HIGH COURT RULING (SERVICE TAX)

2014-TIOL-623-HC-MUM-ST

M/s Zenith Computers Ltd Vs CCE (Dated : April 11, 2014)

ST - Promotion of brand OR promotion of branded goods - ROM filed against reference to TM dismissed on the ground that since M(J) has given findings on merit, he is not required to address other issues of export of service & limitation dealt by M(T) - appeal to High Court dismissed since it does not raise any substantial question of law: High Court

Also see analysis of the Order + Also see analysis of the Order

2014-TIOL-622-HC-KOL-ST

Smt Ranuka Prasad Vs CCE (Dated : April 22, 2014)

Service Tax – Writ Petition against order of pre-deposit by CESTAT under Section 35F of Central Excise Act, 1944 – Order traversed beyond the allegations in the Show Cause Notice - The principle behind the issuance of the show-cause notice is not only to make aware the person against whom the action is intended to be taken but it must contain the language in precision which on reading thereof, make the person understand, the case which he has to defend - The show-cause notice is the foundation of an action and, therefore, a plea, which is not taken, shall not be permitted, as the person did not have an opportunity to meet the same – 25% pre-deposit ordered by the CESTAT will cause undue hardship – Reduced to 10% of the demand.

Writ Petition under Article 226 – Maintainability - There is no absolute bar in entertaining the writ petition under Article 226 of the Constitution despite existence of an alternative efficacious remedy -There has been a manifest injustice apparent on the face of the record and the Court does not feel that the jurisdiction under Article 226 of the Constitution is completely ousted.

Also see analysis of the Order

2014-TIOL-621-HC-ALL-ST

The Royal Bank of Scotland NV Vs CC & CE (Dated : April 28, 2014)

Service Tax - Appeal against order of Tribunal - Maintainability - Issue involved is whether the activity is taxable under "Banking and Other Financial services" under clause (zm) of Section 65(105) of the Act and whether such service is not liable to service tax or attracts Nil rate of duty - Issue being related to classification and taxability of service, appeal lies with Supreme Court under Sec 35L of the Central Excise Act, 1944 as made applicable to service tax matters - Appeal dismissed on the

ground of maintainability.

Also see analysis of the Order

2014-TIOL-614-HC-ALL-ST

M/s BSNL Vs CCE (Dated : April 11, 2014)

ST - Tribunal dismissing appeal for failure to comply with the order of pre-deposit - appeal to High Court.

Held: As Bharat Sanchar Nigam Ltd. is a Corporation which is owned and controlled by the Central Government and the appeal has been dismissed by the Appellate Tribunal as a consequence of a default in deposit of the amount directed by the Tribunal, appellant directed to deposit half of the amount indicated by the Tribunal within a period of 8 weeks - upon complying with the same, Tribunal to hear appeal on merits: High Court [para 10]

2014-TIOL-613-HC-AHM-ST

CST Vs Zydus Technologies Ltd (Dated : November 13, 2013)

ST- Refund - Services of Scientific & Technical Consultancy Service received in SEZ by respondent before marketing products/exporting the products have a relationship to the manufacture of final product - Such services received are to be considered as provided for the authorized operations and hence eligible for refund of service tax paid on such services- Revenue appeal dismissed: High Court

ST- Refund- Revenue contending that upto 28/6/2012 the respondent continued to submit application/sought extension for permitting to establish setting up a unit in SEZ and they rendered technical and scientific services for research during the aforesaid period and, therefore, it cannot be said that the services were rendered for manufacturing and/or was related to various operations- issue is no longer res integra in view of the Gujarat HC decision in Cadila Healthcare Ltd. where it is held that services rendered even prior to the manufacture of final product can be said to be commercial activity and, therefore, the assessee is entitled to CENVAT credit- no error committed by Tribunal in holding that respondent is entitled to refund as claimed- appeal dismissed: High Court [para 5, 6]

2014-TIOL-602-HC-ALL-ST

M/s S K Engineering Works Vs CCE & ST (Dated: April 29, 2014)

ST - Works Contract - exclusion of value of goods and material sold by service provider - assessing authority has completely ignored notification 12/2003-ST for the reasons best known to him though he must be well aware of the said notification

issued by Central Government - view taken is not justified - Orders quashed & matter remanded - WP allowed: High Court

2014-TIOL-601-HC-AHM-ST

Shiva Industrial Security Agency (Gujarat) Pvt Ltd Vs CCE (Dated: February 26, 2014)

Service Tax - Appeal against the pre-deposit ordered by the CESTAT - Dispute on rate of tax applicable - Whether 10.2% or 12.36% - There is prima facie evidence to suggest that the appellant recovered service tax from the customers at the rate of 10.3% only - Pre-deposit modified to the extent of undisputed tax collected at the rate of 10.3% and 25% of the disputed amount.

2014-TIOL-580-HC-MUM-ST

CST Vs M/s Sgs India Pvt Ltd (Dated: April 23, 2014)

ST - Foreign parties requisitioning services of appellant to provide import-worthiness certificates of sample goods in India - consideration for such services paid in forex is not liable to Service Tax - Revenue Appeal dismissed: High Court

Also see analysis of the Order

2014-TIOL-579-HC-AHM-ST

Jmc Projects (India) Ltd Vs CST (Dated: April 24, 2014)

ST - Order passed by Commissioner on 29.10.2010 - Issue of admissibility of composition scheme for ongoing Works Contracts as on 01.6.2007 has since been decided by Apex Court in the case ofNagarjuna Construction Company Limited vs. GOI, 2012-TIOL-107-SC-ST which was not available before the Adjudicating authority at the time of passing the adjudication order - Secondly Adjudicating authority has not considered para 2 of the CBEC Circular NO.128/10/2010-ST dated 24.08.2010 which is binding on the field formations - issue of free supply of goods/sale of goods in a works contract and its inclusion in the assessable value, is required to be examined in the light of judicial pronouncement of Delhi High Court in the case of G.D.Builders v. UOI 2013-TIOL-908-HC-DEL-ST ,read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006 - Observing inter alia as above, Tribunal remanding the matter to the adjudicating authority - Appeal before High Court. Held: Tribunal having remanded the proceedings for fresh consideration, no question of law arises - Tax Appeals dismissed: High Court

2014-TIOL-568-HC-AHM-ST

Sagar Construction Vs UoI (Dated: April 17, 2014)

ST - Plea of financial hardship - Tribunal ordering pre-deposit of Rs.50 lakhs against the tax demand of Rs.4.14 crores - it is well settled that financial hardship must not be only pleaded but the same must also be proved - in the absence of any specific pleading and no proof at all, Tribunal could have taken into account any so-called financial hardship of the petitioner in making the pre-deposit - no error committed by Tribunal - Petition dismissed. However, time for making pre-deposit extended: High Court

2014-TIOL-560-HC-DEL-ST

M/s Glyph International Ltd Vs UoI (Dated: March 20, 2014)

Service Tax - Rebate/Refund - whether appeal lies to Tribunal or Revision Authority - the petitioner is a service tax assessee. It made a refund claim in respect of service tax export turn-over. Aggrieved by an order refusing the refund, it preferred an appeal to the CESTAT under Section 86. The Tribunal by the order impugned in this case accepted the revenues' contention that a specific reference of Section 35EE (of the Central Excise Act) precluded an appeal under Section 86, and that the remedy available to the assessee was a revision to the Central Government.

Held: the amendment to Section 83 by making a specific reference to Section 35EE of the Central Excise Act, did not make any difference to the nature of jurisdiction exercisable by the CESTAT under Section 86; it continued to possess jurisdiction to decide on matters pertaining to rebate and refund. For this reason, the question of law is answered in favour of the assessee/appellant and against the revenue.

Also see analysis of the Order

2014-TIOL-550-HC-ALL-ST

CC, CE & ST Vs M/s Monsanto Manufacturer Pvt Ltd (Dated: March 27, 2014)

ST - The fact that the assessee was not paying service tax on the fixed monthly charges was known to the Department on 27 September 2002 and, therefore the SCN issued on 21.07.2006 covering the period 2001-02 and 2004-05 is clearly time barred – Tribunal order upheld & Revenue appeal dismissed – so also, once the CESTAT had held the demand to be time barred, entering into the merits of the case and passing an order would amount to an illegality – assessee appeal disposed of: High Court

Also see analysis of the Order

2014-TIOL-530-HC-ALL-ST

M/s Addi Industries Ltd Vs CC & CE (Dated: April 3, 2014)

ST - Refund - Period during which the goods were exported was April 2008 to June 2009 - At the relevant time the notification 41/2007-ST required assessee to pay service tax and thereafter apply for refund within a period of sixty days from the end of the relevant quarter - Admittedly, the assessee did not do so - refund claim filed on 10.12.2009.

Held - Notfn . 18/2009-ST dt . 7.7.2009 is prospective in nature and has no application whatsoever for the impugned period - once a period of limitation is prescribed, the same would necessarily govern - no substantial question of law - appeal dismissed: High Court [para 9, 10]

2014-TIOL-525-HC-ALL-ST

CCE Vs M/s Glyph International Ltd (Dated: April 16, 2014)

Service Tax - Appeal fee - No error in the order of Tribunal in holding that no fee is payable in respect of appeals relating to rebate or refund - Section 86 (6) does not speak of a refund/rebate - As the Tribunal has correctly held, there is no residuary provision in Section 86 (6) for payment of fee in respect of rebate / refund cases - No substantial question of law arises.

Also see analysis of the Order

2014-TIOL-510-HC-KAR-ST

CST Vs M/s Team Lease Services Pvt Ltd (Dated: April 2, 2014)

CENVAT - Service tax paid on the Group Personal Accident and Group Medical Policies for the employees, whether can be considered as Input service for a provider of ' Manpower recruitment or Supply agency services' -substantial question of law raised in appeal is fully covered in favour of respondent by two judgments of the Division Bench of this Court in case of Micro Labs Ltd. & Stanzen Toyotetsu India (P) Ltd. – Credit admissible – Revenue appeal dismissed: High Court [paras 5, 6]

2014-TIOL-499-HC-ALL-ST

M/s Indian Coffee Workers Co-Operative Society Ltd Vs CCE & ST (Dated: April 8, 2014)

Service Tax - Outdoor catering service - Appeal against demand of service tax on the ground that the appellant has been paying VAT on sale of Foods and Drinks - There is no merit in the contention that since the assessee is liable to pay Value Added Tax on the sale involved in the supply of goods at the canteen, it is not liable to the payment of service tax - The charge of tax in the cases of VAT is distinct from the charge of tax for service tax - The activities of the appellant are covered within the meaning of outdoor caterer as per Section 65(24) and Section 65(76a) - The service is taxable under Section 65(105)(zzt) - Demand of service tax upheld.

Penalty under Section 78 - Having regard to the fact that there were contrary views which had held the field, a case for imposition of penalty was not made out. The essential ingredients of Section 78 were not fulfilled - Penalty under Section 78 set aside.
Also see analysis of the Order
2014-TIOL-498-HC-MUM-ST
Indian Hotels And Restaurant Association Vs UoI (Dated: April 8, 2014)
Parliament competent to impose Service Tax on Restaurants and hotels – Single Judge Kerala HC order cannot be accepted: Bombay High Court
Also see analysis of the Order
2014-TIOL-497-HC-MUM-ST
M/s Andrew Telecom (I) Pvt Ltd Vs CC& CE (Dated: April 3, 2014)
ST - Agency commission paid by foreign principal in convertible foreign exchange - assessee paid ST under bona fide belief that such services are covered under BAS - Board clarifying in year 2009 that such activity is covered under Export of Services Rules, and ST is not required to be paid - When the application for refund was made invoking Section 11B of the CEA, 1944 the same applies with full force including the rule of limitation prescribed therein – judgment of apex Court in Mafatlal Industries cannot be applied to such an extent so as to totally override and brush aside a provision like Section 11B with the rule of limitation carved out therein - Refund claim time barred – Appeal dismissed: High Court
Also see analysis of the Order
2014-TIOL-477-HC-DEL-ST
Mgf Development Ltd Vs CST (Dated : March 25, 2014)
ST - Amount received as transfer charges for substituting the names of new purchasers of immovable property in the place of purchasers who had initially agreed to purchase the property – Tribunal held that *prima facie* the activity is covered under the definition of real estate agent service and ordered pre-deposit of 50% of the tax demanded in respect of demand concerning extended period & covered by first appeal and the entire service demanded for the normal period in the second appeal with proportionate interest ordered – Appeal before High Court. *Held*: at the stage of entertaining the appeal Court had directed appellant to deposit 50% of demand without interest or penalty and the same has been complied with – Tribunal, therefore, to hear appeal on merits: High Court

2014-TIOL-471-HC-DEL-ST

Teknow Overseas Pvt Ltd Vs Asst Commissioner of Service Tax (VCES) (Dated: March 26, 2014)

Service Tax - VCES – No provision to extend the date for payment of first 50 per cent: The object of the "Service Tax Voluntary Compliance Encouragement Scheme, 2013" appears to the net escaped tax liability by service providers who are otherwise either in default or have not been assessed. It was to afford them a window of opportunity to voluntarily disclose their liability. In a sense it is similar to a permanent mechanism as the Settlement Commission or a voluntary disclosure scheme which the Central Government put in place in different tax regimes. Self contained nature of the scheme is evident from the definitions as well as the regime it dictates for a declarant who has offered to fully disclose the tax dues which are payable according to him and also make the necessary deposit as a pre-deposit for extension of the benefit which is immunity from the penalty, interest and other proceedings given under section 108. It would be worth noticing that the scheme itself was brought into force w.e.f . May, 2013. Assesees and service providers liable to service tax therefore had adequate time to weigh the choices and make necessary declaration under sections 106 and 107. The fact that the declaration regime required payment of 50% of the tax dues under section 107, and at the same time allowed flexibility for payment of the balance of 50% in this Court's opinion would not be fatal to the working of the scheme. In fact the right of the assessee to claim the benefit of the scheme is dependent upon its depositing the initial 50%. The assesee's income from rendering of services was not brought to tax for some reason or the other, due to omission, either wilful or inadvertent; such assesses were given more than enough time to consider whether they would make a disclosure under the Scheme. Once such disclosure was made, the applicant or declarant was entitled to be considered only upon deposit of 50% by 31.12.2013. The consideration prayed for by the petitioner that such initial deposit cannot be considered as mandatory cannot be granted, given the fact that the scheme is a package and does not permit any such division. It is also noticed that the authorities have not been given any discretion in the matter of grant of extension of time to make initial pre-deposit of 50% of the declared tax amount. In fact, the consequences are spelt out for failure to pay the tax dues under section 110. In these circumstances the claim in the petition for a direction to extend the period or alternatively for deleting the sum of Rs.81 lakhs from the declaration already filed cannot be granted.

2014-TIOL-464-HC-P&H-ST

CCE Vs M/s BSNL (IUC) (Dated: February 3, 2014)

CENVAT Credit of Inter Usage connection (IUC) charges - whether can be considered as Input Service - the order of the Tribunal waiving of the pre-deposit in the case of respondent cannot be said to be erroneous or perverse in any manner as it relies on the decision of the Chennai & Bangalore Tribunals in BSNL and Manipal Advertising Services P. Ltd. - no merit in Revenue appeal, hence dismissed: High Court

2014-TIOL-463-HC-AHM-ST

CST Vs Associated Hotels Limited (Dated: April 03, 2014)

Service Tax - Appeals – Commissioner (Appeals) has the power to remand: Short question is whether the Commissioner (Appeals) exercising powers under section 85 of the Finance Act, 1994 has the power to remand the proceedings back to the adjudicating authority. Under sub-section (4) of section 85 of the Finance Act, 1994, the Commissioner (Appeals) hearing the appeals can pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty. Proviso to sub-section (4) provides that no order enhancing the service tax, interest or penalty shall be made without affording a reasonable opportunity to the person affected. Sub-section (5) of section 85 provides that subject to the provisions of the said Chapter, in hearing the appeals and making orders, the Commissioner shall exercise the same power and follow the same procedure as he exercises and follows in hearing the appeals and passing orders under the Central Excise Act, 1944.

In plain terms, sub-section (4) of section 85 of the Finance Act, 1994 is worded widely and gives ample powers to the Commissioner while hearing and disposing of the appeals to pass such orders as he thinks fit including an order enhancing tax, interest or penalty. Such powers would, therefore, inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority. In absence of any specific bar in this respect, the appellate powers flowing from sub-section (4) of section 85 would clothe the Commissioner (Appeals) with power to even remand the proceedings. If proper inquiry is not conducted or the proceedings is decided ex parte, it would not be necessary in every case that the Commissioner (Appeals) converts himself to the adjudicating authority and conducts the entire inquiry necessary for proper adjudication of the issues. In such a case, the Commissioner (Appeals) may as well decide to remand the proceedings, and there is no limitation on his powers to do so.

2014-TIOL-446-HC-KAR-ST

M/s Symphony Teleca Corporation India Pvt Ltd Vs Addl.Commissioner of Service Tax (Dated : March 21, 2014)

ST - Commissioner(A) directing petitioner to make a pre-deposit of Rs.40 lakhs within 10 days of the order - petitioner's grievance is that the order is very harsh and they had offered to deposit a reasonable amount pending consideration of appeal - Revenue counsel submitting that the order may be modified but the petitioner be directed to make a pre-deposit of Rs.30 lakhs - High Court ordering petitioner to make a pre-deposit of 50% of the amount indicated of Rs.40 lakhs and report compliance - WP disposed of - however, appellate authority directed to dispose appeal expeditiously: High Court

2014-TIOL-441-HC-AHM-ST

CST Vs Arvind Mills Ltd (Dated : March 20, 2014)

ST - Manpower Supply Recruitment Agency - respondent, in order to reduce his cost of manufacturing, deputed some of its staff to its subsidiaries or group companies for stipulated work or limited period - All throughout, the control and supervision remained with the respondent - Actual cost incurred by the company in terms of salary, remuneration and perquisites is only reimbursed by the group companies - there is no element of profit or finance benefit - subsidiary companies cannot be said to be their clients - there was no relation of agency and client - Tribunal has rightly

held that service rendered by the respondent is not a taxable activity attracting Service Tax - no question of law arises - Revenue appeal dismissed: High Court

2014-TIOL-439-HC-P&H-ST

D P Singh Chadha Vs CCE (Dated : March 26, 2014)

ST - Assessee is a Government contractor and engaged in the construction of residential/commercial complexes on contract basis for various Government Departments/civil authorities - appellant entered into two composite contracts for construction of residential flats at Ludhiana with Ludhiana Improvement Trust during the period 2005-06 to 2009-10 and as such he completed the same and handed over to the Improvement Trust – ST levied on Construction of Complex w.e.f 16.06.2005 and on Works Contract services from 1.6.2007 – ST demand issued under two SCNs for Rs.27.54 lacs and confirmed by lower authorities with penalty and interest – appeal before CESTAT against order of Commr(A) dismissing appeals – CESTAT ordering pre-deposit of Rs.9.5 lakhs plus the proportionate interest on the amount of Rs.27.54 lakhs – appeal to High Court.

Held: Tribunal while ordering pre-deposit observed that prima facie there is no justification for the authorities classifying the composite services provided by the petitioner as commercial or industrial construction services after 1.6.2007 has held that there is no justification for the petitioner's claim to the benefits of 2007 rules because they neither filed ST-3 Returns nor remitted service tax liability after availing the benefits of the Composition Scheme 2007 Rules or exhibited the overt conduct which would amount to exemption of an option under Rule 2007 – no substantial question of law arises in appeal, hence dismissed – however, time extended for making pre-deposit: High Court

2014-TIOL-431-HC-KAR-ST

CST Vs M/s The Peoples Choice (Dated: March 7, 2014)

ST - Statutory provision under which the SCN was issued was not in existence as on that date - Demand invoking obsolete provisions not sustainable - Tribunal order cannot be interfered - Revenue appeal dismissed: High Court ST - Statutory provision under which the SCN was issued was not in existence as on that date - Demand invoking obsolete provisions not sustainable - Tribunal order cannot be interfered - Revenue appeal dismissed: High Court

Also see analysis of the Order

2014-TIOL-429-HC-UKHAND-ST

CC & CE Vs M/s Doon Institute of Information & Technology Pvt Ltd (Dated: March 12, 2014)

Service Tax - Computer training is a Vocational training and hence a Computer Training institute is entitled for exemption from Service Tax in terms of notfn .

24/2004-ST till its amendment by notfn . 19/2005-ST - it cannot be said that the Notification 24/2004-ST made any distinction between a vocational training institute and a computer training institute - Revenue appeal dismissed: High Court

Also see analysis of the Order