HIGH COURT RULING (SERVICE TAX)

2013-TIOL-533-HC-KERALA-ST

Kerala Classified Hotels And Resorts Association Vs UoI (Dated: July 3, 2013)

Service Tax on Restaurants and hotels beyond the legislative competence of the Parliament - Refund can be claimed if tax paid: The very purpose of incorporating the definition of tax on sale or purchase of goods in Article 366 was to empower the State Governments to impose tax on the supply, whether it is by way of or as a part of any service of goods either being food or any other article for human consumption or any drink either intoxicating or not intoxicating whether such supply or service is for cash, deferred payment or other valuable consideration. It can be seen from Article 366(29-A) (f) that service is also included in the sale of goods. If the constitution permits sale of goods during service as taxable necessarily Entry 54 has to be read giving the meaning of sale of goods as stated in the Constitution. If read in that fashion, necessarily service forms part of sale of goods and State Government alone will have the legislative competence to enact the law imposing a tax on the service element forming part of sale of goods as well, which they have apparently imposed.

Held : i) It is declared that sub Clauses (zzzzv) and (zzzzw) to Clause 105 of Section 65 of the Finance Act 1994 as amended by the Finance Act 2011 is beyond the legislative competence of the Parliament as the sub Clauses are covered by Entry 54 and Entry 62 respectively of List II of the Seventh Schedule.

ii) That if any payments have been made by the petitioners on the basis of the impugned clauses, they are entitled to seek refund of the same.

Also see analysis of the Order

2013-TIOL-528-HC-AHM-ST

Sports Club Of Gujarat Ltd Vs UoI (Dated : March 25, 2013)

Service Tax - Service by club to its members held ultra vires: it is declared that Section 65(25a), Section 65(105) (zzze) and Section 66 of the Finance (No.2) Act, 1994 as incorporated / amended by the Finance Act, 2005 to the extent that the said provisions purport to levy service tax in respect of services purportedly provided by the petitioner club to its members, to be ultra vires.

Also see analysis of the Order

2013-TIOL-521-HC-MAD-ST

AGS Entertainment Pvt Ltd Vs UoI (Dated : June 26, 2013)

Service Tax - Temporary transfer of copyright - Section 65(105)(zzzzt) - taxability on film distribution : Issues before the High Court were:

1. Whether the taxable event provided under Section 65(105)(zzzzt) of the Finance Act, 1994 is covered by Article 366 (29A)(d), which is a "deemed sale of goods"?

2. Whether the Petitioners are right in contending that the levy of service tax on "temporary transfer or permitting the use or enjoyment of copyright" provided under Section 65(105)(zzzzt) of the Finance Act, 1994 is covered under Entry 54 of List II and whether it amounts to transgression by Parliament into the exclusive domain of the State Legislature?

3. Whether the Petitioners are right in contending that the copyright is goods and transfer of copyright of Cinematograph films is only delivery of goods for consideration and is absolute transfer and no service element is involved?

4. Even assuming that there is an element of service involved in the nature of transaction done by the Petitioners, should the dominant intention of the transaction being transfer of goods has to be only taken into consideration?

5. Whether the Petitioners are right in contending that Parliament has no authority to dissect a composite transaction as in the case of the Petitioners and levy service tax?

6. Whether Section 65(105)(zzzzt) levying service tax on the temporary transfer or permitting the use or enjoyment of copyright is ultra vires the Constitution?

And the verdict is against the petitioners

Also see analysis of the Order

2013-TIOL-516-HC-MAD-ST

Mediaone Global Entertainment Ltd Vs Chief Commissioner Of Central Excise (Dated : June 26, 2013)

Service Tax - 'levy of service tax on distributors/sub - distributors of films and exhibitors of movie - Board Circular 148/2011 upheld: With more multiplexes and single theaters on rise right from cities to moffusil, there is a huge rise in business over all. The source of concept of service tax lies in economics. Huge money is involved in film industry, coupled with host of commercial activities right from the Box Office to theatrical exhibition. Having regard to the variant modes of arrangements between the distributors/sub-distributors of films and exhibitors of movie, CBEC was justified in issuing the Circular clarifying the transactions between the distributor/sub-distributor and owners of the theatres and levy of service tax and that the nature of transaction determines the leviability of service tax and decision to be taken on case to case basis. The impugned Circular No.148/17/2011-ST dated 13.12.2011 cannot be said to be beyond the powers of Central Board of Excise and Customs. The Circular does not restrict the powers of the officials to decide a particular dispute in a particular manner and the impugned circular is not violative of Section 37B.

Also see analysis of the Order

2013-TIOL-512-HC-KERALA-ST

Malabar Gold Private Limited Vs Commercial Tax Officer (Dated : June 24, 2013)

VAT vs Service Tax: The Company is engaged in marketing, trading, export and import of jewellery, gold ornaments, diamond ornaments, platinum ornaments, watches, etc. under the name of 'Malabar Gold'. Single Judge held that Trade Mark is goods - Royalty received from franchisees for use of its trademark and for sharing business know-how is leviable to VAT even if Service Tax is paid.

The term 'franchise' is included in Section 65(105)(zze) of the Finance Act. The same is a taxable service and the taxable event is the service rendered by the Company. Thus, any service provided or to be provided to a franchisee will come within the purview of the said provision. Going by the definition of franchise, it is an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved.

Single Judge Decision is over ruled - Franchise services are liable to service tax and demand of VAT on the same transaction by state government as “right to use Trade Mark” rejected.

Also see analysis of the Order

2013-TIOL-441-HC-DEL-ST

CCE & ST Vs Simplex Infrastructure & Foundry Works (Dated: April 23, 2013)

Service Tax – Consulting Engineer – Definition of Consulting Engineer at the material time included only “firm” - “Any body corporate” was introduced only with effect from 01.05.2006 – No error in the order of the Tribunal setting aside the demand against the respondent, which is a private limited company – Section 65(31) of the Finance Act, 1994 – Revenue's contention to refer to General Clauses Act, 1897 has no merit.

2013-TIOL-430-HC-DEL-ST

Indian Institute Of Aircraft Engineering Vs UoI (Dated : May 21, 2013)

Service Tax - Flying Training Institutes providing training for obtaining Commercial Pilot Licence (CPL) and on Aircraft Engineering Institutes for obtaining Basic Aircraft Maintenance Engineer Licence - Not liable to pay Service Tax - Board Instruction quashed: In Instruction No. 137/132/2010-ST dated 11.05.2011, CBEC clarified that Flying Training Institutes providing training for obtaining Commercial Pilot Licence (CPL) and on Aircraft Engineering Institutes for obtaining Basic Aircraft Maintenance Engineer Licence (BAMEL) would clearly come in the category of coaching centres as laid out in the Section 65(27) of the Finance Act ibid (either prior to or after Budget 2011) and therefore would be taxable. Section 65(27) as it stood till 30th April, 2011 excluded from the domain of commercial training or coaching centres, 'training centres or establishments issuing any certificate or diploma or degree or any educational qualification recognized by law'. Even after 30th April, 2011, though the part of Section 65(27) making such exclusion has been deleted but the Notification dated 25th April, 2011 supra issued in exercise of powers under Section 93 of the Finance Act has exempted 'coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognized by any law from the whole of Service Tax leviable under Section 66 of the Finance Act'.

What is ‘recognized by law'?: The expression 'recognized by law' is a very wide one. The legislature has not used the expression "conferred by law" or "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt. The High Court was of the view that the Act, the Rules and the CAR, having provided for grant of approval to such institutes and having laid down conditions for grant of such approval and having further provided for relaxation of one year in the minimum practical training required for taking the DGCA examination, have recognized the Course

Completion Certificate and the qualification offered by such Institutes. The certificate / training / qualification offered by Institutes which are without approval of DGCA would not confer the benefit of such relaxation. Thus, the certificate / training / qualification offered by approved Institutes, has by the Act, Rules and the CAR been conferred some value in the eyes of law, even if it be only for the purpose of eligibility for obtaining ultimate licence / approval for certifying repair / maintenance / airworthiness of aircrafts. The Act, Rules and CAR distinguish an approved Institute from an unapproved one and a successful candidate from an approved institute would be entitled to enforce the right, conferred on him by the Act, Rules and CAR, to one year relaxation against the DGCA in a Court of law. The inference can only be one, that the Course Completion Certificate/training offered by such Institutes is recognized by law .
Also see analysis of the Order
2013-TIOL-426-HC-DEL-ST
Bharti Airtel Ltd Vs UoI (Dated : May 9, 2013)
Service Tax - Pre-deposit: Free Telephone Service to employees and associates - Tribunal ordered pre-deposit of Rs . 80 Crores. Taxability doubtful for the period prior to 23.08.2007. Pre-deposit reduced to Rs. 25 Crores.
2013-TIOL-403-HC-DEL-ST
CST Vs Ratan Singh Builders Pvt Ltd (Dated : May 7, 2013)
Service Tax – Rate of tax applicable is the one prevailing at the time of providing the service, not the receipt of payment:, following the decision in the case of Vistar Construction (2013-TIOL-73-HC-DEL-ST) the present appeal does not raise any substantial questions of law and is therefore dismissed.
Also see analysis of the Order

2013-TIOL-399-HC-KAR-ST
GSP Infratech Development Ltd Vs UoI (Dated: April 3, 2013)
Service Tax - Recovery proceedings under Section 87(b)(iii) by directing the banks not to allow withdrawal / transfer - Section 87 applies only after a proceeding under Section 73 is concluded by an order determining the amount due and payable by the petitioner - Such a situation having not arisen as there is no conclusion of the proceeding, Section 87 is inapplicable - Impugned communications to the banks are quashed.
2013-TIOL-363-HC-MAD-ST
M/s Leaap International Pvt Ltd Vs CST (Dated : April 30, 2013)

Service Tax - Appeal against the order of pre-deposit by the Tribunal - Demand of service tax on profit made on ocean freight under " Business Auxiliary Service" - There are two important expressions in Section 35F of Central Excise Act - One is 'Undue hardship' - "Undue hardship" is a matter within the special knowledge of the applicant for waiver and has to be established by him - Mere assertion about 'undue hardship' would not be sufficient - For a hardship to be 'undue' it must be shown that the particular burden to have to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the benefit which the applicant would derive from compliance with it - The other aspect relates to imposition of conditions to safeguard the interest of the Revenue. It is for the Tribunal to impose such conditions as are deemed proper to safeguard the interest of the Revenue - No error in the order of Tribunal in ordering pre-deposit - However, considering facts and circumstances, amount of pre-deposit is reduced to Rs 20 lakhs .

2013-TIOL-362-HC-DEL-ST

M/s Air India Ltd Vs Commissioner Adjudication, Service Tax (Dated : May 3, 2013)

Service Tax – Waiver of Pre-deposit : in view of the fact that the financial hardship of the appellant has already been recognised by the Tribunal in other orders dated 29.11.2011 and 12.10.2012, the entire amount of tax, penalty and interest demanded ought to have been waived as a condition for hearing the appeal. Consequently, the order of the Tribunal is modified by directing that there shall be full waiver of the requirement to pre-deposit the tax, penalty and interest . The appeal of the appellant before the Tribunal shall be heard without insisting on any pre-deposit. It is obvious that the respondent shall also not press for recovery of the tax, penalty and interest amount till the disposal of the appeal by the Tribunal.

2013-TIOL-343-HC-MAD-ST

M/s Aluminium & Glazing Vs CCE (Dated: April 16, 2013)

Service Tax - Ex parte and non-speaking Pre-Deposit cum Appeal Order set aside - Pre - Deposit order passed without giving opportunity of hearing and that too without giving sufficient reasons for pre-deposit of 50% for hearing the appeal – Order of Single Judge set aside and Commissioner (Appeals) directed to hear the appellant and pass fresh orders.

Also see analysis of the Order

2013-TIOL-340-HC-KAR-ST

Mr Siddramappa S Yelamali Vs CCE (Dated: January 31, 2013)

ST - s. 85 of FA, 1994 - Appellant's son participated in the adjudication proceedings as the Managing Partner of the firm - son receiving o-in-o passed by Jt. Commissioner on 07/02/2009 - son committing suicide on 23/06/2009 - appeal filed by appellant who is the father of the deceased son & a partner in the firm on 05/10/2009 which was dismissed as time barred by Commissioner(A) and order was upheld by CESTAT - knowledge of passing of o-in-o can be attributed to the appellant also who is a partner - therefore, it cannot be said the appellant was not aware of the order - explanation offered is unacceptable - appeal rightly held as time barred - Appeal dismissed: High Court [paras 11 & 12]

Also see analysis of the Order
2013-TIOL-331-HC-DEL-ST
Delhi Chit Fund Association Vs UoI (Dated : April 23, 2013)
No service tax is chargeable on the services rendered by the foreman in a business chit fund – Entry against Sr. no. 8 in Notification 26/2012-ST quashed: High Court
Also see analysis of the Order
2013-TIOL-330-HC-MUM-ST
Welspun Syntex Ltd Vs CCE (Dated : April 4, 2013)
ST – appellant allowing another company to use its plant, machinery and equipment by a conducting agreement for the period September, 2004 to July, 2005 – whether services are liable to tax under 'support services of business or commerce' - for the subsequent period after the insertion of clause 90(a) viz. 'renting of immovable property' w.e.f 01.06.2007, the petitioner has been paying service tax – issue involves a serious triable question – petitioner entitled to a complete waiver of pre-deposit: High Court [paras 7 & 8]
Also see analysis of the Order

2013-TIOL-297-HC-JHARKHAND-ST
M/s Damodar Valley Corporation Vs CCE & ST (Dated: March 21, 2013)
Service Tax - Petitioner blamed for "killing the small businessman and their business" and held liable for payment of ST without notice - Whether the order in question has been passed in bonafide exercise of power under the statutory provision or it is something else – notice issued to Additional Commissioner, CE, Ranchi for answer as he has the right to be heard before any observation is made.
Also see analysis of the Order
2013-TIOL-283-HC-MAD-ST
Commissioner Salem Municipal Corporation Vs CCE (Dated: March 5, 2013)
Service Tax – Demand against Salem Municipal Corporation – Wrong calculation based on the amount shown in the trial balance sheet and including the property tax and income from other sources, which are excluded from the purview of service tax - these are merits of matter, which can be looked into by the Appellate Authority and hence this writ petition is not maintainable – High Court

2013-TIOL-277-HC-MAD-ST
M/s Prasad Corporation Ltd Vs CCE (Dated: March 6, 2013)
Service Tax – Writ against pre-deposit: The cardinal principle of consideration of the waiver of pre-deposit is based on undue hardship, prima-facie case, balance of convenience, financial burden and other difficulties, expressed by the party before taking the matter on appeal and these factors have to be weighed in relevant circumstances, taking into account all the material facts, which alone can come to the wisdom of the authority to give certain waiver of pre-deposit to the party who is on appeal. With regard to the undue hardship and other difficulties expressed by the petitioner, much less what is now claimed, the respondent himself has come to a conclusion while ordering the pre-deposit amount with a lenient approach. Therefore, there is no merit in this writ petition. However two weeks time granted to make pre-deposit – High Court
2013-TIOL-223-HC-DEL-ST
Sercon India Pvt Ltd Vs CST (Dated: March 18, 2013)
Service Tax - Valuation - Inclusion of reimbursable expenditure - Prima facie, as per the decision in case of Intercontinental Consultants & Technocrats Pvt. Ltd, the amount which has been actually received by the petitioner from its clients towards reimbursement of expenses, could not be the subject matter of service tax - Further, the figures taken by the revenue include the direct expenditure which is not reimbursed by the clients - Keeping in view the payment of Rs 40 lakhs already deposited, balance amount of Rs 60 lakhs deposit ordered by the CESTAT is waived.
2013-TIOL-210-HC-KERALA-ST
T L George Vs CCE (Dated: February 22, 2013)
Service Tax - Writ Petition against the rejection of appeal filed beyond three months by the Commissioner (Appeals) - The Statutory provisions of the Finance Act, 1994 were with effect from 28.05.2012 amended by the Finance Act, 2012 to reduce the time limit to two months and period of condonation by one month - The impugned order was passed on 18.09.2012, which is after insertion new provisions - No reason to interfere with the decision of Commissioner (Appeals) in not accepting the appeal - Petitioner lost the opportunity to file appeal on his own latches - Petition has no merit.
2013-TIOL-202-HC-MUM-ST
M/s Oil & Natural Gas Corporation Ltd Vs CCE (Dated: March 1, 2013)
Tribunal was in error in coming to the conclusion that the Appellant was dis-entitled to the benefit of CENVAT credit in respect of the input services used in or in relation to the manufacture of dutiable final products on the ground, as the Tribunal held, that crude oil which is subject to a further process of manufacture at the Uran plant for the production of dutiable final products is exempted from central excise duty - Since ONGC, Uran admittedly also produces dutiable final products, they would be entitled to take CENVAT credit ONLY on that quantity of input service which is used in the manufacture of the ultimate dutiable product – Tribunal has also not answered the question whether the Appellants were entitled to CENVAT credit of service tax paid on

the input services received by the Appellants prior to the registration as Input Service Distributor but distributed post the registration – Appeal restored to the file of the Tribunal to decide this question: High Court [paras 17 & 18]
Also see analysis of the Order

2013-TIOL-189-HC-MAD-ST
M/s Gopinath And Sharma Vs CE & ST (Dated: February 28, 2013)
Service Tax- Appeal filed by Chartered Accountant before Commissioner (Appeals) after two years - Case of assessee is that by mistake the appeal was filed before the wrong Forum and without calling for details from the assessee or affording opportunity of hearing, the Lower Appellate Authority in Appeal No.24 /2012 (MST) dated 16.02.2012 dismissed the appeal that the appeal was filed beyond the period of six months including the condonable period of three months. It is well settled law that once the period of limitation has run itself out, the Appellate Authority does not have power to condone the delay in filing the appeal beyond the maximum period prescribed under the Act.
2013-TIOL-168-HC-MAD-ST
Aluminium & Glazing Vs CCE (Dated : February 12, 2013)
ST - Once appeal is filed by the aggrieved person against the original order, it is mandatory requirement under Section 35-F of the Act to pay the entire amount ordered by the original authority, as a condition precedent for taking up the appeal - Petitioner not having sent their official for hearing, the Commissioner(A) considered the prima-facie case, balance of convenience, undue hardship and financial burden, which were focussed by the petitioner, and reduced the amount of pre-deposit to Rs.19,50,000/-, which is approximately 50% of the total amount due - such a lenient approach cannot be called in question - Writ Petition dismissed: High Court [paras 13 & 15]
2013-TIOL-167-HC-AHM-ST
Aarvee Denims & Exports Ltd Vs UoI (Dated : January 9, 2013)
ST - Petitioners are recipients of taxable service from service provider situated outside India - Whatever be the position after 18.4.2006, by virtue of introduction of Section 66A of the Finance Act, 1994, for the earlier period, the demand would not be sustainable - adjudicating authority to grant a full hearing to the petitioners and take final decision - Petition disposed of: High Court [paras 7 & 8]
2013-TIOL-155-HC-MUM-ST
Thermax Instrumentation Ltd Vs CCE & CC (Dated: February 6, 2013)

ST - CESTAT granting waiver of pre-deposit as appellant claimed that they had paid entire demand - on verification, it was found that only Rs.6 Crores had been paid - Order recalled and appellant directed to pay balance along with 25% penalty & Contempt initiated – later appellant filing application for modification – CESTAT held that contentions raised by appellant are not acceptable as Stay was granted considering the statement of the Counsel while disposing Stay application; that if the submissions are accepted then it will amount to review of order which is not permissible in the eyes of law - time was extended for making pre-deposit & in view of unconditional apology tendered, SCN issued for initiation of contempt proceedings was withdrawn Appeal filed before High Court.

HELD - Whether the entire dues of Rs.18.08 crores have been paid is a matter of verification - the ends of justice would be served by furnishing an opportunity to the Appellant to establish through cogent material to the satisfaction of the Commissioner, Central Excise what part of the demand has been paid - Tribunal has not gone into this aspect since it felt disabled from doing so on the ground that it would amount to a review of the earlier order – Directions issued to appellant and CCE, Pune-I for carrying out verification – CESTAT order dated 15/10/2012 set aside and application restored for consideration afresh – Appeal disposed of: High Court [paras 6, 7, 8 & 9]

2013-TIOL-150-HC-MUM-ST

Patel Engineering Limited Vs UoI (Dated : February 20, 2013)

Recovery of Arrears - CBEC Circular No. 967/01/2013: The provisions contained in the circular dated 1 January 2013 mandating the initiation of recovery proceedings thirty days after the filing of an appeal, if no stay is granted, cannot be applied to an assessee who has filed an application for stay, which has remained pending for reasons beyond the control of the assessee.The law laid by the Court on the interpretation of the circular of the Central Board of Central Excise and Customs would bind all authorities who are subject to the jurisdiction of this Court.

Direction to follow the High Court Judgement: It is directed that henceforth the controlling authority shall issue acircular to all the authorities within his jurisdiction that the directionscontained in the judgment of this Court in Larsen & Toubro Limited(supra) shall be duly observed.

2013-TIOL-129-HC-MAD-ST

Yantra Media Pvt Ltd Vs Additional Commissioner of Service Tax (Dated : January 22, 2013)

Additional Commissioner relies on a Supreme Court Order passed after his order – matter remanded: there appears to be an error apparent on the face of the records, as the authority could not have relied upon a Supreme Court decision which has not been pronounced on the date when the impugned order was passed by the authority. The impugned order is set aside and the matter is remanded to the respondent for passing fresh orders on merits.

2013-TIOL-125-HC-MUM-ST

Central Railway Vs CCE & CC (Dated: February 8, 2013)

Service Tax: Pre-deposit by Railways: it has been urged that the dues of the Union Government are secure since, after all, it is the Union Ministry of Railways which has to pay the demand if it is found to be due and payable. Having regard to the fact that the demand has been levied against the Union Ministry of Railways, the ends of justice would require that the extent of the deposit should be scaled down. At the same time, having evaluated the merits, prima facie, an absolute waiver for the earlier period is not warranted. No case of financial hardship has been urged at the hearing. Pre-deposit of 20% demand, ordered.
2013-TIOL-119-HC-DEL-ST
Wipro Ltd Vs UoI (Dated: February 13, 2013)
Service Tax – Export Rebate – Condition 3 of Notification No. 12/2005 – Impossible to comply with requirement before export – Rebate Allowed: the description, value and the amount of service tax and cess payable on input-services actually required to be used in providing the taxable service to be exported are not determinable prior to the date of export but are determinable only after the export and if, further, such particulars are furnished to the service tax authorities within a reasonable time along with the necessary documentary evidence so that their accuracy and genuineness may be examined, and if those particulars are not found to be incorrect or false or unauthenticated or unsupported by documentary evidence, it cannot be said that the object and purpose of the requirement stand frustrated. In the present case, no irregularity or inaccuracy or falsity in the figures furnished by the appellant in the rebate claims has been alleged. Moreover, it appears somewhat strange that none of the authorities below has demonstrated as to how the appellant could have complied with the requirement prior to the date of the export of the IT-enabled services.
Also see analysis of the Order
2013-TIOL-112-HC-KERALA-ST
M/s Elengical Trade Links Vs UoI (Dated: February 6, 2013)
ST - Recovery of demand during pendency of appeal before Commissioner(Appeals) - Recovery Stayed - HC
2013-TIOL-111-HC-KAR-ST
M/s Texonic Instruments Vs CST (Dated: February 01, 2013)
Recovery during pendency of Stay application – Recovery Stayed: the writ petition is hereby disposed of directing the Tribunal to consider the stay application filed by the petitioner in the appeal before them within a time frame of three weeks. Till the disposal of the stay application by the Appellate Authority, the respondents shall not take coercive steps against the petitioner. The Tribunal to expedite the matter without being influenced by any of the observations made in this order.

2013-TIOL-81-HC-DEL-ST

Delhi Chartered Accountants Society (Regd) Vs UoI (Dated: February 1, 2013)

Service Tax - Rule 7(c) of Point of Taxation Rules 2011 - Rate of service tax applicable for Chartered Accountant Service in respect of payments received on or after 01.04.2012, but invoices issued and service rendered prior to 01.04.2012 - Service Tax rate enhanced from 10% to 12% with effect from 01.04.2012 - Applicable rate will be only 10%, but not 12% - With effect from 01.04.2012, the Petitioner's case is covered under Rule 4(a)(ii) of the Point of Taxation Rules, 2011.

CBEC Circulars No.158 /9/2012-ST dated 08.05.2012 and No.154 /5/2012-ST dated 28.03.2012, clarifying that the provisions of Rule 7(c) existed as on 31.03.2012 would apply and therefore service tax rate should be applied as 12% are erroneous - On and from 01.04.2012, the old Rule 7 was no longer in existence, having been replaced by new Rule 7 - Circular No.158 , insofar as it states that in the case of the eight specified services (which includes the services of chartered accountants), if the payment is received or made, as the case may be, on or after 01.04.2012, the service tax needs to be paid at 12% is without any statutory basis - The new Rule 7 does not cover the services which were earlier referred to in Clause (c) of Rule 7 (including services of chartered accountants) as it exis ted up to 31.3.2012. The circular has overlooked this crucial aspect.

Circulars - Validity - The two Circulars are contrary to the provisions of the Finance Act, 1994 and the Point of Taxation Rules, 2011 - It is well-settled that a Circular which is contrary to the Act and the Rules cannot be enforced - The circulars have to be in conformity with the Act and the Rules and if they are not, they cannot be allowed to govern the controversy.

Also see analysis of the Order

2013-TIOL-73-HC-DEL-ST

Vistar Construction (P) Ltd Vs UoI (Dated : January 23, 2013)

Service Tax – Rate of tax applicable is the one prevailing at the time of providing the service, not the receipt of payment: Therefore, the taxable event, in so far as service tax is concerned, is the rendition of the service. That being the position, the taxable events in the present writ petition had admittedly occurred prior to 01.03.2008. At that point of time the rate of service tax applicable in respect of the services in question was 2% and not 4%, which came into effect only on or after 01.03.2008.Therefore, the rate of tax applicable on the date on which the services were rendered would be the one that would be relevant and not the rate of tax on the date on which payments were received.

Also see analysis of the Order

2013-TIOL-66-HC-MAD-ST

Mrs Kutty Padmini Vs CST (Dated: December 5, 2012)

Service Tax - 'Writ' - Whether the notice of attachment of an immovable property can be challenged by an individual, who is not the owner of the said immovable property. The present writ application has been filed against the notice of attachment of the immovable property, issued by the Commissioner of Service Tax. The said immovable property was attached because of default in payment of service tax. The petitioner contended that on the basis of power of attorney and MOU between the petitioner and

her husband, and the settlement deed by the said husband in favour of their minor daughter, the property stood transferred in the name of their minor daughter who in turn after attaining majority sold the same to the third parties, the present owners of the property.

2013-TIOL-60-HC-DEL-ST

CST Vs Consulting Engineering Services (I) Pvt Ltd (Dated: January 14, 2013)

Service Tax - Taxable event is providing the taxable service not receipt of payment : The taxable event as per the Finance Act, 1994 is the providing of the taxable service. In the present case, we find that not only were the services admittedly provided prior of 14.05.2003 but also the bills have been raised prior to 14.05.2003. The only thing that happened after 14.05.2003 was that the payments were received after that date. That, in our view would not change the date on which the taxable event had taken place. Since the taxable event in the present case took place prior to 14.05.2003, the rate of tax applicable prior to that date would be the one that would apply. In the present case, the rate of 5% would be applicable and not the rate of 8%.

2013-TIOL-59-HC-AP-ST

CCE & C Vs M/s National Ship Design & Research Centre (Dated: December 03, 2012)

Service Tax - Consulting Engineer service vis-à-vis Scientific and Technical Consultancy Service – The activities of “Scientific Research” and “Consulting Engineering Services” are different – Scientific Research not taxable prior to 16.07.2001 under Consulting Engineer Service – No error in the order of the Tribunal

Also see analysis of the Order

2013-TIOL-52-HC-AHM-ST

Ronak Travels Thro Propreitor Anas Patel Vs UoI (Dated: October 10, 2012)

Service Tax - No penalty under both Section 76 and Section 78 - Tribunal's direction to pre deposit entire penalty quashed ' Tribunal directed to hear appeal on deposit of Service Tax and 25% of penalty under Section 78. This order is based on a prima facie opinion and shall not be construed as if the court has expressed any opinion on the merits of the case, including the levy of penalties under section 76 and 78 of the Act.

2013-TIOL-38-HC-KOL-ST

SKP Securities Ltd Infinity Infotech Parks Ltd Vs Deputy Director (Ra-IDT) & Ors (Dated: September 26, 2013)

Service Tax - CAG has no power to audit records of a private assessee: there is no provision in Chapter V of the Finance Act, 1994 or for that matter in the CAG Act which empowers the CAG to audit the accounts of an assessee which is a nongovernment company, not in receipt of aid or assistance from any government or government entity. Sub-section (2) of Section 94 also does not empower the Central Government to frame rules for audit of the accounts of an assessee by any audit team

under the Comptroller and Auditor General of India. There can be no doubt that statutory rules, framed in exercise of power conferred by statute cannot introduce something not contemplated in the statute, from which it derives its rule making power.

Since conflicting decision appears to have been given in another case, matter referred to Division Bench: In the opinion of the Single Judge in this case, the impugned notice cannot be sustained and the same is liable to be set aside. However, in view of the judgment rendered by P. K. Ray, J in Berger Paints India Ltd. in the context of Rule 173-G(6)(c) which is in para materia with Rule 5A of the Service Tax Rules, the Court is of the view that judicial propriety demands that this writ application be referred to a Division Bench for adjudication.

Also see analysis of the Order

2013-TIOL-20-HC-UKHAND-ST

CCE Vs M/s Usha Breco Ltd (Dated : December 28, 2012)

Service Tax - Tour Operator - Though in terms of the definition provided in the appropriate law - our - means - journey from one place to another, irrespective of the distance between such places , but in order to levy tax, holding out that the service is tour, it is to be shown that the service has been provided by a tour operator. By providing the facility of transportation from Mansa Devi to Chandi Devi and vice versa, assessee did not carry out tour operation. It facilitated journey of its clients from one place to the other as is being done by the passenger transporters while carrying out their transportation business.

2013-TIOL-12-HC-AHM-ST

CCE Vs M/s Cadila Healthcare Ltd (Dated : 18, 2012 & November 7, 2012)

Entitlement of CENVAT Credit as input service on:

(i) Technical Testing and Analysis services - the services availed in respect of technical testing and analysis services are directly related to the manufacture of the final product. The contention of the department that unless the goods have reached the commercial production stage, CENVAT credit is not admissible in respect of the technical testing and analysis services availed in respect of the product at trial production stage, does not merit acceptance.The assessee was entitled to avail of CENVAT credit in relation to service tax paid in relation to technical testing and analysis services availed by it.

(ii) Commission paid to foreign agents - Obviously, commission paid to the various agents would not be covered since it cannot be stated to be a service used directly or indirectly in or in relation to the manufacture of final products or clearance of final products from the place of removal.The commission agent is directly concerned with the sales rather than sales promotion and as such the services provided by such commission agent would not fall within the purview of the main or inclusive part of the definition of input service. The service rendered by the commission agents not being analogous to the activities mentioned in the definition, would not fall within the ambit of the expression "activities relating to business". Consequently, CENVAT credit would not be admissible in respect of the commission paid to foreign agents.

(iii) Courier service - the courier services availed by the assessee whereby the courier

collects the parcel from the factory gate for further transportation would fall within the ambit of the term 'input service' as defined under rule 2(l) of the Rules.

(iv) Clearing and forwarding service - the services rendered by the C & F agent of clearing the goods from the factory premises, storing the same and delivering the same to the customer would fall within the ambit of rule 2(l) of the Rules as it stood prior to its amendment with effect from 1.4.2008, namely clearance of final products from the place of removal.

(v) Miscellaneous Services : The assessee availed of CENVAT credit in respect of service tax paid on various services, viz. Repair and Maintenance of copier machine, air conditioner, water cooler, Management Consultancy, Interior Decorator, Commercial or Industrial Construction Service. According to the assessee these services are input services which are categorically covered under sub-rule (5) of rule 6 of the Rules and that the inclusive part of the definition of "input service" clearly covers services used in relation to renovation or repairs of factory or office relating to factory.No infirmity can be found in the view taken by the Tribunal that such services are eligible services for the purpose of taking CENVAT credit on the service tax paid thereon.

(vi) Technical Inspection and Certification - the service of technical inspection and certification agencies availed by the assessee would clearly fall within the ambit of input service. The contention that such certification has no nexus with the manufacture of final product is evidently fallacious as it would not be permissible for the assessee to use the necessary instruments without certification.

2013-TIOL-09-HC-AP-ST

M/s Siva Sai Constructions Vs Government Of India (Dated : December 20, 2012)

Service Tax - Coercive Action under Section 87 of the Finance Act, 1994 during the pendency of Appeal along with Stay Petition and Condonation of Delay Petition before the Tribunal - Held that: The respondents not to initiate or pursue any coercive steps against the petitioner (or others who owe dues to the petitioner) under Section 87 of the Finance Act, 1994 or any other appropriate provision, till disposal of the petitioner's applications for condonation of delay and for grant of interim relief in the appeal preferred by the petitioner to the Tribunal (Para 7).