INDIRECT TAXES

Service Tax

Sunil Moti Lala

A. Classification of Service

Banking & Other Financial Service

1. The assessee supplied storage tanks to their customers for fixed term and charged consideration on monthly basis. The Tribunal held that, as per the agreement the property in tank always remained the property of the assessee and the same was only loaned for use to their customers without transferring the right to sell. Further, the assessee was not a banking company or financial institution hence not liable under Banking & Other Financial Service.

Inox Air Products Ltd. v. CCE, Nagpur 2015 (37) STR 1024 (Tri.-Mumbai)

2. The assessee in this case imposed commitment charges on the clients who did not draw the amount of loan that had been at their disposal. It was contended that these charges were for the loss of interest that the bank would have earned if the customer had drawn money from the loan account. The Tribunal held that, commitment charges are integrally connected with the lending which is taxable service and same cannot be separated from lending service, hence liable to service tax.

Punjab National Bank v CCE & ST Jaipur-II 2015 (38) STR 498 (Tri.-Del.)

3. The Tribunal held that stock brokers acquire shares, bonds etc. on behalf of client and therefore, are not financial institution as per RBI Act and hence, they were not liable to pay service tax.

2015 (38) STR 490 (Tri.-Mum.) Parag Parikh Financial Advisory Services Ltd. v. CST, Mumbai.

Business Auxiliary Services

4. Since the act of purchasing a car is a sale where property is delivered, any repair/service on purchased cars is done for oneself, the margin on sale and purchase of used cars by dealer would not be liable for service tax under the category of Business Auxiliary Services despite the fact that such cars were not registered with the RTO on purchase and some repairs/services were carried on such cars on purchase.

Sai Service Station v. CCE, C&ST (2015) 37 STR 516 (Tri.-Bang.)

5. The department in this case sought to demand service tax on service charges collected from cement and asbestos sheet companies for disposal of fly ash. The said services charges were for providing infrastructure, water, lighting, road maintenance etc. the Tribunal held that, activity of collection and removal of fly ash as per the rate of Tamil Nadu Government does not constitute infrastructural support service under BSS.

Mettur Thermal Power Station v. CCE (ST) Salem 2015 (38) STR 606 (Tri.- Chennai)

6. The department in this case sought to demand service tax on additional handling charges and facilitation charges on import of goods paid by importer/seller under BAS. The Tribunal held that, the assessee was importing impugned goods in own name and selling them on a principal basis to the buyer. Hence, he could not be held to be a service provider and expenses incurred before the transfer of goods formed a part of sale price and could not form a part of any service tax liability.

Indian Oil Corporation Ltd. v. CCE, Goa 2015 (38) STR 501 (Tri.-Mumbai)

7. The Tribunal held that the appellant provided marketing services of products of principal located outside India which is covered under BAS and qualifies as export of service.

CST, Mumbai-II v. Bayer Material Science P. Ltd. 2015 (38) STR 1206 (Tri.-Mumbai)

8. The assessee entered into an agreement with manufacturers of hoses, LPG stove etc. for marketing, business promotion, etc. for enhancing customer base in respect of said goods. The assessee contended that, they merely endorsed safety requirements under various regulations and therefore were not liable to service tax. The Tribunal observed that, the assessee not only promoted sale of goods of manufacturer by making available their marketing/distributor network but also added brand value to the products which attracted customers to buy the said products. Therefore it held that, the assessee provided Business Auxiliary Services to various manufacturers.

Hindustan Petroleum Corporation Ltd. v. CCE, Mumbai 2015 (38) STR 131 (Tri.-Mumbai)

9. The Tribunal held that multi-piece packing of soaps on job work basis amounts to deemed manufacture and hence cannot be taxed under Business Auxiliary Services. The matter was remitted back to give specific finding as to why the activity of the appellant did not amount to manufacture and if it does not amount to manufacture, why benefit of Notification No. 8/2005-S.T. cannot be extended.

Deshmukh Services v. CCE & ST [2015] 55 taxmann.com 111 (Mumbai- CESTAT)

10. The Tribunal held that purchase of goods from vendor and exporting the same to customer abroad at a markup value constitutes trading activity on principal to principal basis and cannot be regarded as business auxiliary service even if the markup is stated in the book as commission.

Behr India Ltd. v. CCE, Pune [2015] 55 taxmann.com 526 (Mumbai-CESTAT)

11. The process of cooling milk to a temperature below 5 degrees Celsius for the purpose of long distance transportation does not constitute a service rendered in relation to production or processing of goods (not amounting to manufacture) and hence not liable to service tax under the category of Business Auxiliary Services.

Sharma Ice Factory v. CCE (2015) 37 STR 660 (Tri.-Del.)

Cargo Handling Service

12. The Tribunal held that, loading/unloading of coal by engaging tippers come within the purview of Cargo Handling Service. It was further held that, mining of sand from riverbed was within the Mining Service and not under scope of Cargo Handling Service. Extended period of limitation was not invoked in view of conflicting decisions of Tribunal and others.

Shreem Coal Carriers (P) Ltd. v. CCE, Nagpur 2015 (37) STR 1038 (Tri.-Mumbai)

13. The assessee collected barge (shipping) charges towards transportation of imported goods from the mother vessel to the jetty. The department sought to tax these charges under Cargo Handling Service. The Tribunal held that such transportation activity is a part of import transportation of bringing goods into India and liable for import duty and cannot be made liable to tax under Cargo Handling Service.

United Shippers Ltd. v. CCE, Thane-II 2015 (37) STR 1043 (Tri.-Mumbai)

Clearing and Forwarding Agent Services

14. The assessee was engaged in procuring orders from Government departments for cars manufactured by Maruti Udyog and in providing related liaison services between the two parties for a commission. The Tribunal held that the activity performed by the assessee could not be classified as clearing and forwarding agent services and therefore not liable to service tax.

CCE v. Amitdeep Motors (2015) 37 STR 637 (Tri.-Del.)

15. The Tribunal held that where the assessee merely procures purchase orders based on prices determined by the principal and does not deal with goods at all, his services would be that of Commission Agent and not of Clearing and Forwarding Agent.

Malhotra Distributors Pvt. Ltd. v. CCE [2015] 55 taxmann.com 245 (Mumbai – CESTAT)

16. The Apex Court held that supervising and liaisoning with coal companies and railways for verification of material as per requirement of cement companies cannot be termed as a clearing and forwarding agents service as they are not connected with clearing and forwarding operations.

Coal Handlers (P) Ltd v. Commissioner of Central Excise Range Kolkata – I [2015] 57 taxmann.com 402 (SC)

Club or Association Service

17. The assessee, an apex body of software companies, contributed subscription amounts for achievement of various objectives of public, industry and national importance including awareness/education/exports/ intellectual capital growth etc. The department sought to tax the subscriptions received from members under the category of Club or Association Service. The Tribunal held that subscription charged by the assessee was not liable to service tax.

NASSCOM v. CST Delhi 2015 (37) STR 1041 (Tri.-Del.)

18. The assessee was engaged in running a club for its members where activities relating to yoga, sports etc. were carried out. The Tribunal relying on decision in Ranchi Club Ltd., held that as per the principle of mutuality, services provided to members do not fall within the ambit of Club or Association Service. In case of other assessees, such as co-operative housing societies, which collected charges from members/ shareholders for managing and maintaining land and building belonging to the society, it was held that they were also not liable under Club or Association Service.

Matunga Gymkhana v. CST, Mumbai 2015 (38) STR 407 (Tri.-Mumbai)

19. The Tribunal held that FICCI and ECSEPC being charitable organisations who are dominantly pursuing activities of general public utility fall outside the purview of Club or Association Service. Further, any service provided to non-members prior to 1-5-2011 would not constitute a service under the head of Club or Association.

Federation of Indian Chambers of Commerce & Industry v. CST, Delhi 2015 (38) STR 529 (Tri.-Del.)

Construction Services

20. Construction Services in respect of embassy building and its staff quarters not meant for commercial or industrial use would not be liable for service tax under Commercial or Industrial Construction Services.

Bhayana Builders Pvt. Ltd. v. CCE (2015) 37 STR 525 (Tri.-Del.)

See also Paharpur Cooling Towers Ltd. v. CCE&C (2015) 37 STR 550 (Tri.-Del.)

21. The Tribunal held that where the assessee had constructed office buildings, the said service could not be classified under the category of 'Construction of Residential Complex Services' as office buildings would not be covered under the term residential complexes.

Singhania Enterprises v. CCE (2015) 37 STR 551 (Tri. – Del.)

Consulting Engineer Services

22. The assessee was engaged in providing data relating to drilling activities carried out by ONGC without providing any technical assistance / consultancy or analysis related to the data. Since the assessee was neither technically qualified nor an engineering firm, it could not be classified as a Consulting Engineer within the meaning contained in section 65(31) of the Act and therefore no service tax was payable under the category of Consulting Engineer Services

Halliburton Offshore Services Inc. v. CST (2015) 37 STR 634 (Tri.-Mum.)

Commercial Coaching & Training Services

23. The assessee conducted training in spoken English for duration of two weeks and claimed exemption as vocational institute. The Tribunal held that, even after undergoing training in English language for years together both in School and Colleges, it was difficult to attain proficiency, it was inconceivable that in a matter of two weeks, any proficiency or skill could be imparted or achieved. Further, training in languages, whether Indian or foreign had not been prescribed vocational training by Government of India and therefore, assessee was not eligible for benefit of Notification No. 9/2003-ST or its successor Notification No. 24/2004-ST.

Ullhas Vasant Bapat v. CCE, Pune-III 2015 (37) STR 1034 (Tri.-Mumbai)

24. The appellant provided courses in Information Technology, Marketing, Personnel Management, HRD etc. The Tribunal held that since the Institute is not affiliated to any University or approved by any Statutory Authority or under any other law, it was liable to service tax under Commercial Training or Coaching Service. It was further held that, courses conducted by the appellant cannot be qualified as vocational courses entitled for benefit of exemption under Notification No. 9/2003-ST and 24/2004-ST.

Balaji Society v. CCE, Pune-III 2015 (38) STR 139 (Tri.-Mumbai.)

Information Technology Software Services

25. The Tribunal held that where the overseas branches had received Information Technology and Software Services from the overseas sub-contractor and the payments for the same was also made out of EEFC A/c No. service tax under reverse charge mechanism can be demanded from the Indian Head Office since by virtue of section 66A the overseas branch would be considered as a separate person and it is who has received the sub-contractor's services and not the Indian Head office

Infosys Ltd. v. CST (2015) 37 STR 862 (Tri.-Bang.)

Intellectual Property Service

26. The appellant had the requisite permissions to use his property in the name and likeness of the legendary martial artist "Bruce Lee". The appellant had paid consideration to the Foreign Service provider for the visual images supplied to them by way of royalty. The property embodied in visual images would come squarely within the definition of artistic work as defined in section 14(c) of the Copyright Act. Since copyright is specifically excluded from the IPR service during the relevant period the question of levy of service tax on copyrights is not sustainable.

Indiagames Ltd. v. CST (2015)37 STR 299 (Tri.-Mum.)

Management Consultancy Service

27. The assessee was engaged in liaison services including administrative support, banking and loan arrangement etc. with various Government authorities. The department sought to tax the assessee under the category of Management Consultancy Services. The Tribunal held that, in absence of agreement or invoice, it was difficult to understand the nature of services. Since the activities undertaken by the assessee included advice and consultancy as well as executory functions connected with the advisory functions which were not related to routine or operational functions, the services were covered under Management Consultancy Services.

CST, Mumbai v. Essel Corporate Services Pvt. Ltd. 2015 (37) STR 943 (Tri.-Mum.)

28. The assessee was engaged in providing advice related to conceptualising, devising, development, modification, rectification, or up-gradation of working system of companies and also in relation to the commercial aspect, current development, import and export policy of India, potential problems and solutions, marketing strategies as well as alerting clients about potential misuse of their IPRs, economic and political scenario etc. The assessee contended that they were liable to service tax under BSS. The Tribunal

held that, the services provided were in the nature of Management Consultant as BSS covered essentially executory service in nature.

Empro Oil (P) Ltd. v. CCE, Noida 2015 (38) STR 1038 (Tri.-Del.)

Mandap Keeper Services

29. The Tribunal held that marriage as a social function existed much before religions came into being and therefore it was futile to argue that marriage is a religious function. The mode of conducting the marriage either by following religious rituals or otherwise does not make marriage a religious function. The appellant was liable to pay service tax under Mandap Keeper Service.

CCE, Pune-II v. Central Panchayat 2015 (37) STR 1038 (Tri.-Mumbai)

Market Research Services

30. The Tribunal held that, market research services provided to companies abroad must be treated as export of service.

Kirloskar Ebara Pumps Ltd. v. CCE, Kolhapur 2015 (38) STR 488 (Tri.-Mumbai)

Outdoor Caterer Services

31. The assessee provided canteen service in the premises of service recipient. The Tribunal held that since the assessee was providing snacks and foods, it was liable to pay service tax under the category of Outdoor Caterer Service and set aside the penalty as the assessee was under *bona fide* belief that it did not have to pay service tax.

Masoji Caterers v. CCE, Raipur- I 2015 (38) STR 69 (Tri. - Del.)

32. The Tribunal held that a co-operative society of members being employees of a company engaged in preparation and serving of food to the employees are a provider of catering service.

Alfa Laval (India) Ltd. Employees Co-operative Consumer Society v. Commissioner of Central Excise. Pune-I [2015-TIOL-1184-CESTAT-MUM]

Port Services

33. The department sought to demand service tax on compensation received from ONGC for providing permission to lay their pipelines through port limits. The said compensation had been calculated @ 50% of wharfage charges paid. The Tribunal held that the assessee did not extend any facility, service or personnel in relation to pipeline or goods flowing through such pipelines and the amount received cannot be considered as amount paid towards any service rendered. The payment was received for permission and not for any port service. It was also held that, mere erection of wharfage by itself does not amount to rendering of port service and term 'wharfage' was used for merely determining compensation and not to determine nature of service rendered.

CST Mumbai v. Traffic Manager, Mumbai Port Trust 2015 (37) STR 993 (Tri.-Mumbai)

Programme Producer's Services

34. The assessee had entered into agreements with various foreign entities who were required to make audio-visual coverage of the IPL cricket matches and uploaded the digitised images for broadcasting to the viewers of the cricket match all over the world, it was held that the activities carried out by the non-resident service providers were in the nature of "Programme Producer's Services" and accordingly the assessees were liable to pay service tax on the services under the reverse charge basis. However, the amounts paid to overseas entities for booking of hotel, accommodation and transportation services for personnel in connection with recording of cricket matches to be held outside India it would not be covered under the category of Programme Producer's Service, since the same is in the nature of support services

BCCI v. CST (2015) 37 STR 785 (Tri.-Mum.)

Rent-a-Cab Scheme

35. The issue at hand in the said case was whether service tax would be levied under the category of Rent-a-Cab Services where the

motor vehicle was hired without the hirer having possession of the vehicle. The High Court, referring to section 75 of the Motor Vehicles Act and Rent-a-Cab Scheme, highlighted the difference between hiring and the Rent-a-Cab Scheme stating that in the case of hiring the owner of the vehicle retains control and possession whereas in the Rent-a-Cab Scheme the person is enabled to take the vehicle wherever he pleases subject to the terms of contract between him and the owner subject to the payment of rent. Therefore, the Court held that unless there is a transfer of control and possession of vehicle to the hirer there cannot be said to be a transaction liable for service tax under the category of Rent-a-Cab Services

CCC v. Sachin Malhotra (2015)37 STR 684 (Uttarakhand).

36. The Tribunal held that the assessee, a transport corporation, could not be considered as a person engaged in renting of cab service as the activity undertaken by them is to provide bus facility/transport facility to the citizens of city and main activity is running the buses in the city for convenience of citizens which was not a Rent-a-Cab Service operation.

Bangalore Metropolitan Transport Corpn. v. CST, Bengaluru 2015 (38) STR 976 (Tri.-Bang.)

37. The High Court held that when there is only a contract to hire and there is no renting of cab, there is no service tax payable.

CC & CE, Meerut- I v. R. S. Travels 2015 (38) STR 3 (Uttarakhand)

Renting of Immovable Property

38. The assessee had received rental income from renting out flats which were used as hostels / residential accommodation. The Tribunal held that no service tax was payable under the category of 'Renting of Immovable Property' as renting of buildings solely for residential purposes were specifically excluded from the charge of service tax.

Singhania Enterprises v. CCE (2015) 37 STR 551 (Tri. – Del.)

39. The assessee had received a security deposit from the licensee of the premises which provided security in case of default in rent or default in payment of utility charges and for prospective damages, if any. Thus where the revenue had sought to include the notional interest on security deposit within the value of taxable service of renting of immovable property but failed to provide evidence that the security deposit had influenced rent in any manner, the Tribunal held that the inclusion of notional interest on security deposit in value of taxable service was incorrect.

Murli Realtors Pvt. Ltd. v CCE (2015) 37 STR 618 (Tri. – Mum.)

40. The Tribunal in majority order held that payments collected towards lease and rent from various shop owners situated in stadium is liable to service tax under Renting of Immovable Property Service. In relation to the stadium rented out temporarily for conduct of social, official or business function, the Tribunal held that the assessee was liable to service tax under Mandap Keeper Service. It was further held that consideration received for staging the match, exclusive rights to use the advertising sites to sell and exhibit advertising of any kind is liable to service tax under sale of space or time for advertisement and that membership fees received for running a club for promoting cricket is not charitable in nature and therefore liable to service tax under Club or Association Service. With regard to conducting and telecast of cricket tournament, the Tribunal held that it is not in relation to any business or commerce and hence TV rights subsidy, BCCI tournament receipts, infrastructure subsidy etc. was not liable to service tax under BSS.

Vidarbha Cricket Association v. CCE, Nagpur 2015 (38) STR 99 (Tri.-Mumbai)

Share Transfer Agent Services

41. The Tribunal in this case held that, Share Transfer Agent Service and Registrar to an Issue service are liable to service tax w.e.f. 1-5-2006

and reimbursement of expenditure for the period prior to 1-5-2006 is not liable to tax at all. It is further held that, postage is in nature of duty/ tax as per section 2(f) of Indian Post Act, 1898 and service tax cannot be levied on amount charged as tax. Also when postage/stationery recovered from service receiver on actual basis by service provider, service provider acts as a pure agent therefore, reimbursement made to pure agent is not includible in value of taxable service rendered.

Link In Time India Pvt. Ltd. v. CCE, Thane-I 2015 (38) STR 705 (Tri.-Mumbai)

Storage and Warehousing

42. The assessee was engaged in running a container freight station ('CFS') wherein it rendered cargo handling services such as loading, unloading, arranging for and supervising the examination of cargo, stuffing and de-stuffing of cargo and movement of empty containers amongst various other services, with respect to the export goods of its customers. For a few customers, the assessee provided storage and warehousing services for fixed monthly rentals in addition to the cargo handling services it rendered. The assessee did not pay service tax on the storage and warehousing services on the ground that the services were incidental to the cargo handling services rendered for the export goods of its customers and therefore not liable to service tax. On appeal, the Tribunal held that the storage services carried out pursuant to the agreement with the customers, were in addition to the normal activity of cargo handling services for which specific consideration was received and could not be considered as incidental to cargo handling services. The Tribunal held that if storage was to be considered as incidental to cargo handling services it would have specifically mentioned in the definition of cargo handling services and since it was not provided for in the definition the said services would be liable to service tax under the category of Storage and Warehousing Services

CCE v. Maersk India Pvt. Ltd. (2015) 37 STR 555 (Tri.-Mum.)

43. The assessee was a manufacturer and seller of liquid oxygen, nitrogen etc. for which it provided storage tanks to customers. The Tribunal observed that the assessee had no control on gas in the storage tank and whole responsibility was with the buyer only and held that as the assessee was not responsible for security of goods it was not liable to service tax under category of Storage and Warehousing Service.

Inox Air Products Ltd. v. CCE, Raigad 2015 (38) STR 179 (Tri.-Mumbai)

44. The appellant received incineration charges for usage of storage tank to store chemicals received from other factories and contended that it received amounts for sharing common expenses which were not liable to service tax. The Tribunal held that, the same is liable to service tax under Storage & Warehousing Services.

State Fertilizers & Chem. Ltd. v. CCEC&ST (A) Vadodara-I 2015 (38) STR 116 (Tri.-Ahmd.)

Technical Inspection and Certification Service

45. The Tribunal held that the activity of technical inspection and certification of seeds produced by seed producers would be liable for service tax under the category of Technical Inspection and Certification services.

Maharashtra State Seed Certification Agency v CC&CE (2015) 37 STR 655 (Tri. – Mum.)

Telecommunication Services

46. The Tribunal held that International Private Lease Circuit services are in the nature of telecommunication services. Hence when such services are received from a Service Provider located outside India no Service Tax would be payable on reverse charge basis since only telecommunication services provided by a person having a licence under Indian Telegraph Act would only be liable for service tax and the overseas service provider is not a person licensed under the said Indian Telegraph Act

Infosys Ltd. v. CST (2015) 37 STR 862 (Tri.-Bang.)

Tour Operator's Service

47. The assessee provided bus services to companies for transportation of their employees from designated spots to the company and back on contract basis and used only contract carriage buses. The Tribunal held that, for the period prior to 10-9-2004, tours operated by the assessee under contract carriage permit were not operated in a tourist vehicle, and hence not liable to service tax.

Capricon Transways Pvt. Ltd. v. CCE, Raigad 2015 (37) STR 1027 (Tri.-Mumbai)

Transport of Goods Service

48. The assessee provided transportation of waste effluent material through pipeline for disposal. The Tribunal held that waste effluent was not goods as per section 2(7) of Sale of Goods Act, 1930 therefore services cannot be made taxable under transportation of goods through pipeline or conduit service.

Gujarat State Fertilizers & Chemicals Ltd. v. CCE, Vadodara 2015 (37) STR 1076 (Tri.-Ahmd.)

49. The assessee had to undertake the activities of – loading of the coal into the dumpers in the mine, transportation of the coal to railway siding; and unloading the same into railway wagon. A separate price for each of the above activities was mentioned in the contract. However the department had sought to tax the whole range of activities under the category of cargo handling service. On appeal, the Tribunal held that separate prices denote separate contracts as a part of one instrument. Accordingly, the Tribunal held that – The activity of loading and unloading of coal, would be liable for service tax under the category of Cargo Handling Services but the activities of transportation of coal, were in the nature of goods transportation agency services. However, no service tax would be payable since the liability to pay service tax in respect of these service was on the recipient of service.

Jai Jawan Coal Carriers Pvt. Ltd. v. CST (2015) 37 STR 509 (Tri.-Del.)

Works Contract Services

50. The Larger Bench held that the service element in composite works contract, involving transfer of property in goods and rendition of service, where such services are classifiable under Commercial or Industrial Construction, Construction of Complex or Erection, Commissioning or Installation, are subject to levy of service tax even prior to 1-6-2007 (when works contract service was notified)

Larsen & Toubro Ltd. v. CST, delhi 2015 (38) STR 266 (Tri.-LB)

51. The Tribunal held that where the assessee was engaged in only developing the land for township, by carrying out activities such as levelling, demarcation of plots/shops, construction of wall boundaries/roads/iron poles with lamps/ underground cabling work/underground and overhead storage tanks, development of landscape lawns in earmarked areas etc. the same would not be liable for service tax under construction of complex service (for the period up to 30-5-2007) or under works contract service (for the period w.e.f. 1-6-2007)

Alokik Township Corporation v. CCE (2015) 37 STR 859

52. The Tribunal held that service tax could not be levied in relation to works contract services provided by sub-contractor to executive agency for and on behalf of Government department is not taxable as the intention is not to tax non-commercial projects undertaken by Government of India.

R.B. ChyRuchi Ram Khattar & Sons v. CST New Delhi 2015 (38) STR 583 (Tri.-Del.)

53. The Tribunal held that activities such as construction of sub-station and maintenance or repair of the sub-station undertaken by the appellant for transmission of electricity, though classifiable under the category of commercial or industrial construction services or works contract services would be exempt from payment of service tax since taxable services rendered in relation to

transmission and distribution of electricity have been exempted under Notification No. 45/2010-ST dated 20-7-2010

Kedar Constructions v. CCE (2015) 37 STR 631 (Tri.-Mum.)

B. Valuation

54. The High Court held that the sale price of pager was restricted to hardware, i.e. pager units, and airtime charges and licence fees were not includible in it. The dealer did not do anything to the pager before or at the time by delivery and merely collected airtime charges and *pro rata* licence fees. Sale of pager was a standalone transaction, and activation of pager was subsequent to sale.

CST, Mumbai v. Page Point Service (P) Ltd. 2015 (37) STR 938 (Bom.)

55. The value of spare parts/accessories/ consumables such as lubricants and coolants etc. sold during the course of servicing the vehicles could not be included in the gross value of authorised service station services.

CCE&ST v. Krishna Swaroop Agarwal (2015) 37 STR 647 (Tri.-Del.)

56. The Tribunal held that reimbursable expenditure travel expense of the employees of appellant and providing output service shall not form part of the value of the taxable service.

Kirloskar Pneumatic Co. Ltd v. Commissioner of Central Excise, Pune – III. [2015-TIOL-538-CESTAT-MUM]

57. The appellant had paid VAT for defective auto parts replaced and raised service invoices for auto parts sold/used and for service charges. The Tribunal held that the value of parts sold/used not includible in value of taxable services.

Safeways Motors v. CCE, Nagpur 2015 (38) STR 1005 (Tri.-Mumbai)

58. The department sought to levy tax on handling charges collected as part of value of goods is composite activity of sale and service. The Tribunal held that charges collected on parts sold either independently or as a part of service and repair of automobiles on which VAT/ Sales tax had been paid would not be liable to service tax.

Automotive Manufactures P. Ltd. v. CCE & C, Nagpur 2015 (38) STR 1191 (Tri.-Mumbai)

59. The Tribunal held that where the assessee, a clearing and forwarding agent had sought to exclude the expenses such as godown rent, charges for unloading from wagons and loading into trucks, other misc. expenses, charges for transportation from rail head to godown, Unloading and stocking at godown, loading for onward movement, etc. reimbursed by the principals to the appellants from the taxable value of its services there was no legal obligation on the service recipient to incur such expenses hence the same cannot be excluded from the value of taxable services for the period April 2002 to September, 2006.

Clearchem Agencies v. CCEx, Indore (2015) 37 STR823 (Tri.-Del.) relying on Sri Bhagvathy Traders v. CCE (2011) 24 STR 290 (Tri.-LB)

60. Where the customers for commercial or industrial construction service have supplied free supply material, its value cannot be included in the value of taxable services.

Bhayana Builders Pvt. Ltd. v. CCE (2015) 37 STR 525 (Tri.-Del.)

Paharpur Cooling Towers Ltd. v. CCE&C (2015) 37 STR 550 (Tri.-Del.)

C. CENVAT Credit

61. The High Court held that combined reading of rules 3(1) & (4) of CCR, 2004 indicated that there was no legal restriction for utilisation of CENVAT credit which were not the output service of assessee.

CCE&C v. Panchmahal Steel Ltd. 2015 (37) STR 965 (Guj.)

62. The Tribunal allowed CENVAT credit of service tax paid on Rent-a-cab service used for transportation facility provided to customers air travel service for travel of partners and employees of the company for business purpose and rent of office premises, as each action was directly connected to the business of manufacture.

Nash Industries v. CC&ST, Bengaluru 2015 (37) STR 1060 (Tri.-Bang.)

63. The Tribunal allowed CENVAT credit of service tax paid on manpower supply services hired for maintaining occupational health centre at factory in terms of Rajasthan Factory Rule, 1951 and at project and corporate offices.

Binani Cement Ltd. v. CCE&ST, Jaipur-II 2015 (37) STR 1071 (Tri.-Del.)

64. The Tribunal allowed CENVAT credit of services availed for the construction of railway sidings for purpose of transportation of coal to captive power plant with the factory as transportation of coal was necessary for generation of electricity in the power plants and was connected with business of manufacturing of final product.

RSWM Ltd. (Fabric Division) v. CCE, Jaipur-II 2015 (37) STR 1074 (Tri.-Del.)

65. The assessee availed CENVAT credit on outdoor catering and mandap keeper services used by it for providing commercial training and coaching service. The Tribunal observed that, there is nothing on record to show whether any expenses were recovered from students and the appellant had not collected any money from students as it was felicitation-cum-promotional event. It held that, input service credit had been rightly availed by the assessee.

Palmtech Institutions India Pvt. Ltd. vs CCE & ST, Jaipur 2015 (38) STR 54 (Tri-Del.)

66. The Tribunal held that services used for setting up of factory are to be treated as input services eligible for CENVAT credit prior to amendment of Rule 2(1) of CCR, 2004.

Liugong Indian Pvt. Ltd. v. CCE & ST Indore 2015(38) STR 96 (Tri.-Del.)

67. The department denied credit of service tax paid on outdoor catering services on the ground that the said services were primarily used for personal use or consumption of employees and therefore excluded from the definition of input service. The Tribunal held that the cost of outdoor catering service used in relation to business activities form part of cost of final product and hence admittedly borne by the assessee and therefore CENVAT credit is not deniable.

Hindustan Coca Cola Beverages Pvt. Ltd. v. CCE, Nashik 2015 (38) STR 129 (Tri.-Mumbai)

68. The assessee was engaged in providing training or coaching service, management consultancy service and convention service. It claimed CENVAT credit of service tax paid on brokers' services for the purpose of purchase/ lease of flats or residential accommodation for its faculty. The Tribunal held that expenses incurred related to the output service which could not be provided without faculty being available. Hence credit was allowed.

Tata Management Training Centre v. CCE, Pune-III 2015 (38) STR 157 (Tri.-Mumbai)

69. The Tribunal allowed CENVAT credit of service tax paid on club house services availed for holding meetings with foreign delegates and event management services availed for training of employees as they pertained to the business of export service and consequently allowed the refund of the same.

Willis Processing Services (I) Pvt .Ltd. v. CCE, Mumbai-II 2015 (38) STR 169 (Tri.-Mumbai)

70. The appellant availed CENVAT credit against bills raised by commission agents. The Tribunal observed that as per the agreement said commission agent performed sales promotion activities such as procuring of orders, soliciting customers and promoting products which were to be treated as input service.

Novozymes South Asia Pvt. Ltd. v. CCE, Bangalore 2015 (38) STR 204 (Tri.-Bang.)

71. The appellant claimed CENVAT credit on all services used for providing taxable and exempted services without maintaining separate accounts. The department contended that, appellant is liable to pay 8%/6% of value of exempted service as it had not followed the provisions of Rule 6(3)/(3A). The Tribunal observed that, proportionate amount of ` 927/- attributable to exempt service has been paid by the appellant before issue of SCN and held that it would be too harsh to enforce payment of ₹ 24,194/- being 8%/6% of value of exempt service because of non-payment of ₹ 927/- on time as per the provision of Rule 6(3)(3A). It is further held that, no assessee would intentionally evade payment of ₹ 927/- hence demand was not justified.

Rathi Daga v. CCE, Nashik 2015 (38) STR 213 (Tri.-Mumbai)

72. The Tribunal allowed CENVAT credit of service tax paid on construction service rendered for fabrication/erection and labour charges for construction of temporary storage shed for cement, steel and other construction material and also for cutting of shrubs, vegetation etc as the said services qualified as input service.

Rathi Daga v. CCE, Nashik 2015 (38) STR 213 (Tri.-Mumbai)

73. The Tribunal held that all input services used for modernisation, renovation or repair to office premises were input services and that advertising for manpower recruitment was also input service. It further held that service of supply of food whose expenditure was met by employees was not an input service and that there was no restriction in availing CENVAT credit before registration is granted.

CST, Mumbai-II v. J .P. Morgan Services India Pvt. Ltd. 2015 (38) STR 410 (Tri.-Mumbai)

74. The Tribunal held that manpower supply services used for cleaning of the yard within sugar mill, weighment of sugarcane and its unloading at factory and care area survey and educating farmers etc. were input services and were to be treated as having nexus with manufacturing business of appellant.

Mawana Sugars Ltd. v. CCE & ST, LTU, Delhi 2015 (38) STR 410 (Tri.-Mumbai)

75. The Tribunal held that MS Pipes/ Channels/Angles, Grinders, Bars, Structures, Plates, Shapes and Sections used in manufacture of technical structures of capital goods are eligible for credit as "capital goods".

Commissioner of Central Excise, Chandigarh v. Parabolic Drugs Ltd - [2015] 55 taxmann.com 4 (New Delhi – CESTAT)

76. The Tribunal held that utilisation of CENVAT credit on capital goods is allowed to the extent of 50% in financial year of receipt and balance in subsequent financial year, even if capital goods are pending installation.

Commissioner of Central Excise, Customs and Service Tax, Rajkot vs .Reliance Ports and Terminals Ltd. [2015] 55 taxmann.com 73 (Ahmedabad – CESTAT)

77. The Tribunal held that CENVAT credit is admissible on towers and cabins used as Passive Telecom Infrastructure for providing output service.

GTL Infrastructure Ltd. v. Commissioner of Service Tax, Mumbai [2015] (37) STR 377 (Tri.-Mumbai)

78. A canteen essentially promotes the welfare of employees as it elicits a better performance from them which in turn improves the production of goods. Therefore CENVAT of outdoor catering service is allowed although the assessee has no obligation to provide such facility.

Resil Chemicals Pvt. Ltd. v. CCE (2014) 36 STR 1260 (Kar.)

79. Merely because service tax on advertisement charges was paid by Unit-1 for the advertisement of product of Unit-II is no ground

for denying credit since both units are under the umbrella of the same company though the units were at different places.

Greaves Cotton Ltd. v. CCE 2015(37) STR 395 (Tri.-Chennai)

80. CENVAT credit availed on Rent-a-cab service availed prior to 1-4-2011 would be permissible in view of the Board Circular No.943/4/2011-CX, dated 29-4-2011.

Prayas Engineering Ltd. v. CCE&ST (2015) 37 STR 508 (Tri. – Ahmd.)

81. In this case, the assessee was engaged in providing its clients passive telecom infrastructure [to be used by Cellular Telecom Operators], and it paid service tax on the services it provided, under the category of Business Auxiliary Services. The Tribunal held that credit of tax paid on tower or BTS cabins etc., which have been used for providing the output services would be admissible since the same would be dealt with under the definition of inputs as defined in Rule 2(k)(ii) of the Credit Rules .

GTL Infrastructure Ltd. v. CST (2015) 37 STR 577 (Tri.-Mum.)

82. Where service tax is paid on insurance of plant and machinery, goods in transit, cash in transit, vehicles and laptops, using the credit of service tax is admissible since the abovementioned activities are in nexus with the business of the assessee.

Hindustan Zinc Ltd. v. CCE (2015) 37 STR 608 (Tri.-Del.)

83. In the instant matter the Tribunal decided that certain input services are eligible for CENVAT credit of service tax paid on Group Medical Insurance, Consultancy Services-for filing of tax returns in U.S. and legal consultancy, Outdoor Catering Services except to the extent of consumption of alcoholic beverages and subscription to International Taxation (website) for getting information and knowledge pertaining to tax compliance.

CCE v. HCL Technologies (2015) 37 STR 716 (All.)

84. The assessee had availed CENVAT credit on outdoor catering services received by it with respect to its factory canteen but had recovered only a part of the amount from its employees. It was held that, the availment of CENVAT credit to the extent of the amount recovered from the employees was not permissible.

Cama Electric Lighting Products India P. Ltd. v. CCEX (2015) 37 STR 718 (Guj.)

85. The Tribunal in this case held that banking and other financial services utilised for sale of shares to raise finance for carrying out manufacturing operations is having nexus with manufacturing activity and therefore input service.

CCE, C&ST, Visakhapatnam-I v. GMR Industries Ltd. 2015 (38) STR 509 (Tri.- Bang.)

86. The department in this case sought to deny the CENVAT credit on the ground that invoice issued is not in the name of assessee but in the name of assessee's head office. The Tribunal held that when there is no dispute regarding consumption of service and service tax has been duly paid thereon, the assessee is entitled to take CENVAT credit even though the invoice is in the name of the head office.

CCE&ST, Raipur v. Dayalal Meghji & Co. 2015 (38) STR 557 (Tri.-Del.)

87. The Tribunal in this case held that, since zonal office of the appellant was not registered at the material time, it cannot be considered eligible to pass on credit to their respective branch.

CCE&ST Chandigarh-I v. Punjab National Bank 2015 (38) STR 586 (Tri.-Del.)

88. The Tribunal held that CENVAT credit availed on services provided by commission agent in relation to promotion of sales of its products is admissible.

Bhurka Gases Ltd. v. CCE (2015) 37 STR 818 (Tri.-Bang.)

89. The Tribunal held that CENVAT credit on input service used for providing call centre services exported outside India was admissible under Rule 5 of the CENVAT Credit Rules relying on *Repro India Ltd. (2009) 235 ELT 614 (Bom.)* and *Drish Shoes Ltd. (2010) 254 ELT 417 (HP).* As regards the BPO services which were exported outside India, it held that since this service became liable for service tax only under definition of "Business Support Services" w.e.f 1-5-2006 the CENVAT credit availed in respect of these services would not be entitled to the benefit of Rule 5 of CENVAT Credit Rules, 2004 and hence the same would be disallowed.

IBM Daksh Business Process Services (P) Ltd. v. CCE (2015) 37 STR 833(Tri.-Del.)

90. The Tribunal held that CENVAT Credit in respect of Group Health Insurance premium, to the extent it relates to the employees of the assessee and not the family members of the employee is admissible. Further it was held that Credit of service tax paid on construction of global training centre which was used for providing commercial Training/Coaching services would be admissible for the period up to 31-3-2011. Gym & hostel constructed by the assessee for its employees was not in the nature of premises used for providing output services and hence credit of service tax paid in construction of the same would not be admissible.

Infosys Ltd. v. CST (2015) 37 STR 862 (Tri.-Bang.)

91. The Tribunal held that where the appellant had availed CENVAT credit on GTA services which were used for transportation of inputs to job worker's premises and for transportation of finished products from the job workers premises to depot the same would not be permissible since the appellant had not manufactured the goods.

Lotte India Corporation Ltd. (2015) 37 STR 876 (Tri.-Che.)

92. The assessee was engaged in providing passive telecom infrastructure by way of telecom towers to various cellular telecom operators and discharged service tax liability under BSS. It claimed CENVAT credit of duty paid on steel structural viz. brackets, mounting poles, clamps, cables, pre-fabricated buildings etc. used in erection of telecom towers. The department denied the credit on the ground that the said goods were not covered under the definition of capital goods. The Tribunal held that there was nexus between the good purchased and service provided and hence the assessee was entitled to claim the credit.

Reliance Infratel Ltd. v. CST, Mumbai-II 2015 (38) STR 984 (Tri.-Mumbai)

93. The Tribunal allowed CENVAT credit of service tax paid on rent, insurance for sugar stacked at Ludhiana and commission paid for sale of sugar after clearance from factory as integral part of manufacturing and sale activity.

Dhampur Sugar Mills Ltd. v. CCE, Meerut – II 2015 (38) STR 1004 (Tri.-Del.)

94. The High Court held that service tax paid on mobile phones which are used by employees/ staff of manufacturer are eligible as input service credit.

Commissioner of Central Excise, Goa v. Hindustan Coca Cola Beverages (P) Ltd. - [2015] 57 taxmann.com 72 (Bom. HC)

95. Services relating to residential colony of employees and the clubs are welfare activities having no nexus with the business of manufacturing of final product. CENVAT Credit cannot be availed on service tax paid on

- Security service provided at the colony
- Repairs of mixer used in the canteen
- Civil work done at the colony, furniture/ wooden partition for VIP rooms and telephone lines installed at the residence of officer/club rooms as these are welfare activities for the staff and have no nexus with the business of manufacturing the final product.

Mahindra & Mahindra Ltd. v. Commissioner of Central Excise [2015-TIOL-1065-CESTAT-MUM]

96. The Tribunal held that CENVAT credit related to HR Steel Sheets and plates used for repair and maintenance of storage tank is covered under "capital goods" definition eligible for credit as 'inputs'.

Hindustan Petroleum Corporation Ltd. v. Commissioner of Central Excise, Customs and Service Tax, Vishakhapatnam –I [2015] 57 taxmann.com 152 (Bangalore CESTAT)

97. The Tribunal held that CENVAT credit in respect of House-keeping services was allowable as the same were pollution control measures required under Prevention and Control of Pollution Act and therefore had nexus with manufacturing activity.

CCE, Delhi –III v. Maruti Suzuki India Ltd 2015 - (38) STR503 (Tri.-Del.)

D. Others

Appeal

98. Summons issued by an investigating authority under provisions of section 14 of Central Excise Act, 1944 cannot be considered to be in the nature of a decision or order as mentioned in section 35 of the said Act and hence no appeal can be filed against the same on the ground that conduct of enquiry by Revenue is illegal and arbitrary.

Neesa Leisure Ltd. v. CCE&ST (2015) 37 STR 482 (Tri.-Ahmd.)

99. The High Court held that CESTAT must not reject the application for condonation of delay without giving opportunity of being heard on merits specially when the petitioner shows sufficient cause for delay in filing appeal. Accordingly, the petition was allowed along with direction to CESTAT to decide the matter in accordance with law and on merits.

Sanjayraj Hotels And Resorts Pvt. Ltd v. Union of India - [2015] 37 STR 970 (Guj.)

100. The time limit for filing an appeal before the CCE (Appeals) is 3 months (which is 3 British calendar months) and not 90 days from the date of receipt of order. Thus where the order was received by the appellant on 8-10-2011 the time limit of filing appeal would expire on 8-1-2012. Further if the day on which the period of filing appeal or the further period up to which the delay can be condoned expires falls on a public holiday then the same can be filed immediately on the next working day.

CCE v. Ashok Kumar Tiwari (2015) 37 STR 727 (All.)

101. The Tribunal held that pre-deposit is mandatory even in respect of orders passed prior to 6-8-2014 and appeals filed thereafter.

M/s. AI Champdany Industries Ltd., v. Commissioner of Central Excise, Kolkatta–IV - [2015-TIOL-576-CESTAT-Kol.]

Demand – Extended Period

102. Something more than mere non-registration, non-filing returns or non-payment of service tax is required for sustaining the allegation of suppression of facts for invocation of extended period of limitation. There has to be some act of omission or commission, which points towards an intent to evade payment of service tax.

M.P. Laghu Udhyog Nigam Ltd. v. CCE, Bhopal, 2015(37) STR 308 (Tri.-Del.)

103. Extended period cannot be invoked on the basis that when in doubt the appellant should have approached the department for clarification. This is because; there is no such statutory provision wherein an assessee can seek advisory opinion from departmental officers. This is a misconception that has no legislative basis.

Affinity Express India Pvt. Ltd. v. CCE (2015) 37 STR 333

104. When the adjudicating officer himself had interpreted the provisions in the favour of the assessee and dropped the demand, the Tribunal observed that the provisions are capable

of two interpretations and hence there was no *mala fide* intention on the part of the assesse. Accordingly, the extended period of limitation was not evocable.

IFB Industries Ltd. v. CCE (2015) 37 STR 529 (Tri.-Del.)

Jai Jawan Coal Carriers Pvt. Ltd. v. CST (2015) 37 STR 509 (Tri.-Del.)

Penalty

105. The act of the assessee of depositing service tax along with interest prior to adjudicating order supported their contention that they were under a *bona fide* belief of not being liable to pay service tax on provident fund received from the recipient of the service to whom manpower supply services were provided. No act of fraud, collusion, wilful misstatement or suppression of facts or contravention with intent to evade payment of service tax. Hence the penalty was condoned u/s. section 80 (reasonable cause).

H. M. Singh and Co. v. CCE & ST 2015(37) STR 172 (All.)

106. Where the assessee had collected service tax but had failed to deposit the same with the Government the amounts were recoverable under section 73A of the Act. The assessee contested that no penalty under sections 76 and 78 would be imposable since the same would be attracted only in case tax is recovered under section 73 and not under section 73A. On appeal the Tribunal held that penalty under sections 76 and 78 were attracted. However, following the decision of jurisdictional High Court *[CCE v. First Flight Couriers [2011(22) STR 622] (Punjab & Haryana)]* only penalty under section 78 was imposed and penalty u/s. 76 was waived.

CCE&ST v. Ajay Kumar Gupta (2015) 37 STR 626 (Tri.-Del.)

107. Where the issue involved related to interpretation of an exemption notification and statutory provisions, it was held that imposition of penalties was not warranted

Kedar Constructions v. CCE (2015) 37 STR 631 (Tri.-Mum.)

108. Where the assessee had discharged the service tax liability along with interest before issuance of show cause notice, no penalties can be imposed on it.

Sunita Tools Pvt. Ltd. v. CST (2015) 37 STR 644 (Tri.-Mum.)

109. Where there was a short levy/ short payment of service tax on account of fraud, collision, wilful misstatement, suppression etc. the fact that the tax along with interest had been paid before issuance of show cause notice would not exempt the assessee from penalty proceedings.

India Gateway Terminal P. Ltd. v. CC, CE&ST (2015) 37 STR 665 (Tri.-Bang.)

110. The High Court held that, once assessee proves reasonable cause for failure to pay service tax, section 80 of FA, 1994 starts to operate insulating imposition of penalties under sections 76, 77 or 78 and hence the CESTAT order limiting its benefit to section 78 only and not extending to section 76 is liable to be set aside.

Akbar Travels of India (P) Ltd. vs. CCEC & ST, Thiruvananthapuram 2015 (38) STR 957 (Ker.)

111. The Court held relying on Supreme Court Judgment in the case of *Pratibha Processors v. Union of India, AIR 1997 SC 139,* that where the assessee originally provided housekeeping services which was not taxable, registered themselves and paid service tax but surrendered the registration without claiming refund and subsequently when they rendered 'back office services' which was taxable they failed to pay the tax on time and paid the entire tax before adjudication, penalties u/s. 76 (delay in payment), 77 (failure to register) & 78 (failure to pay tax with an intent to evade) were not imposable taking into consideration the past conduct of the assessee from where it concluded that they did not have any intent to

evade tax due to *bona fide* confusion and there was no contumacious conduct or deliberate violations of the provisions of law. Further, there was also a reasonable cause u/s. 80 to condone the penalties

CCE v. Busy Bee (2015) 37 STR 932 (Mad.)

Refund

112. The Tribunal held that section 26(i) (e) of SEZ Act, 2005 provides exemption to all services imported into SEZ for the purpose of carrying out authorised operations in SEZ. Section 51 provides an overriding effect over other Acts and Notification No. 15/2009-ST cannot nullify overriding provisions of section 51. If a service provider pays service tax on services provided to an SEZ unit, recipient of services is bound to get refund unless assessment of the service provider is re-opened and refund given to service provider.

Barclays Technology Central India (P) Ltd. v. CCE, Pune-III 2015 (38) STR 35 (Tri.-Mumbai)

113. The assessee paid service tax on persuasion by Department without the receipt of assessment order/adjudication order. However it made request for refund within 3 months from the date of payment of duty. The Tribunal held that since there was no demand made under law, tax collected was not payable at all and therefore the assessee was entitled to refund along with interest.

CKP Mandal v. CST, Mumbai-II 2015 (38) STR 73 (Tri.-Mumbai)

114. Where the revenue had not questioned the taking of credit when the same was taken, eligibility of the same cannot be questioned at the time of granting refund

Morgan Stanley Advantage Services Ltd. v. CST (2015) 37 STR 639 (Tri.-Mum.)

115. The Tribunal held that the time limit for filing refund claim under Notification No. 41/2007-S.T dated 6-10-2007 would not be governed by provisions of section 11B of Central Excise Act, 1944 made applicable to service tax *vide* section 83 of Finance Act, 1994 but would be governed by the time limit given in Notification No.41/2007-S.T., dated 6-10-2007.

H.R. International (Unit-II) v. CCE (2015) 37 STR 649 (Tri.-Del.)

116. The Tribunal held that refund of service tax paid on the input services of terminal handling charges is permissible under Notification No. 17/2009-ST dated 7-7-2009

CST v. Adani Enterprise Ltd. (2015) 37 STR 667 (Tri.-Ahmd.) relying on Commissioner v. Adani Enterprises Ltd. (2014) 35 STR 741 (Guj.)

117. The High Court held that relevant date for filing the refund claim under Rule 5 of the CENVAT Credit Rules, 2004 is the date of receipt of payment and not the date when the services were provided.

Commissioner of Customs, Central Excise and Service Tax v. M/s Hyundai Motor India Engineering (P) Ltd. - [2015-TIOL-739-HC-AP-ST]

118. The Tribunal held that when substantive conditions of the Rebate Notification No.12/2005-ST dated 19-4-2005 were fulfilled by the assessee, rebate claim could not be denied merely for not filing the declaration in time, if the contents of the declaration are such that they can be verified from the records maintained.

Crest Premedia Solutions (P) Ltd. v. CCE – [2015] 55 taxamann.com 69 (Mumbai – CESTAT)

119. The Tribunal held that, jurisdiction for claiming refund is from where the consignments are exported and services are received and not where registered office is situated.

CCE & C, Nagpur v. Noble Grains India Pvt. Ltd. 2015 (38) STR 525 (Tri.- Mumbai)

120. The assessee in this case provided investment advisory services to a customer located outside India having no office in India and received payment in convertible foreign exchange. The Tribunal held that it was a case of export of service and therefore the assessee was entitled for refund claim.

CST, Mumbai v. Greater Pacific Capital Pvt. Ltd. 2015 (38) STR 656 (Tri.-Del.)

121. The Tribunal held that, once the service tax had been collected by the department from appellant by treating their services as BAS at the time of considering the claim for rebate of service tax so paid then the classification of service could not be questioned. Denial of refund on the ground that in absence of service agreements, the nature and classification is not ascertainable is not sustainable.

Alar Infrastructures Pvt. Ltd v. CCE, Delhi-I 2015 (38) STR 1087 (Tri.-Del.)

122. The Tribunal held that input services without which the quality and efficiency of output services exported cannot be achieved are eligible for refund.

Commissioner of Service Tax, Mumbai-II v. Syntel Sterling Bestshores Solutions Pvt. Ltd. [2015-TIOL-1085-CESTAT-MUM]

123. The Tribunal held that as service tax was paid inadvertently on export of services, limitation period of 1 year shall be counted from the date of payment of service tax since refund claim is filed within 1 year from such payment, the appeal was allowed.

Kirloskar Ebara Pump Ltd. v. CCE, Kolhapur – 2015 (38) STR 488 (Tri.-Mum.)

Service of Order

124. It was held that in terms of section 37C of the Central Excise Act, an order needs to be served through registered post with acknowledgement due. However Service of order on the assessee through speed post has also been held to be valid since in terms of India Post Office Act, 1898, a speed post is also considered to be a registered post.

Jay Balaji Jyoti Steels Ltd v. CESTAT Kolkata (2015) 37 STR 673 (Ori

Show Cause Notice

125. The Hon'ble Tribunal held that demand for service tax would not be sustainable if the show cause notice did not contain any allegations regarding how certain charges received by the assessee were liable for service tax under a particular category of service.

Ruchi Infotech Ltd. v. CCE (2015) 37 STR 131 (Tri.-Del.)

126. The Commissioner (Appeals) confirmed demand under BAS, whereas the SCN was issued for demand of service tax under BSS. The Tribunal after relying on Apex Court judgment in *Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC)* and *Brindavan Beverages Ltd. 2007 (213) ELT 487 (SC)* held that Order in Appeal travelled beyond scope of SCN therefore, unsustainable and liable to be set aside.

Deepak & Co. vs CCE, New Delhi 2015 (38) STR 1010 (Tri.-Del.)

Miscellaneous – Import of Service

127. It was held that exhibition services, technical inspection and certification services were categorised under performance based category of Import of service Rules and since the services were provided outside India and the resultant payment for these services were made overseas, no liability to pay service tax arose.

K.G. Denim Ltd. v. CST (2015) 37 STR 616 (Tri.-Chennai)

If we are not free, no one will respect us.

— Dr. A. P. J. Abdul Kalam