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CESTAT RULING (SERVICE TAX)

2014-TIOL-479-CESTAT-BANG

S V Engineering Construction Vs CC, CE & ST (Dated: July 9, 2013)

Service Tax - Impleadment of Party - Whether remittances made by Principal contractor on its own account could be treated as remittances by sub-contractor/petitioner - Matter to be considered eventually – Appropriate to implead principle contractor as respondent.

2014-TIOL-473-CESTAT-MUM

Jet Airways (I) Ltd Vs CST (Dated: December 11, 2013)

ST - Services received by Jet Airways from Computer Reservation System companies fall under the category of 'Online database access and/or retrieval service"- since service provider is situated abroad, in terms of s.66A of the FA, 1994, Jet Airways is liable to discharge Service Tax liability on reverse charge basis - in the absence of any reference to the IT Act or to the DTAA in s.66A it cannot be presumed that the definitions given in those laws would apply - well settled position in law is that the provisions of tax statute has to be strictly construed - question of time bar is both a question of fact as well as a question of law and can be gone into at the time of final hearing - according to appellant, out of total ST demand of Rs.187 crores, Rs.147 crores is within normal period of limitation - appellant has not established any prima facie case on the plea of financial hardship - at best it can be considered for waiver of interest and penalties imposed and tax demand beyond normal period of limitation - appellant directed to make a pre-deposit of Rs.147 crores within eight weeks and report compliance: CESTAT

2014-TIOL-472-CESTAT-MAD

M/s AVM Telekom Vs CST (Dated: October 3, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Appellant did not pay Service Tax on certain incentives received as per the contract - Nothing in the contract which shows that payment of incentives was to employees of applicant and not to appellant themselves - Whether employees can be considered to be distinct from appellant is debatable issue - Pre-deposit of Rs. 1,50,000/- ordered.

2014-TIOL-471-CESTAT-MAD

M/s AVM Projection Service Vs CST (Dated: October 30, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Renting of Immovable Property - Liability to Service Tax - Appellant leased out projection theatre and collected projection charges - Leasing out projection theatre for screening of films is included in definition of Renting of Immovable Property, 'for use in course of furtherance of business and commerce', that falls under Section 65(90a) of Finance Act, 1994 – Pre-deposit of Rs. 1.5 lacs ordered.

2014-TIOL-468-CESTAT-DEL

M/s Coperion Ideal Pvt Ltd Vs CST (Dated: January 6, 2014)

Service Tax - Stay / dispensation of pre deposit – Business Auxiliary Service provided

in procuring sales orders for overseas manufacturer of bulk material handling systems, taxable under Section 65 (105)(zzb) of the Finance Act 1994 – Demands confirmed with interest and penalty in adjudication on the ground that the service was provided in India and not treatable as 'export of service' under Rule 3(1)(iii) of the Export of Services Rules, 2005; agitated herein.

2014-TIOL-467-CESTAT-KOL

M/s Alishan Steels Pvt Ltd Vs CCE & ST (Dated: January 16, 2014)

ST - Major portion of the taxable value i.e. 1.8 crores is claimed to have been received against surrender of tenancy agreement but the applicant has not been able to produce any evidence in this context to show that the said amount has been incorrectly included under the brokerage and commission services - No Chartered Accountant's certificate has been produced nor any evidence adduced before the adjudicating authority or before this Tribunal - Pre-deposit ordered: CESTAT

2014-TIOL-465-CESTAT-DEL

M/s GAP International Sourcing (India) Pvt Ltd Vs CST (Dated: February 28, 2014)

Service Tax - services for foreign entity relating to procurement of goods recommending fabrics to be used for manufacture of garments, recommending vendors from which fabrics, yarn, zippers, buttons, snap fasteners etc. can be procured, reporting the status of manufacture of products by the chosen vendors, analyzing the reports of the samples sent by the vendors, giving recommendation about the product integrity, inspecting export consignments and issuing inspection certificates etc. Whether export of service or taxable in India: when the service provided by a person in India is consumed and used by a person abroad, it is treated as export : Though the services have been performed in India, these services being Business Auxiliary Services are in respect of the business of the appellants principal located abroad. The services being provided by the appellant are obviously meant for and are used by *M/s GAP* , U.S.A. for their business. The services being provided by the appellant are covered by Clause (iii) of Rule 3 (1) of Export Service Tax Rules, 2005, as these services are in relation to business or commerce and in terms of this clause, readwith sub-rule (2) of Rule 3, these services would be treated as exported out of India if the recipient is located outside India and the same have been delivered outside India and used India and payment for the same has been received by the service provided in convertible foreign exchange. There is no dispute that the payment for these services has been received in convertib le foreign exchange and the payment has been made by *M/s GAP* , U.S.A. located abroad, not having any establishment or branch in India.

Export of Service Rules, 2005 and Taxation of Service (provided from outside India and received in India) Rules, 2006, readwith Section 66A of the Finance Act, 1994 are fully in accordance with the law laid down by the Apex Court in case of *All India Federation of Tax Practitioners* (supra) and *Association of Leasing and Financial Service Companies* (supra) that service tax is a value added tax, which, in turn, is a destination based consumption tax in the sense that it is not a charge on business but is a charge on the consumer. Therefore what constitutes export of service has to be decided strictly in accordance with the pro visions of Export of Service Rules, 2005.

In this case, *M/s GAP* , U.S.A. do not have any branch or project or business establishment in India. The service in relation to procurement of goods being provided by the appellant are entirely meant for *M/s GAP* , U.S.A. and the service in question, - business auxiliary service, covered by Rule 3 (1) (iii) of the Export of Service Rules,

2005 have obviously been used by *M/s GAP* , U.S.A. in relation to their business located abroad. Therefore these services have to be treated as delivered outside India and used outside India and since payment for the service has been received in convertible foreign exchange, the same would have to be treated as exported out of India.

Also see analysis of the Order

2014-TIOL-464-CESTAT-DEL

M/s Ferro Scrap Nigam Ltd Vs CCE (Dated: January 9, 2014)

Service Tax - Demand - Cargo Handling Services provided to M/s Bhilai Steel Plant - Tax demands with interest and penalty confirmed for first period and dropped for subsequent period on the basis of Tribunal ruling in the Modi Construction Co. case; culminating in assessee and departmental appeals respectively, agitated and commonly addressed herein.

Held: Impugned order has considered all the activities undertaken by the appellant within the plant of M/s Bhillai Steel, applied the Tribunal decision in the case of Modi Construction Co., apart from various other decisions of Tribunal, and held that in as much as the activities in both the cases are identical, the ratio of the ruling is fully applicable in the present case also - Modi ruling, upheld by Jharkhand High Court applicable to instant case - Catena of rulings in assessee's favor, notably the case of I.A. Dhas vs. CCE, Raipur dealing with identical activities for the same steel plant - Commissioner has rightly dropped the demand; Revenue's appeal rejected and assessee's appeal allowed.

2014-TIOL-463-CESTAT-KOL

M/s Tata Global Beverages Ltd Vs CST (Dated: March 6, 2014)

ST - Whether the amount of Rs.8.98 crore received by the Applicant from M/s. Tata Tea Ltd. on the transfer on the ' Goodwill', viz. ' Kanan Devan ', along with transfer of the ongoing business, against two Deeds of Transfer is to be subjected to service tax levy, under the category of ' Intellectual Property Service' or otherwise - Applicant has granted a non-exclusive licence to KDHP to use ' Kanan Devan ' as part of KDHP's corporate name for a period of 30 years - Prima facie liable to Service Tax in view of Board Circular 80/2004, Dated : September 17, 2004, para 9.1 thereto - prima facie the Commissioner's reasoning invoking the extended period is apparently convincing and the same is not totally without any evidence on record - Applicant has failed to make out a prima facie case for total waiver of pre-deposit of the dues adjudged - Pre-deposit ordered of 25% of the ST involved: CESTAT

2014-TIOL-458-CESTAT-BANG

Silverline Estates Vs CST (Dated: February 18, 2014)

Service Tax - Amount collected from customers not paid to Government but kept in escrow account - whether provisions of Section 73A are attracted - NO: As per Section 73A, if a person has collected any amount as service tax, that amount has to be paid to the Government. In this case, question is whether that amount can be said to have been collected. Admittedly, the meaning of 'escrow account' is that amount is kept with a third party and has to be disbursed to a person who is eligible to get the same as and when the issue attains finality. It is stated that the amount collected by the appellant was kept in escrow account and he has given an assurance to the buyer that if the amount is not liable to be paid, the same shall be paid with interest. It is only a deposit which is not taken into account of the appellant and kept in a separate

account to ensure safety of money and to ensure disbursement to the ultimate customer. Needless to say that if the liability exists and if it is held that the appellant is liable to pay, the amount will have to be paid to the Government since it is in escrow account. Therefore Commissioner should have determined the liability and if there was liability, the amount in escrow account would have been paid to the Government. Therefore, at this stage, we cannot say that the amount has been collected as service tax and therefore, the clause (2) of Section 73A is attracted and the amount should have been paid to the Government by the appellant. It is not the case of the department that the appellant is liable to pay service tax on the service rendered .

Also see analysis of the Order

2014-TIOL-457-CESTAT-AHM

M/s Indusface Consulting Pvt Ltd Vs CCE & ST (Dated: February 5, 2014)

Service Tax - Stay/Dispensation of pre-deposit - Service tax liability - Prima facie, appellant is not providing the services mentioned as taxable and at same time, appellant is eligible for availing Cenvat Credit of service tax by him under the reverse charge mechanism - Whether services rendered by appellant were taxable or does not fall under any of the service category based upon CBC letter no.137/76/2008-CX4 dt. 04.06.2008, needs to be analyzed and understood in its correct perspective - Pre-deposit of Rs . 2,00,000 is ordered.

2014-TIOL-448-CESTAT-AHM

M/s Civic Construction Vs CCE & ST (Dated: February 24, 2014)

Service Tax - Stay/Dispensation of pre-deposit - Non discharge of Service tax liability - Prima-facie, kind of services rendered by appellant are covered under the category of 'Commercial or Industrial Construction Services' on which appellant has not discharged service tax liability for the demand period - Appellant's contention as to correct valuation to be adopted for discharge of liability needs consideration as the issue that cost of free supplies of the materials need not be included for service tax liability is arguable - Pre-deposit of Rs . 2,00,000 is ordered.

2014-TIOL-446-CESTAT-MAD

Chettinadu Constructions Vs CCE (Dated: October 22, 2013)

Service Tax - Stay / dispensation of pre deposit - "industrial or commercial construction" under Section 65 (25b) of the Finance Act 1994 - tax demands with interest and penalties on construction of buildings for certain educational institutions, under dispute herein. Held: The activity of commercial or industrial construction is made taxable under section 65 (105) (zzzq) - hardly any education is provided without collecting any fees and for that reason alone, the educational institutions cannot be prima facie considered a commercial institution - If such criterion is adopted even IITs to be considered as undertaking business or commerce - Activities taxable under commercial training or coaching is on different type of activity like coaching for entrance examination - Bench has already granted waiver of pre-deposit of dues for assessees similarly placed - waiver of pre-deposit of dues arising from the impugned order granted for admission of appeal, with stay on collection of dues during pendency of the appeal.

2014-TIOL-445-CESTAT-DEL

M/s Daurala Organics Vs CCE (Dated: January 17, 2014)

Service Tax – Intellectual Property rights service, taxable under Sec 65(55b) and Sec 65(105)(zzr) wef 10.09.2004 – Demands proposed under proviso to Sec 73(1) confirmed in adjudication, along with interest, but penalties dropped under Sec 80; reviewed by jurisdictional Commissioner under Sec 84, imposing penalties under Sections 76, 77 and 78 in the order-in-revision; agitated herein.

Held: Original Authority has confirmed service tax demand by invoking extended period under proviso to Section 73 (1) on the basis of finding that the non-payment of the service tax was attributable to their intention to evade the tax - This finding unchallenged by the appellant - Once such finding is given, there would be no scope for the conclusion that the appellant did not discharge the service tax liability due to bonafide reasons, confirmation of service tax demand by invoking proviso to Section 73 (1) and waiver of penalty by invoking Section 80 do not go hand in hand - no infirmity in the impugned order.

2014-TIOL-444-CESTAT-AHM

M/s Quintiles Technologies (India) Pvt Ltd Vs CST (Dated: February 4, 2014)

Service Tax - CENVAT Credit - Calculation of refund claim - Definition of 'Export Turnover of Services', given in Clause (D) of Rule 5(1) of the Cenvat Credit Rules, 2004, has made no distinction with respect to payments received from export of services - Logic of giving cash refund of taxes used in relation to export of services under Rule 5 of Cenvat Credit Rules, 2004, is to have 'Zero rated' exports - As claimed by appellant, even exempted export services are required to be added to the Export turnover of services and all the unutilized service tax credit pertaining to exported service will be admissible as refund under Rule 5 of the Cenvat Credit Rules, 2004.

2014-TIOL-443-CESTAT-MUM

M/s True Education Institute Pvt Ltd Vs CCE (Dated: February 11, 2014)

ST - Commercial Training or Coaching Service - Consideration received by sale of prospectus and admission forms prima facie cannot be considered as a part of the service provided - Order confirming demand set aside and matter remanded: CESTAT [paras 5, 6]

Also see analysis of the Order

2014-TIOL-442-CESTAT-MUM

Taco Faurecia Design Center Pvt Ltd Vs CCE (Dated: January 22, 2014)

ST Refund - in case of export of service the relevant date is the date of receipt of the payment towards the service exported - as appellant has filed refund claim within one year of the date of receipt of payment, refund claim is in time - appeal allowed with consequential relief: CESTAT [para 5]

2014-TIOL-441-CESTAT-MAD

Arkema Peroxides India Ltd Vs CCE (Dated: July 8, 2013)

Service Tax - Demand under Rule 2(1) (d) (iv) of Service Tax Rules 1994 prior to

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18.04.2006 set aside in adjudication, revised by jurisdictional Commissioner and agitated herein. Held: Demand prior to 18.04.2006 unsustainable in view of the ruling in Indian National Ship Owners Association case to the effect that Rule 2(1)(d)(iv) is ultra vires - Impugned order set aside - OIO passed by original authority restored, appeal allowed with consequential relief.

2014-TIOL-435-CESTAT-MUM

Emerson Innovation Center Vs CCE (Dated: February 3, 2014)

ST - Erroneous Refund - appellant filing refund claim under rule 5 of CCR, 2004 in respect of accumulated credit of service tax paid on taxable services used for providing export output service - adjudicating authority allowing refund of Rs.3.43 Crores - Revenue challenging order on ground of merits and time bar - Commissioner(A) allowing appeal filed by Revenue and directing applicant to pay Rs.2.92 cr with interest - Appeal before Tribunal. Held: refund claim filed on 24.04.2012 in r/o credit availed on input services received during 16.05.2008 to 31.03.2010 - onus is on applicant to show that the services have been used for the export of output service - applicants have failed to prove this fact - moreover refund is to be filed before the expiry of the period specified in s.11B of the CEA, 1944 - prima facie applicant has failed to make out a case for total waiver - pre-deposit ordered of Rs.1 Crore: CESTAT

2014-TIOL-434-CESTAT-DEL

Computer Sciences Corporation India Pvt Ltd Vs CST (Dated: February 18, 2014)

ST - in furtherance of its business operations in India , Appellant hired certain overseas employees (expatriate employees) who were either directly employed by the appellant or were transferred from other group companies; that during the tenure of employment in India, the expatriate employees are for all intents and purposes, employees of the appellant and discharge duties and responsibilities as such in India – appellant incurred the expenditure on the expatriate employees' social security benefits in India by way of Provident Fund etc. and also deducted from their salaries and pays income tax on the basis of the total income earned on behalf of the expatriate employees; and the appellant also issued Form 16 and Form 12 BA of the Income Tax Act, 1961 to the expatriate employees in its status as the employer - In addition to these remittances and deductions of the appropriate tax under the provisions of the 1961 Act, the appellant also remitted to its group companies certain social security and other benefits that are payable to the account of the expatriate employees under the laws of the foreign jurisdiction; that no amounts over and above the remittances made to the credit to the seconded employees was ever paid to the overseas group companies - issue squarely covered by the Final Order of this Tribunal in Volkswagen India (Pvt.) Ltd. *(2013-TIOL-1640-CESTAT-MUM)* - activity cannot be held to be taxable as "Manpower Supply or Recruitment Agency Service" - Order set aside and Appeals allowed with consequential relief: CESTAT

2014-TIOL-433-CESTAT-MUM

M/s Graphite India Ltd Vs CCE (Dated: January 24, 2014)

ST - Commercial or Industrial Construction Services - Lowering, laying, jointing and testing GRP pipes for Gujarat Industrial Development Corporation is taxable service as GIDC is a corporation primarily undertaking development of infrastructure for industries - Appeal dismissed: CESTAT

Limitation - In none of the Returns filed, they have indicated that they are rendering the services to GIDC or the amount of consideration received for such services - demand not time-barred.

Penalty - appellant had not shown any reasonable cause for failure to discharge of Service Tax liability inasmuch as they were well aware of the provisions of law as they were discharging the Service tax liability in respect of the very same activity undertaken for other entities - waiver not available u/s 80 of FA, 1994.

Also see analysis of the Order

2014-TIOL-432-CESTAT-MAD

The Kalpakkam Industrial Co-Operative Service Society Ltd Vs CCE (Dated: August 29, 2013)

Service Tax - Stay / dispensation of pre deposit - Classification of service - applicant is a co-operative society registered under the Societies Act and administered by Special Officer of Govt. of Tamil Nadu, claiming to have merely supplied manpower during material period - Revenue viewed that the service actually rendered to Madras Atomic Power Station for maintenance works in Reactor Building Group in Civil Service and others was classifiable under "Management, Maintenance & Repair" service - tax demands confirmed with interest and penalty in adjudication; Commissioner(Appeals) rejected their appeal for non compliance of stay order; and agitated herein.

Held: Work Order No. NPCIL/MAPS/KINCOSS/2007-2008 dt. 2.8.2007 reveals that the works are in relation to maintenance work - prima facie applicant failed to make out a case for waiver of predeposit of entire amount of tax along with interest and penalty - considering the financial hardship of the co-operative society, applicant to deposit a sum of Rs.10,00,000/-.

2014-TIOL-426-CESTAT-MUM

Kala Sagar Vs CST (Dated: January 17, 2014)

ST - Commercial or Industrial Construction Service - Clause (c) & (d) of Sec 65 (25b) do not specify that they should be undertaken in respect of new building only - finishing services, restoration or similar services provided, whether in respect of 'new' building or 'old' building, would attract ST liability - Extended period rightly invoked - Penalties imposable: CESTAT by Majority

Also see analysis of the Order

2014-TIOL-425-CESTAT-MUM

Vyankatesh Real Estate Developers Vs CCE (Dated: January 17, 2014)

Refund - appellant are builders and developers who sold flats to ultimate buyers of residential unit and paid ST - later, they realized that they are not required to pay ST and filed refund claim - claim sanctioned but amount transferred to the Consumer Welfare Fund on the ground that appellant has failed to discharge the bar of unjust enrichment - appeal filed. Held: appellant has produced certificate from buyers that they have not paid ST - no ST invoice has been issued pertaining to these transactions - it is to be held that appellant has passed the bar of unjust enrichment and are entitled to refund claim - as tax not payable, provisions of s. 11B is not applicable - Appeal allowed with consequential relief; CESTAT

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2014-TIOL-424-CESTAT-MAD

M/s Goldline Hospitality Solutions (P) Ltd Vs CCE (Dated: September 2, 2013)

Service tax - Stay / dispensation of pre deposit and request for change of cause title - Outdoor catering service under Sections 65(76a) and 65(105)(zzt) of the Finance Act 1994 - benefit of notification No.12/2003-ST dated 20.06.2003 denied, tax demands with interest and penalties adjudicated and agitated herein.

Held: Cause title change admitted for implementation by Registry - Prima facie, as per the agreement between the parties, it is 'service of supply of food', under Outdoor Catering Service - applicant has failed to make out a prima facie case and is directed to deposit a sum of Rs.5 lakhs (Rupees Five Lakhs only) within a period of six weeks; upon compliance, the balance adjudged dues shall remain waived and recovery thereof stayed during the pendency of the appeal.

2014-TIOL-419-CESTAT-MUM

Water Resources Department Vs CCE, C & ST (Dated: January 31, 2014)

ST - Erection, Commissioning & Installation Service - Chief Engineer, Water Resources Department of the Govt. of Maharashtra is not a commissioning or installation agency as they do not undertake the activity ' Erection of sluice gates in agricultural dams ' for anybody else except themselves - Erection of structures referred in definition means that of a plant and machinery - Agricultural dam or sluice gates cannot be considered as a plant and machinery or equipment or structures thereof - they are in nature of infrastructural construction catering to the needs of agriculture and are excluded from the purview of Service Tax levy both under the category of Commercial & Industrial Construction service and Works Contract services - appellant falls outside purview of ST - Appeal allowed: CESTAT

Also see analysis of the Order

2014-TIOL-418-CESTAT-DEL

M/s Ferro Scrap Nigam Ltd Vs CCE (Dated: January 1, 2014)

Service Tax – Business Auxiliary Service (BAS) under Section 65(19) of the Finance Act 1994 – Appellant, a PSU, engaged in recovery, processing the scrap / slag arising in the factory of the steel plants, viewed as falling under the definition of clause (v) of BAS – demands confirmed in adjudication with interest and penalty, agitated herein.

Held: No dispute on the detailed activity undertaken by the appellant i.e., separation of the iron metal from the molten slag - dispute limited to whether the said activity can be called as "production of goods" and further "on behalf of the client" - every production may not amount to manufacture but admittedly every manufacturing activity involves production of goods – Since the Commissioner, in his order dated 21.09.2006 has held that the said activity does not amount to manufacture and such order stands accepted by the Revenue, it has to be held that there was no production of goods, and the first criteria of the definition is not satisfied – second criterion no longer res integra and settled in favor of appellant - appellant's activity prior to June 2005 cannot be held to be exigible to service tax under the category of BAS - impugned order set aside on merits, appeal allowed with consequential relief, unnecessary to deal with plea of limitation.

2014-TIOL-417-CESTAT-KOL

M/s Kolkata Port Trust Vs CCE (Dated: November 25, 2013)

Service Tax - Stay / dispensation of pre deposit - Commissioning and installation of Gantry Cranes - tax demand on service portion of the contract confirmed with interest and penalty after extending benefit of notification No.1/2006-ST dated 01.03.2006, agitated herein.

Held: Imports related to contract for designing, manufacturing, supplying, installing, testing and commissioning of 4 numbers of Rubber Tyred Cranes undisputedly suffered applicable customs duty on the entire contractual value - Prima facie force in the appellant's contention that since the entire contractual value had been assessed to customs duty, considering the same as goods - Consequently, even if it is considered as 'works contract' comprising the value of goods as well as the services, the principle of vivisecting the contract, at this stage, cannot be considered as the issue had been referred to the Larger Bench - Applicant Company being a Government of India Undertaking and the issue, prima facie, being not settled, case for total waiver of the dues adjudged - predeposit of all dues adjudged is waived and its recovery stayed during pendency of the Appeal.

2014-TIOL-411-CESTAT-MAD

M/s Coimbatore Anamallais Agencies Pvt Ltd Vs CCE (Service Tax) (Dated: September 10, 2013)

Service Tax - Stay/dispensation of pre deposit - Valuation in "Servicing of Motor Vehicle" - Appellant paid tax on service component but not on value of goods, disputed by revenue, resulting in tax demand with interest and penalties, agitated herein. Held: Ratio of ruling in Seva Automobiles case law applicable - waiver of pre-deposit granted for admission of appeal, with stay on collection of dues arising from impugned order till the disposal of the appeal.

2014-TIOL-410-CESTAT-DEL

M/s KEC International Ltd Vs CST (Dated: March 12, 2014)

Frivolous Litigation - Costs Imposed on Revenue: This application seeking rectification/review of the order dated 19.8.2013, condoning a delay of nine days, for the detailed reasons recorded therein, is clearly a fundamentally misconceived and frivolous application. Tribunal is burdened with a huge pendency. It is regrettable that not only are such frivolous applications filed by Revenue but are even argued by DRs at great length and unmerited vehemence. There is also no provision, conferring jurisdiction on the Tribunal to review an order condoning delay in presenting the appeal. Since a wholly frivolous application is filed by Revenue, seeking review of an order condoning the delay while recording reasons therefore, seeking exercise of a jurisdiction not vested in the Tribunal and what is more, such application is pursued with great vehemence, resulting in wastage of substantial time of a docket overloaded Tribunal, it is appropriate to dismiss this application with costs of Rs . 10,000/- payable by the petitioner/Revenue to the Prime Minister's Relief fund, within two weeks from today.

2014-TIOL-409-CESTAT-BANG

Infosys Ltd Vs CST (Dated: February 26, 2014)

Service Tax – Demand of service tax under reverse charge under Section 66A - No service tax in respect of information technology software services received from

overseas sub-contractors by overseas branches.

Telecommunication service – reverse charge - such services are taxable only when the same is provided by person who has been granted a licence under Indian Telegraph Act, 1985. It is not the case of the department that Foreign Service suppliers have been licensed under the Indian Telegraph Act – Demand set aside.

Service Tax – CENVAT Credit on insurance premium for family members of employees – not allowed; CENVAT Credit on services utilised for construction, maintenance or repair or renovation of Global Training Centre up to 01/04/2011, allowed.

Credit of service tax paid on services used in respect of hostel, food court, gym etc - it is quite clear from the definition that both of them cannot be considered as premises from where the service is provided or an office relating to the premises from where service is provided. Therefore, the question of their necessity or essentiality is not really material once it is clear that the services are not covered by the definition itself - credit would not be admissible

Held:

(a) Denial of CENVAT credit and demand for the same in respect of service tax paid on insurance premium in respect of group health insurance scheme as regards employees is set aside. However, the matter is remanded to verify and limit the demand to the extent of service tax payable on insurance premium attributable to families of employees, if other family members are covered and expenses are borne by the appellant.

(b)(1) Denial of CENVAT credit attributable to services utilised for construction, maintenance or repair or renovation of Global Training Centre up to 01/04/2011 is not sustainable and is set aside. However for the period subsequent to 01/04/2011, if any service has been used for setting up of global training center, such credit would not be available. To examine this aspect and to quantify the amount in this regard, the matter is remanded to Original Authority.

(b)(2) As regards credit of service tax paid on services used in respect of hostel, food court, gym etc., in view of the interpretation of definition,, CENVAT credit would not be admissible in respect of service tax paid relating to construction, maintenance, repair or renovation to these facilities. Credit has been simply disallowed in relation to all services attributable to construction service and maintenance or repair service. The adjudicating authority is requested to get each invoice verified and quantify the demand.

(c) The demand of service tax with interest in respect of Telecommunication service is set aside.

(d) The demand for service tax in the capacity of receiver for ITSS received from overseas sub-contractor by overseas branches of the appellant is also set aside.

(e) All the penalties under various Sections imposed on the appellant in their entirety set aside.

Also see analysis of the Order

2014-TIOL-403-CESTAT-MUM

M/s Sachin Construction Vs CCE & ST (Dated: December 17, 2013)

ST - as per work order, activity undertaken by the appellant is excavation for foundation in soil and soft rock including tree removing - such activity would be squarely covered by the definition of 'Site preparation, excavation and earth moving, demolition service' - contention of appellant that activity undertaken is 'supply of tangible goods service' is prima facie not correct - pre-deposit ordered: CESTAT [para 5.1, 5.2]

2014-TIOL-402-CESTAT-DEL

M/s Krishna Homes Vs CCE (Dated: February 14, 2014)

Service Tax - Construction of residential complex - No tax payable by builder/promoter prior to 1.7.2010 - Entitled for refund of Service Tax paid : The assessees had engaged contractors for construction of residential complexes. The dispute in these appeals is as to whether the assessees would be liable to pay service tax on the amounts charged by them from their customers with whom they had entered into agreements for construction of the residential units and whose possession was to be handed over on completion of the construction and full payment having been made by the customers. Tax Research Unit of the Central Board of Excise & Customs, which is a wing of the CBEC dealing with legislation work, had vide Circular No. 332/35/2006- TRU dated 01/8/06 clarified that in case where a builder, promoter, developer builds a residential complex having more than 12 residential units by engaging a contractor for construction of such residential complex, the contractor shall be liable to pay service tax on the gross amount charged for the construction service provided to the builder/promoter/developer under construction of complex service falling under Section 65 (105) (zzzh) of the Finance Act, 1994 and that if no person is engaged by the builder, promoter, developer for construction work who undertakes construction work on his own without engaging the services of any other person than in such cases, in absence of the service provider and service recipient relationship, the question of providing taxable service to any person by any other person does not arise.

Explanation to Section (105) (zzzh) prospective : With effect from 01/7/10 an explanation was added to Section (105) (zzzh) as : - " Explanation - For the purposes of this sub-clause, the construction of a new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer.]" By this explanation the scope of the Clause (zzzh) of Section 65 (105) has been expanded and this amendment by adding an explanation has been held by Tribunal as prospective amendment.

Unjust enrichment not applicable : The presumption under Section 12B of the Central Excise Act, 1944 is a rebuttable presumption and when an assessee shows invoices issued by him in support of his claim that no amount representing service tax had been charged by him from his customers, the burden would shift to the department to produce evidence that the incidence of the tax, paid whose refund is sought had been passed on to the Customers. In this case no such evidence has been produced by the department. In view of this, the refund claims are not hit by unjust enrichment.

Also see analysis of the Order

2014-TIOL-401-CESTAT-MUM

Choudhary Yatra Co Pvt Ltd Vs CCE & C (Dated: January 31, 2014)

ST - Bus reservation charges is for conduct of the tours and, therefore, it rightly forms

part of the tour operator services as defined in law - demand upheld, however, penalty is not leviable u/s 78 of the FA, 1994 since the activity was under dispute and the department cannot allege suppression or willful misstatement of facts - except for above modification, Appeal dismissed: CESTAT [para 6, 6.2, 6.3]

ST - Tour operator service - since the entire activity is a single activity, the same cannot be divided and segregated and service tax liability discharged only on the part of service rendered of seat reservation and tour extension by contending that bus reservation falls under a different category altogether: CESTAT

Also see analysis of the Order

2014-TIOL-400-CESTAT-DEL

M/s Kumaon Mandal Vikas Nigam Ltd Vs CST (Dated: January 6, 2014)

Service Tax - Stay/Dispensation of pre-deposit - Organising Kailash Manasarovar Yatra by the appellant, who is a Government Company owned by the State Government of Uttaranchal - Rejection of appeal by the Commissioner (Appeals) on the ground of time bar - Whether the appellant's appeal before the Commissioner (Appeals) was time barred and the period of delay was far beyond that which can be condoned by the Commissioner (Appeals) is a question linked with the point of fact as to whether the appellant had received complete adjudication order or whether the first page of the adjudication order passed by the Additional Commissioner was missing - This fact can be examined only at the time of final hearing - Prima facie, the demand is barred by limitation as the appellant cannot not be held to be guilty of suppression of facts - Pre-deposit waived.

2014-TIOL-399-CESTAT-KOL

M/s Mas Construction Pvt Ltd Vs CST (Dated: November 13, 2013)

Service Tax - Stay / dispensation of pre deposit - valuation of construction services - contention that inclusion of non-taxable value like receipts from LIC, refund from income tax, loan through Director, receipt from fixed deposit, cash deposit etc. inflated the tax demand - entitlement to the benefit of Notification No.15/2004-ST dated 10.09.2004 contended - prima facie force in argument on inclusion of value related to non-taxable services - dispute on eligibility to notification referred to five member bench - Applicant to deposit Rs.20.00 lakh (Rupees twenty lakh) less Rs.6.00 lakh(Rupees six lakh) already deposited within a period of 12 weeks.

2014-TIOL-394-CESTAT-DEL

M/s Centre For Entrepreneurship Development Vs CCE (Dated: January 31, 2014)

ST - It would be absurd to allege that an institution run by the State Government and which is associated in implementation of various welfare schemes of the Centre and State Government by organizing various training programmes to improve the skills of poorer sections of the society, of having evaded service tax by taking recourse to fraud, willful misstatement, suppression of facts etc. - neither longer limitation period nor penalty is attracted: CESTAT [para 7]

Since the appellant institute provides courses which result in the award of diplomas or

degrees, as mentioned above, which are recognized under the law, the appellant institute would not be covered by the definition of "commercial training or coaching centre " and, therefore, we are of the prima facie view that any training programmes conducted or organized by the appellant would not attract service tax: CESTAT [para 6]

Prima facie the activity of data digitization for various Government departments would not be covered by the definition of support services of business or commerce as the data digitization service for various Government departments cannot be treated as the service in relation to business or commerce: CESTAT [para 6]

Services of renting of immovable property and franchisee service - the service tax on the same has admittedly being paid by the appellant - amount already paid by the appellant is sufficient for hearing of the matter, further pre-deposit was waived and stay granted: CESTAT [para 6.1]

Also see analysis of the Order

2014-TIOL-393-CESTAT-AHM

M/s Trichem Enterprises Pvt Ltd Vs CCE & ST (Dated: December 10, 2013)

Service Tax - Business Auxiliary service - tax liability under Section 65(19) read with Sec 65(105)(zzb) of the Finance Act 1994, on commission earned - dispute on admissibility to exemption under Notification No.6/2005-ST dt. 01.03.2005 amended by Notification No.4/2007-ST w.e.f. 01.04.2007 - Tax demands with interest and penalty confirmed in adjudication and upheld by Commissioner (Appeals) on the ground that appellant has not fulfilled the conditions contained in para 2 of the exemption notification - agitated herein.

Held: No proposal in SCN alleging violation of conditions of exemption notification - Both the Adjudicating and appellate authorities travelled beyond the scope of the notice - demand of duty over and above the exempted limit of Rs.4 lakhs for the financial year 2006-07 is required to be discharged along with the interest applicable - However, appeal filed with respect to duty demand for the period of 2007-08 is required to be allowed - no facts have been disclosed in the show cause notice to the effect as to how appellant has willfully suppressed or misstated with intention to evade the payment of service tax - penalty imposed under Section 78 of Finance Act, 1994 is required to be set aside.

2014-TIOL-392-CESTAT-MUM

CCE Vs Nagar Taluka Ssk Ltd (Dated: December 30, 2013)

ST - Respondent availing GTA service but did not pay service tax on reverse charge basis - upon pointing out by department, they expressed inability to pay and assured that they will pay along with interest and which they paid - demand confirmed along with interest and equivalent penalty u/s 78 of FA, 1994 - Commissioner(A) dropping penalty so Revenue in appeal. Held : whatever service tax would have been paid would have been taken as credit, if paid in time - by paying ST late, they have paid interest also - respondents are entitled for the benefit of s.80 of FA, 1994 - Revenue appeal dismissed: CESTAT [para 6]

2014-TIOL-387-CESTAT-DEL

M/s National Construction Company Vs CCE (Dated: February 21, 2014)

taxindiaonline.com

ST - activity of site formation and clearance, excavation of top soil and over burden has to be treated as an activity ancillary to mining and since the overall contract is for mining and as such it is an indivisible contract, the entire contract has to be treated as a mining contract and not a contract for site formation, clearance, excavation and earth moving - Demand for period 16/6/05 to 31/5/07 set aside: CESTAT

ST - except for mention of loading of the mined lignite of the desired quantity into the trucks, there is absolutely no mention in the contract of any handling or transportation of coal by the appellant within the mining area - From the nature of the contract also, it cannot be said to be a contract for handling cargo and, hence, it would be absurd to classify the appellant's activity as cargo handling service and charge service tax - ST demand for the period 2003 to 15/06/05 by classifying the same as the Cargo Handling Service is absurd and not sustainable: CESTAT

When w.e.f. 01/6/07 the activity of the appellant has been accepted by the Department as mining service, for the period prior to 01/6/07, the same activity cannot be classified as site formation and clearance, excavation and earth moving or as cargo handling service - demand not sustainable for prior period: CESTAT

Limitation - SCN for both the periods has been issued on 29/09/2008 - last date for filing of ST-3 return for October 2007 to March 2008 period was 25/4/08 and hence SCN issued is within one year - for the six monthly period ending 30th September 2007 last date for filing ST-3 was 25/10/07 and the SCN for demand of short paid service tax for this period could be issued upto 24/10/08, so demand is within time - service tax demand for the period from 01/6/07 to 31/3/08 has to be upheld: CESTAT

Demand and Penalty - service tax demand for the period from 01/6/07 to 31/3/08 is upheld along with interest and also the penalty under Section 78 is also upheld. Similarly, the penalty @ Rs. 200/- per day under Section 76 for the period from 01/6/07 to 31/3/08 is also upheld: CESTAT

Also see analysis of the Order

2014-TIOL-386-CESTAT-KOL

M/s Srei Capital Market Ltd Vs CST (Dated: November 25, 2013)

Service tax - Demand - Tax demands with interest and penalty adjudged on "Management Consultant's Service" defined under Section 65 (105) (r) of the Finance Act, 1994, solely on the basis of difference between the gross taxable value shown in the relevant ST-3 Returns vis-a-vis entries made in their Debtor's ledger agitated herein.

Held: Appellant was given sufficient opportunities of hearing, but sought adjournments on one pretext or the other - although re-conciliation statement submitted, they have not adduced proper evidences explaining the discrepancies as claimed by them - there has been no proper adjudication of the case due to non-participation of the Appellant - appropriate case for re-appreciation of facts and evidences / documents in support of the claim that the differential value between ST-3 Returns and Debtors ledger were on account of receipts attributable to non-taxable activity / adjustments - Appellant to deposit 10% of the service tax involved within a period of four weeks from today and report compliance directly to the Commissioner; upon compliance, Commissioner to decide the issue afresh after granting a reasonable opportunity of hearing.

2014-TIOL-385-CESTAT-AHM

M/s Noble Detective And Security Service Pvt Ltd Vs CST (Dated: January 10, 2014)

Service Tax - Security Agency service - demands based on difference in the amounts reflected in the profit and loss account of the appellant and the ST-3 returns filed with department confirmed in adjudication with interest and penalty, upheld by Commissioner (Appeals) and agitated herein solely on time-bar (limitation) aspect.

Held: appellant's argument that demand is time barred as balance sheets were regularly filed with Registrar of Companies is required to be rejected in terms of the Steel Industries ruling - issue of invocation of extended period in the second show cause notice, is a mixed question of facts and law - Once SCN served on an issue, appellant's duty to inform the Revenue that inspite of earlier show cause notice appellant continued to follow the earlier practice of declaring incorrect value of services in their ST-3 return vis-a-vis balance sheets - Revenue cannot imagine that the appellant will continue to follow a wrong practice inspite of earlier show cause notice - the case laws relied upon by the appellant distinguished on facts and circumstances and inapplicable to the present proceedings - Views fortified by Tribunal ruling in the case of Robot Detective & Security Agency to the effect that extended period can be invoked in a subsequent show cause notice.

2014-TIOL-377-CESTAT-MAD

M/s Everest Educational Charitable Trust Vs CST (Dated: July 9, 2013)

Service Tax – Demand - "Commercial Training or Coaching Institutes" as defined under Section 65 (27) of the Finance Act, 1994 – appellant running a charitable trust and conducting coaching and training in various fields of management, marketing, computer hardware engineering, human resources development etc. – Revenue viewed that the same was taxable and proposed demands – proposals dropped in adjudication on the ground that tax liability did not exist on the charitable organization, and even if it did, it was exempt under Notification No. 24/04-ST dated 10.09.04 for training imparted by "Vocational Training Institutes" – subsequently, refund was sanctioned but not paid – both adjudication orders reviewed by jurisdictional Commissioner under Sec 84 of the Finance Act 1994, who issued notice, proposing reversal of earlier decision and denial of refund.

Held: specific finding recorded in the initial adjudication order to the effect that training courses conducted by the appellants was vocational training - no specific proposal in the revision show cause notice to revise this finding - This is fatal to the proceedings because the finding on eligibility to the exemption under notification 24/04-ST had become final and there was no proposal for revising this in the show cause notice - preliminary objection raised by the appellant is valid - merits of the issue whether the appellants were running a commercial institute or whether vocational training was imparted; and question of limitation not addressed - both the appeals are allowed with the direction to refund the amount deposited by the appellants during the investigation stage.

2014-TIOL-376-CESTAT-KOL

M/s Mohta Technocrats Pvt Ltd Vs CCE , C & ST (Dated: November 20, 2013)

Service Tax - Stay / dispensation of pre deposit - Mining and Mineral services - activity of Excavation/raising, screening/cleaning/feeding, loading, transportation etc. in the Mining area of various clients - Revenue proposed tax demand for the period prior to 01.06.2007 under "BAS" - For the period 01.06.2007 - 31.03.2009, on the basis of receipt shown in the Balance Sheet in comparison to the ST-3 filed with the Department - contention that the difference is on account of various non-taxable

receipts including trading of Textile items from their Head office not raised during adjudication.

Held: applicant's non-co-operation with the investigation/adjudication recorded in the impugned order - based on work orders submitted by the applicant, the Department has come to the conclusion that they have carried out Business Auxiliary Service for the period prior to 1/06/2007 and subsequently under the category of 'Mining and Mineral Services' - Department's case is that from 1.6.2007 onwards, Service Tax discharged inconsistent with the receipts shown in final accounts - explanation on the trading of textile items from their Head office in Kolkata has not been raised earlier before the adjudicating authority, hence, prima facie not acceptable at this stage - no prima facie case for total waiver of pre deposit of dues adjudged - claim of financial hardship has not been substantiated - applicant to deposit 50% of the Service Tax confirmed within a period of Eight Weeks.

2014-TIOL-369-CESTAT-AHM

M/s Hamon Shriram Cottrel Pvt Ltd Vs CCE & ST (Dated: January 1, 2014)

Service Tax - Stay / dispensation of pre deposit – valuation under Rule 2A (i) of the Service Tax (Determination of Value) Rules, 2006 - supply, erection, commissioning and installation of cooling towers - issue involved is whether the disputed contracts entered into by the appellant can be vivisected and whether the sale value of the goods charged by the appellant from its customers represent only the price of the goods or also include consideration for performing a service - The issue is contentious and needs deeper consideration, which can be gone into detail at the time of final hearing of the matter - appellant to pre-deposit Rs.50,00,000/- (Rupees fifty lakhs only) within a period of eight weeks; and upon compliance, there will be stay on recovery of the remaining amounts and penalties till the disposal of the appeal.

2014-TIOL-368-CESTAT-AHM

CCE & ST Vs M/s Hitachi Home And Life Solutions (I) Ltd (Dated: December 10, 2013)

Service Tax - Demand - technical collaboration agreement and royalty paid to Hitachi Japan viewed by Revenue as taxable under the category 'consulting engineer' under Sec 65(31) and Sec 65(105)(g) of the Finance Act 1994 - Tax demands with interest and penalty confirmed in adjudication; set aside by Commissioner (Appeals); and agitated by Revenue herein.

Held: No infirmity in Appellate Commissioner's findings that the technical know how provided by the foreign company as per the Licensed agreements was transfer of intellectual property rights; that no consultancy or advice was involved and hence the same was not liable to service tax under consulting engineer service; and that the impugned service is specifically covered for levy of tax with effect from 10/09/2004 under Section 65 (55b) of the Finance Act, 1944 as "Intellectual Property Service" - consistent with Quintiles Data judgment.

2014-TIOL-367-CESTAT-AHM

M/s Quality BPO Service Pvt Ltd Vs CST (Dated: December 6, 2013)

Service tax – Refund - refund of accumulated Cenvat Credit under Notification No.5/2006-C.E.(N.T.) dt. 14.03.2006 read with Rule 5 of the Cenvat Credit Rules, 2004 disputed herein. Held: Proviso under clause 2 of the notification uses the word 'may' and hence EOU has option to file quarterly or monthly claims – The refund

available under the notification is not linked to the relevant date prescribed under Sec 11B of the Central Excise Act 1944 – No time limit prescribed in the notification and claims cannot be held to be time barred.

2014-TIOL-366-CESTAT-MAD

M/s Arignar Anna Sugar Mills Vs CCE & ST (Dated: August 19, 2013)

Service Tax - Stay / dispensation of pre deposit - assistance in providing labourers for cutting sugar cane viewed by department as covered by the definition of "man-power supply or recruitment agency service" under Section 65(105)(k) read with Section 65(68) of the Finance Act, 1994 - demands confirmed in adjudication with interest and penalties agitated herein.

Held: Prima facie, applicant is not engaged in the business of supply of man-power for consideration - in the absence of employer employee relationship the payment for the labourers cannot be considered to be paid to the applicant; the payment is only routed through them - amount of Rs.4/- PMT charged appears to be for transportation of the employees from one site to the other and not towards consideration of services rendered, requiring examination at the time of hearing the appeal - similar circumstances considered in the case of M/s. Thiru Arroraran Sugars Ltd. - waiver of pre-deposit granted for admission of appeal, with stay in collection of any such dues on admission of the appeals.

2014-TIOL-362-CESTAT-DEL

Shyam Kumar And Co Pvt Ltd Vs CCE & ST (Dated: October 1, 2013)

Service Tax - Stay/Dispensation of pre-deposit - Extension thereof - Sunset clause in sub-section (2A) of Section 35C is not applicable to grant of waiver of pre-deposit - It requires to be noted there is no specific provision authorising grant of stay of realisation of the adjudicated liability - However the power to grant of stay pending the hearing of an appeal being an inherent power of an appellate forum/quasi judicial forum, such power is exercised as integral to the appellate jurisdiction. It is this exercise of the power to grant of stay that is the subject matter of the sunset clause in the proviso to Sub Section (2A) of Section 35C - The sunset clause does not apply to grant of waiver of pre-deposit, an exercise conditioned by the provision of Section 35F - Application seeking extension of operation of order waiving balance amount of adjudicated liability is misconceived.

2014-TIOL-361-CESTAT-MUM

Continental Drugs Company Pvt Ltd Vs CST (Dated: December 11, 2013)

ST - If the appellant had indeed rendered a multiplicity of services, the charges would have varied every month which also is a pointer towards the fact that the appellant rendered only one type of service - From the statements of the employees of the appellant firm, the service rendered was only security services and nothing else - Demand upheld & appeal dismissed: CESTAT [para 5.1]

Limitation - there is nothing in the records to show that the appellant consulted either the department or obtained any legal opinion as their liability towards service tax - bonafides not proved - appellant did not obtain any registration nor follow any of the statutory procedures and had thus suppressed the facts from the department with an intention to evade service tax, confirmation of the demand along with interest and penalties is upheld: CESTAT [para 5.2]

Argument that the appellant was operating on a no-profit no-loss basis and, therefore, cannot be considered as a commercial concern is without any basis - Inasmuch as the appellants were charging consideration from the group companies/entities for the services rendered on a monthly basis and the appellant had shown the income so received as business income in their balance sheet and the group entities which made the payments to the appellant firm had claimed these as expenditure, thereby enjoying the benefit of income tax by reducing their profits: CESTAT [para 5.2]

Also see analysis of the Order

2014-TIOL-360-CESTAT-MUM

CCE Vs Sonali Caterers (Dated: January 17, 2014)

ST - Respondent are maintaining canteen with TISCO and receiving remuneration towards service provided under the category of Outdoor catering service - on the basis of records of TISCO, revenue issued SCN to respondent demanding ST - respondent contesting liability and submitting that they have paid ST on the payment received, records produced - adjudicating authority failing to co-relate with ST returns and confirming demand - Commissioner(A) setting aside the order on the ground that adjudicating authority not appreciating the facts - Revenue appeal. Held: actual liability of ST payable has not been considered by both the authorities - matter needs re-examination, hence remanded: CESTAT [para 4, 5]

2014-TIOL-359-CESTAT-AHM

M/s Shiva Industrial Security Agency (Gujarat) P Ltd Vs CCE & ST (Dated: December 12, 2013)

Service Tax - Stay / dispensation of pre deposit - plea for modification of stay order dated 01.10.2013 - appellant has not made out any case for modification as conclusion is based upon fact that the appellants had not deposited the amount of service tax liability collected from the service recipient during the material period - appellants are also liable for interest on the amounts of service tax liability which gets fastened on them, apart from penalty - reasons recorded in the stay order dated 01.10.2013 does not require any reconsideration - However, time for depositing the amounts indicated therein extended on request, by further eight weeks - if compliance is not reported the appeals are liable to be dismissed without granting any further opportunity to the appellants.

2014-TIOL-355-CESTAT-MUM

The Sanjivani (Takli) Sahakari Sakhar Karkhana Ltd Vs CCE & C (Dated: January 15, 2014)

ST - For the period prior to 16/06/2005, the section as it stood at the relevant time, dealt with only recruitment of manpower for a client - as appellant has not undertaken any recruitment activity for M/s. Bajaj , for the period up to 16/06/2005, the activity of the appellant does not come within the purview of service tax under the category of 'manpower recruitment agency service': CESTAT [para 5.1]

S. 67 of FA, 1994 - W.e.f. 16/06/2005 scope of the taxable service was widened bringing within the purview not only recruitment but also supply of manpower - appellant submission that they received only 75% of the salaries to be paid to their employees from M/s. Bajaj and has not received any consideration for the supply of manpower is a misplaced one - Section 67 of the FA, 1994 provides that service tax

shall be paid on the gross amount received by the service recipient - section 67 does not envisage that the service provider should always render the service on a profit basis - Even if loss is incurred in the provision of service, on the consideration received service tax liability would accrue: CESTAT [para 5.1]

ST Liability - Merely because the appellant collected only 75% of the salary paid to the employees, it does not take the appellant out of the purview of service tax liability - law does not envisage that the appellant should be engaged in supplying manpower to various clients - Even if the activity undertaken in a one-time transaction, conforming to the legal definition of supply of manpower, service tax liability would accrue - without the appellant's consent and without the agreement entered into between the appellant and M/s. Bajaj , the employees of the appellant could not have been employed by M/s. Bajaj - there is a constructive supply of manpower by the appellant to M/s. Bajaj and, therefore, for the period w.e.f. 16/06/2005, the appellant's activity would be clearly covered within the definition of 'supply of manpower' - Demand upheld: CESTAT [para 5.1]

Penalty - Limitation - In the appeal of the Revenue, the demand is for the normal period and Revenue was already aware of the activity of the appellant for the previous period inasmuch as three show cause notices have been issued earlier - therefore, the question of alleging suppression or willful mis-statement of facts with intent to evade payment of duty would not arise at all - imposition of penalty under Section 78 is not warranted: CESTAT [para 6]

Precedence - to apply the ratio of any decision, the facts should be identical and even a slight change of fact would render the ratio inapplicable: CESTAT [para 5.2]

Also see analysis of the Order

2014-TIOL-354-CESTAT-MUM

The Dukes Retreat Ltd Vs CCE (Dated: January 21, 2014)

ST - Room charges collected by appellant for conducting conferences etc. whether leviable to ST under the category of Mandap keeper service - in appellant's own case Tribunal has granted unconditional waiver from pre-deposit - in case of Rambagh Palace Hotels Pvt. Ltd. (2012-TIOL-673-CESTAT-DEL) it is held that value of room charges booked for purpose of conference etc. is not includable in the value of Mandap Keeper Service and renting out of hotel rooms does not fall within the purview of Mandap keeper service - appellant has made out a prima facie case for grant of stay - Pre-deposit waived and stay granted: CESTAT [para 5]

2014-TIOL-353-CESTAT-DEL

CCE Vs M/s Omkar Singh Solanki (Dated: December 26, 2013)

ST - Rent-a-cab scheme operator - when the vehicle supplier is paid on the basis of distance as per rate sheet, service tax under rent-a-cab operator's service whether would be attracted - lack of clarity - respondent in this case is an individual who in terms of his contract with BSNL was supplying vehicles and charging for the same on kilometer basis and the respondent's contract with BSNL did not mention any service tax - this is not case a case where the Appellant as service provider while collecting the service tax from the BSNL did not pay the same to the Government - it cannot be said that the respondent was aware of the service tax liability and had deliberately evaded the payment of tax - no infirmity in waiver of penalty u/s 80 of FA, 1994 - Revenue appeal dismissed: CESTAT [para 4]