HIGH COURT RULING

2009-TIOL-293-HC-DEL-ST
Unitech Limited Vs CST, Delhi (Dated: May 26, 2009)
ST - Service received from abroad – No tax prior to 18.04.2006 - **2008-TIOL-633-HC-MUM-ST** – **followed – High Court:** in view of the judgment of the Division Bench of Bombay High Court passed in *Indian National Shipowners Association vs Union of India* - **2008-TIOL-633-HC-MUM-ST** it stands declared that the Revenue can collect tax only upon being invested with due legal authority; an event which occurred on the insertion of Section 66A in the Finance Act, 1994 w.e.f . 18.04.2006 by virtue of the Finance Act, 2006. This case is squarely covered by the judgment of the Bombay High Court in the case of *Indian National Shipowners Association* with which this High Court is in respectful agreement.
Also see analysis of the Order
2009-TIOL-292-HC-MP-ST-LB
Som Distilleries Pvt Ltd & Ors Vs UOI & Ors (Dated: March 20, 2008)
Service Tax - Bottling of liquor amounts to manufacture – outside the purview of Service Tax: packaging and bottling of liquor come within the ambit and sweep of manufacture within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944 in view of the definition contained in Section 65(76b) of the Finance Act especially keeping in view the exclusionary facet and further regard being had to the circular issued by Central Board of Excise and Customs.
Also see analysis of the Order
2009-TIOL-271-HC-P&H-ST
CCE, Jalandhar Vs M/s A D Communication (Dated: May 05, 2009)
Service Tax - revision of order under Section 84 of the Finance Act, 1994 - Once the initial order has been passed within a period of two years, the provisions of Section 84(5) of the Finance Act stands complied with - There is no further requirement of law that even on the remand as per the order of the Tribunal the period of limitation that was initially applicable would continue to apply.

Also see analysis of the Order
2009-TIOL-217-HC-P&H-ST
CCE, Jalandhar Vs M/s Darmania Enterprises, Gurdaspur (Dated: April 17, 2009)
Service Tax - penalty - setting aside penalty enhanced by the Commissioner by exercising powers under Section 84 of the Finance Act, 1994 - no question of law much less any substantial question of law would arise for determination - appeal dismissed.
2009-TIOL-210-HC-P&H-ST
CCE, Jalandhar Vs M/s Darmania Enterprises, Gurdaspur (Dated: April 17, 2009)
ST - penalty - Assessing Authority imposes nominal penalty under Ss 76 and 78 by invoking powers u/s 80 - Revisional authority hikes the penalty by exercersing his powers under Sec 84 - Tribunal sets aside the order enhancing penalty - held, penalty under Sec 78 is to be levied in case of fraud, misstatment and suppression but there was no evidence before the Revisional authority to acquire jurisdiction to do so - No question of law - Revenue's appeal dismissed
Also see analysis of the Order
2009-TIOL-202-HC-P&H-ST
CCE, Panchkula Vs M/s Kulcip Medicines (P) Ltd (Dated: February 24, 2009)
Service Tax – C & F Agent; it is 'clearing and forwarding agent, not 'clearing or forwarding agent; Reading the word 'and' as 'or' would amount to doing violence to the simple language used by Legislature which cannot be imputed ignorance of English language; By necessary intendment the expression 'a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner' contemplates only one person rendering service as 'clearing and forwarding agent' in relation to 'clearing and forwarding operations'. To say that if, one person has rendered service as 'forwarding agent' without rendering any service as 'clearing agent' and he be deemed to have rendered both services would amount to replacing the conjunctive 'and' by a disjunctive which is not possible. The counsel for the revenue has not been able to bring on record any material to show the word 'and' should be construed as disjunctive. He has not shown any 'trade practice' which may lead to a necessary inference that service of one kind rendered by one is invariably considered to comprise both. No argument has been advanced before us by him to canvass that the legislature intention is discernible from the scheme of the statute or from any other relevant material. Therefore the word 'and' should be understood in a conjunctive

sense.

If we read the word 'and' as 'or' then it would amount to doing violence to the simple language used by Legislature which cannot be imputed ignorance of English language.

Orchestra of the Larger Bench in Medpro Pharma not impressive: We have not been able to understand with utmost respect to the Tribunal as to what is 'Orchestrated nature of work' involved in the present transaction. The dealer in the present case as per the arrangements reached between the parties has to receive goods which are already got 'cleared' by the manufacturer. The dealer is to store those goods and forward to the buyer of the goods as per direction received. The example of 'wheat and rice' grocery shop is obviously wholly mis -appropriate and does not fit in the context.

Mahavir generics upheld: The view taken by the Tribunal in M/s Mahavir Generics's case (supra) has been accepted by the revenue as no appeal has been filed. Moreover we are not able to persuade ourselves to accept the view taken by the larger Bench of the Tribunal in the case of Medpro Pharma Pvt. Ltd. which has been fascinated by musical notes of symphony

Also see analysis of the Order

2009-TIOL-196-HC-DEL-ST

Home Solution Retail India Ltd Vs Uol (Dated: April 18, 2009)

Service Tax – Renting of immovable property – the tax is on any service in relation to renting not renting per se ; no tax on renting: we have to understand as to whether renting of immovable property for use in the course or furtherance of business or commerce by itself is a service. There is no dispute that any service connected with the renting of such immovable property would fall within the ambit of Section 65(105)(zm) and would be exigible to service tax. The question is whether renting of such immovable property by itself constitutes a service and, thereby, a taxable service.

Service tax is a value added tax – it is apparent that service tax is a value added tax. It is a tax on value addition provided by a service provider. It is obvious that it must have connection with a service and, there must be some value addition by that service. If there is no value addition, then there is no service. Service tax is a value added tax. It is a tax on the value addition provided by some service provider. Insofar as renting of immovable property for use in the course or furtherance of business or commerce is concerned, we are unable to discern any value addition. Consequently, the renting of immovable property for use in the course or furtherance of business of commerce by itself does not entail any value addition and, therefore, cannot be regarded as a service. Of course, if there is some other service, such as air conditioning service provided along with the renting of immovable property, then it would fall within Section 65(105)(zzzz).

Legislative Competence not examined; it has not examined the alternative plea taken by the petitioners with regard to the legislative competence of the Parliament in the context of Entry 49 of List 11 of the Constitution of India. Such an examination has become unnecessary because of the view it has taken on the main plea taken by the petitioners.

Also see analysis of the Order