prima facie*, from 21-12-2010, assessee's work of management and repair of railway sidings owned by private parties was exempt, because, in view of assessee's claim, it was an incident of maintenance and repair of railway tracks - For period prior thereto, since demand was levied against Union Ministry of Railways, ends of justice would require that extent of deposit should be scaled down - Hence, pre-deposit was waived in part - *Central Railway* v. *CCE&C* (Bom.) **472**

NEGATIVE LIST OF SERVICES

Interest/Discount from extending Deposits, Loans and Advances

- Annual granting of interest-bearing loans by a holding company to its subsidiaries and placements by that holding company in bank deposits or in securities, such as Treasury notes or certificates of deposit, constitutes services - This is so because interest does not arise from simple ownership of asset, but is consideration for making capital available for benefit of a third party - However, such interest is not liable to service tax in view of coverage within negative list - ***Empresa de Desenvolvimento Mineiro SGPS SA (EDM)* v. *Fazenda Pública* (ECJ) 444**

PENALTY

Not to be imposed in certain cases

- Where assessee had failed to pay service tax collected and had also not furnished correct amount of service charges in their returns, levy of penalty was justified - Failure to declare correct amount of service charge was claimed to be due to crash of software was found not convincing - Levy of penalty was justified - *Malayalam Communications Ltd.* v. *CCE&C* (Bang. - CESTAT) **511**

PORT SERVICES

- Services provided by person authorised by port/other port in any manner in relation to vessels are port services - Authorization cannot be confused with delegation - Hence, such authorization need not relate to those activities which port is either obliged or exclusively required to perform under Major Port Trusts Act, 1963 - Term 'in relation to' a vessel expands scope of coverage and cannot be confined to those services which are in relation to movement of vessels - Hence, shipchandlers authorised by port to carry out repair work of vessels are covered under port service and are liable to pay service tax - No opinion was expressed on liability to service tax on shipchandlers not carrying out repair work of vessel, as there was no sufficient material available - *Kandla Shipchandlers & Ship Repairers Association* v. *Union of India* (Guj.) **492**

RECOVERY OF ANY AMOUNT DUE TO CENTRAL GOVERNMENT

- Department sought to initiate recovery proceedings, in pursuance of Circular No. 967/01/2013-CX, dated 1-1-2013, pending stay applications even though such applications, in some cases, were pending because of vacancy in posts of appellate authorities - *HELD* : Said Circular had not legal sanction/backing -Even section 37B of Central Excise Act, 1944 does not permit issuance of impugned circular for purpose conveyed by it - Valuable right of appeal granted by statute was sought to be trivialized or annihilated by any administrative means, which was impermissible, as such right can be circumscribed only by and upto extent ordained by statute itself - Since posts of appellate authorities were lying vacant in some cases, it would be grossly unfair, unjust and unreasonable to allow recovery pending disposal of stay applications and would amount to allowing department to take advantage of their own lapses and failings - Hence, Circular No. 967/01/2013-CX, dated 1-1-2013 was void upto extent it provided for recovery of dues during pendency of stay applications even though such pendency was not attributable in any manner whatsoever to assessees - It was directed that : (1) no coercive steps would be taken during such pendency, (2) all such appeal/stay applications must be heard within 3 weeks from date of present judgment, and (3) assessees would co-operate in such hearing - *Mangalam Cement Ltd.* v. *Superintendent, Central Excise* (Raj.) **497**

RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT-LEVIED OR SHORT-PAID OR ERRONEOUSLY REFUNDED

Adjudication of demand

- In case of difference between amounts shown in service tax returns and balance sheet, a demand based on verification of assessee's records is valid in law - *Malayalam Communications Ltd.* v. *CCE&C* (Bang. - CESTAT) **511**

Invocation of extended period of limitation

- Assessee did not pay excise duty in view of divergent views of Tribunal some of which held that assessee's process didn't amount to manufacture - Later, a larger bench held in favour of Revenue - Revenue sought to invoke extended period of limitation - *HELD* : It was not possible to ascribe any wilful suppression or mis-statement on the part of assessee for not paying duty because, during period in question, various Tribunal judgments were in favour of assessee - In order to show suppression or mis-statement on part of assessee, a positive act has to be established - When there is *bona fide* doubt as to non-excisability of goods due to divergent views, extended period of 5 years cannot be invoked - Mere failure or negligence in not paying duty is not sufficient for invoking extended period - Assessee's conduct was bona fide, since activity undertaken by it was not treated as manufacture, it would not have been expected to pay excise duty - Hence, invocation of extended period of limitation was set aside - *CCE,C&ST* v. *Kay Kay Press Metal Corpn.* (Guj.) **422**

- Stay order - Department issued show-cause notice invoking extended period of limitation for non-payment of service tax on renting of immovable property - *HELD* : *Prima facie*, show-cause notice had not disclosed reasons for invocation of extended period - Moreover, there

was no clarity as to levy of service tax on rent *per se* during material period in view of judgment in *Home Solution Retail (India) Ltd.* v. *Union of India* [2009] 20 STT 129 (Delhi) due to which law had to be amended retrospectively - Since there was no allegation as to intent to evade payment of service tax, contravention in payment of service tax didn't attract extended period - Since limitation is a question of jurisdiction, writ petition was maintainable - Hence, *prima facie*, notice was barred by limitation - Proceedings were stayed - *Infinity Infotech Parks Ltd.* v. *Union of India* (Delhi) **507**

- Though extended period of limitation is not invocable in case of *bona fide* belief, but, *bona fide* belief is not blind belief and a belief can be said to be *bona fide* only when it is formed after all reasonable considerations are taken into account - When agreement contained clause fixing responsibility of indirect taxes on assessee, assessee should have taken appropriate steps to ascertain their liability - An assessee registered with Department cannot plead that he was ignorant of provisions of law relating to service tax - In view of suppression by assessee, extended period was found invocable - *Life Care Medical Systems* v. *CST* (Mum. - CESTAT) **532**

RENTING OF IMMOVABLE PROPERTY SERVICE

- Assessee, a statutory body, owned and rented immovable properties, vacant land, markets, chandais, etc. - When department demanded service tax, assessee collected service tax from lessees/licensees and paid it to Department - Department invoked extended period of limitation and imposed penalties - Assessee argued that no penalties were leviable and further tax demand was not properly determined, as it included rent from other sources and also property tax - Assessee filed writ petition against adjudication order passed by Commissioner - *HELD* : Assessee had effective alternative remedy by way of appeal before appellate authorities/Tribunal - Hence, writ petition was dismissed as not maintainable - *Commissioner, Salem Municipal Corpn.* v. *CCE* (Mad.) **491**

SEARCH AND SEIZURE

- On basis of search conducted at premises of other assessees, Revenue found non-duty paid goods and decided to carry out search at assessee's premises to resume incriminating records - Assessee argued that there was no 'reason to believe' as required prior to authorizing search and therefore, search was illegal - *HELD* : There was sufficient reason to believe about existence of 'reason to believe' necessary for issuance of authorization for search - In writ jurisdiction, court cannot act as an appellate or revisional court; court can only examine whether act or issuance of an authorisation was arbitrary or *mala fide* or whether subjective satisfaction which is recorded is such that it indicates lack of application of mind of appropriate authority - In this case, it could not be said that authority issuing warrant of authorisation, was not having enough material to form opinion about 'reason to believe' or that said authorisation was issued without application of mind - Hence, no case was made out to interfere in matter at this stage of seizure - *Elora Tobacco Co. Ltd.* v. *Deputy Director, DGCEI* (MP) **542**

SERVICE

Activity carried out for a consideration

- Assessee, a hotel, booked accommodation where clients had made certain deposits in advance - In event of cancellation by client, assessee retained such deposits - Department sought levy of service tax on such retentions - Assessee argued that in event of cancellation by itself, it was liable to pay compensation equal to double of deposit amount, hence, it was not consideration - *HELD* : Conclusion of a contract between parties did not usually depend on deposit; deposit was merely optional, as client could seek reservation of accommodation, without a deposit being required - Payment of a deposit by client and assessee's obligation not to contract with anyone else arose directly from contract for accommodation, not from payment of deposit - Fact that, if client takes up occupancy, deposit is applied towards price of reserved room, confirms that deposit cannot constitute consideration for supply of an independent and identifiable service - Deposits in hotel sector are meant to mark conclusion of contract, to encourage its performance and to provide fixed compensation in event of cancellation - Such

compensation does not constitute fee for a service even if it was not equal to actual amount of loss suffered - Further, fact that, in case of non-performance of contract by hotelier/assessee, sum returned is double of deposit supports classification of deposit as fixed compensation for cancellation and not as remuneration for supply of a service - Thus, neither payment of deposit, nor retention of that deposit, nor return of double its amount is liable to service tax - ***Société thermale d'Eugénie-les-Bains* v. *Ministère de l'Économie, des Finances et de l'Industrie*** **(ECJ) 361**

- Service tax is leviable only if : (1) there is a direct link between service rendered and consideration received; (2) sums paid constitute genuine consideration for an identifiable service; (3) such service is supplied in context of a legal relationship; and (4) in such relationship, performance is reciprocal - ***Société thermale d'Eugénie-les-Bains* v. *Ministère de l'Économie, des Finances et de l'Industrie*** **(ECJ) 361**

- Consideration is a subjective value, since taxable amount is consideration actually received and not a value estimated according to objective criteria - Where that value is not a sum of money agreed between parties, it must, in order to be subjective, be value which recipient of services attributes to services which he is seeking to obtain and must correspond to amount which he is prepared to spend for that purpose - ***Empire Stores Ltd.* v. *CCE*** **(ECJ) 379**

- Dividend arising on shares does not amount to consideration for any service for following reasons : (1) existence of distributable profits is a prerequisite for paying dividend, which, in turn, is dependent on company's year-end results; (2) proportions in which dividend is distributed are determined by reference to type/class of shares held and not by reference to identity of owner of a particular shareholding; and (3) dividends represent return on investment in a company and are merely result of ownership of that property - Since dividend depends partly on unknown factors and its entitlement is merely a function of shareholding, there is no direct link between dividend and a supply of services, even if services are supplied by a shareholder who is paid dividends - Hence, dividend is outside scope of service tax - ***Cibo Participations SA* v. *Directeur régional des impôts du Nord-Pas-de-Calais*** **(ECJ) 394**

- Involvement of a holding company in management of subsidiaries constitutes a service only if it entails carrying out transactions which are subject to service tax, such as supply of administrative, financial, commercial and technical services - Mere acquisition and holding of shares in subsidiary company is not to be regarded as a service - ***Cibo Participations SA* v. *Directeur régional des impôts du Nord-Pas-de-Calais*** **(ECJ) 394**

- Assessee participated in consortia engaged in discovery and evaluation of mineral deposits - Assessee activities consisted in technical activity and co-ordination of operations as manager of consortium, as well as participation in advisory councils and technical committees established for that purpose - Department sought levy of service tax on activities done by assessee - *HELD* : Assessee's activities, carried out as a member of consortium, in accordance with provisions of a consortium contract and corresponding to share assigned to assessee in that contract, do not constitute supplies of services 'effected for consideration' irrespective of fact that assessee was manager of such consortium - However, where assessee had performed more operations than share thereof fixed by said contract, thereby involving payment by other members against operations exceeding that share, those operations constitute a supply of services 'effected for consideration' and liable to service tax - ***Empresa de Desenvolvimento Mineiro SGPS SA (EDM)* v. *Fazenda Pública*** **(ECJ) 444**

- Placements in investment funds do not constitute supplies of services 'effected for consideration' and are outside scope of service tax - Dividend yielded by those holdings is merely result of ownership of property and is not consideration for any service - ***Empresa de Desenvolvimento Mineiro SGPS SA (EDM)* v. *Fazenda Pública*** **(ECJ) 444**

Exclusion of Sale and Deemed Sale of Goods

- Mere acquisition and holding of shares in a company does not amount to service - Activities which consist in simple sale of shares and other securities, such as holdings in investment

funds, do not amount to service - ***Empresa de Desenvolvimento Mineiro SGPS SA (EDM)* v. *Fazenda Pública*** **(ECJ) 444**

SERVICE TAX COLLECTED FROM ANY PERSON TO BE DEPOSITED WITH CENTRAL GOVERNMENT

- Assessee collected service tax from buyers though it was not chargeable - Assessee paid such tax utilizing CENVAT Credit - Department contended such tax was payable under section 73A and CENVAT credit could not be utilized for payment thereof - *HELD* : As assessee had already paid service tax from their CENVAT credit, they cannot be made to deposit same again with revenue - Deposit of such tax collected from buyers would amount to double payment - *Sangam India Ltd.* v. *CCE* (New Delhi - CESTAT) **521**

SERVICE TAX RULES, 1994

Payment of Service Tax

Adjustment/credit for services not provided

- Assessee, a State Government undertaking, calculated actual amount of service tax up to 30th March; however, for 31st March it calculated average amount of tax and paid such tax on 31st March so as not to be in default - This resulted in excess payment for 31st March, 2005 and 31st March, 2006, which was adjusted in April, 2005 and April, 2007 respectively - Department allowed such adjustment under rule 6(3), but objected to second adjustment made in April, 2007 contending that such adjustment was not made in subsequent month *viz.,* April, 2006 as required in rule 6(4A) - *HELD* : Since adjudication order dated 15-8-2007 allowed first adjustment and such order was not appealed against, matter had attained finality - Even otherwise, rule 6(4A) was not applicable as it came into force with effect from 1-3-2007 Right of second adjustment had already accrued under rule 6(3) on excess payment in March, 2006 - Condition of rule 6(3) as to refund of value of service was inapplicable to assessee, as such condition applied to service provider and not assessee liable to pay tax as recipient - Hence, second adjustment was permissible under rule 6(3) - *Tamilnadu Newsprint and Papers Ltd.* v. *CCE* (Chennai - CESTAT) **517**

General

- Assessee, a manufacturer as well as service provider, paid CENVAT Credit reversal on input service, but, wrongly quoted service tax registration number in challan instead of central excise registration - *HELD* : By quoting service tax registration number in payment challan, assessee had not committed a irreparable mistake - Further, department had received amount due from assessee - Quoting of wrong registration number in concerned challan was only a technical error which could be rectified at department's end itself - Demand was liable to be set aside - *Tej Control Systems (P.) Ltd.* v. *CCE* (Mum. - CESTAT) **543**

SERVICE TAX RULES, 1994

- Rule 6 **517**

VALUATION OF TAXABLE SERVICES

General

- Assessee, a wholesaler, had appointed retailers and such retailers approached hostesses for organizing private parties at which assessee's products were offered for sale - For organizing such parties, retailers used to give free gift to such hostesses and such free gift was provided by assessee to retailers at UKL 1.5 as against normal wholesale price of UKL 10.14 - *HELD* : Retailers provided services to assessee by way of procuring hostesses to arrange sales parties by offering them assessee's product as gift - Wholesale price of gifted product was reduced by assessee by a specific amount in exchange for supply of such services by retailers - Hence, value of service must be regarded as being equal to difference between price actually paid for that product and its normal wholesale price - Taxable value of product supplied by assessee to retailers was sum of monetary consideration received and value of service provided by retailer - ***Naturally Yours Cosmetics Ltd.* v. *CCE*** **(ECJ) 372**

- Under 'introduce-a-friend' scheme, assessee was supplying goods free to its established customers who recommended one of their friends as a potential customer - Assessee paid VAT on cost price of such goods, while Department sought levy of service tax on market value of such goods - *HELD* : Consideration for a supply of goods may consist in a provision of services, if there is a direct link between supply of goods and provision of services and if value of those services can be expressed in monetary terms - In this case, link between supply of free article and introduction of a potential customer was direct, since if service is not provided no article is due from or supplied free by assessee - In case of consideration paid in kind, value can only be price which recipient has paid for article which he is supplying in consideration of services in question - Hence, taxable value was price paid by assessee for article supplied by it - ***Empire Stores Ltd.* v. *CCE* (ECJ) 379**
- Assessee provided services at below their market value against a price reduction coupon issued by a third party under promotional offer - Such price reduction coupon enable assessee to claim price reimbursement from such third party - Department sought inclusion of such reimbursement in taxable value - *HELD* : Consideration may, in whole or in part, flow from a third party not connected with final consumer of services in a transaction not connected with service provider - Taxable amount cannot be less than sum of money which service provider actually receives for supply by him - Hence, where a third party organises a promotional operation by means of reduction coupons, consideration received by service provider comprises of whole of price of services, which is paid in part by final consumer and in part by third party - ***Yorkshire Co-operatives Ltd.* v. *CC&E* (ECJ) 386**
- Where a service provider issues money-off/cash-back coupons to potential customers, provides services at full value and allows reimbursements/cash-back to such customers based on such coupons, taxable amount for supply of services shall be value actually received by service provider *viz.* full value less reimbursement/cash-back allowed on such coupons - ***Elida Gibbs Ltd.* v. *CCE* (ECJ) 454**
- Each time assessee provided services, a discount coupon was provided to customer, which entitled him to discount in case of subsequent availment of services - On such subsequent availment of services, assessee paid service tax on discounted consideration - Department sought levy of service tax on full value of services without allowing deduction on account of coupon - *HELD* : Discounts and rebates are not to be included in taxable amount, as they constitute a reduction of price at which services are offered to customer - Coupon represented promised reduction precisely to induce customer to avail services next time - Hence, on availment of services next time, taxable amount could only be sum actually received from customers - ***Boots Company Plc* v. *CC&E* (ECJ) 463**
- Assessee used to provide services to final consumers through its agents, who were entitled to 10 per cent commission - In case of services procured by agent for their personal use, services were provided at full value under payment in instalments, but, 10 per cent of price was credited to agent's account, which could be withdrawn only after payment of all instalments by agent - Such discount was, at times, not withdrawn by agents and was written off by assessee - In computing taxable value, assessee claimed deduction of discount allowed to agents, which was denied by Department - *HELD* : Definitive taxable amount for supply of services is consideration actually received for them - Hence, discount allowed by assessee was to be allowed as deduction - However, such discount is allowed as deduction only when it is actually paid to agents and it is withdrawn/used by them and not at time of crediting it to agent's account - ***Freemans Plc.* v. *CC&E* (ECJ) 466**
- Stay order - Period from October 2005 to March, 2008 - For period on or after 19-4-2006, when Service Tax (Determination of Value) Rules, 2006 were introduced, free materials supplied by service recipient are, *prima facie*, includible in value of taxable services in view of such valuation rules - For period prior to that date, there was no provision for inclusion of materials supplied free by service recipient - Pre-deposit was ordered in part - *P.C. Snehal Construction Co.* v. *CST* (Ahd. - CESTAT) **507**

WORDS AND PHRASES

- 'Directly or Indirectly', 'In relation to' as appearing in rule 2(l) of CENVAT Credit Rules, 2004 **431**
- 'Sales Promotion', 'Commission Agent', 'Such As' as appearing in rule 2(*l*) of Cenvat Credit Rules, 2004 **474**
- Shipchandlers, Authorization, Delegation, "In relation to" and "In any manner" as appearing in section 65(*82*) of Finance Act, 1994 **493**

STATUTES

❑ **CIRCULAR**

- Section 66E(*f*) of the Finance Act, 1994 - Declared services - Hiring of goods services - Hiring/erection of pandal or shamiana for events doesn't amount to transfer of right to use goods and is liable to service tax - CIRCULAR NO.168/3/2013-ST [F.NO. 356/2/2013-TRU], DATED 15-4-2013 *11*

❑ **NOTIFICATIONS**

- Section 70 of the Finance Act, 1994, read with rule 7 of the Service tax Rules, 1994 - Furnishing of returns - Due date for submission of Form ST-3 for period from 1-10-2012 to 31-3-2013 extended from 25-4-2013 to 31-8-2013 - ORDER NO. 3/2013-ST [F.NO.137/99/2011-ST], DATED 23-4-2013 *20*
- Section 93 of the Finance Act, 1994 - Exemptions - Exemption to services provided to exporters against debit to focus market scheme duty credit scrip (FMS scrip) - NOTIFICATION NO. 6/2013-ST, DATED 18-4-2013 *12*
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