Series of Conference on Finance Act, 2014 amendment in Indirect Taxes

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In the words of Bhagwad Gita Says-

"what a great man does, is followed by others. People Go by the example he sets"

Budget 2014-2015 Speech of Sh. Arun Jaitley, Minister of Finance, July10,2014 (Extract/Excerpt):

GST

9.. I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of **GST. This will streamline the tax administration, avoid harassment of the business** and result in higher revenue collection both for the Centre and the States.

India's Indirect Tax Administration and Causes of harassments

1. Tax Assessments:

(a) No fair hearing;

(b) Sham hearing;

(c) Non-consideration of all issues, facts and law;

(d) Not following the precedents, law sets by higher forums, Courts;

(e) Passing Mechanical orders without application of mind;

(f) Authority do not provide records of hearing proceeding;

(g) No time frame for passing orders after hearing;

(h) 100% cases orders are reserved after hearing;

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(i) Adjudicating authority has no fear of passing wrong orders;

(j) Even in remand back cases, same or worst orders are passed;

(k) No section is mentioned under which power is exercised and orders is passed;

(l) Orders are plainly appears to have been passed by way of outsourced or by lower rank orders and authority merely signatory to it;

(m) submissions of assessee are hardly considered and orders are merely reproduction of allegations in Show Cause Notice.

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(n) Assessment and penalty proceedings are simultaneously done and penalty are invariably imposed merely on account of confirmation of tax demands.

In **Spandana Spoorthy Financial Ltd. v C.C.C.Ex. & ST, Hyderabad-IV 2014 (35) STR 183 (AP)** held that "2. According to us, when the appeal is admitted for hearing and the order of the assessment is under scrutiny, unless the order of assessment reaches its finality, the question of initiation of penalty proceeding does not and cannot arise."

(o) Multiple assessments for same period and for same assesseee

Etc. etc. etc………...

India's Indirect Tax Administration and Causes of harassments

2. Inquiry, investigations, audit, summons search etc:

(a) Multiples inquiries/ investigations of same assessee for the same period by different wings like by divisions/ ranges, anti evasions, audit wing, different units of DGCEI, as well as by different commissionerates;

(b) Issuance of summons of fashions, department has no records for it ;

(c) Issuance of letters in the name of inquiry, investigations without even quoting sections under which power is exercised;

(d) Asking records for last 5 years as a fashions without any reasons

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(e) Chief commissioners or commissioner do not monitor such inquiry and investigations;

(f) Such inquiry and investigations are done even when assessment proceedings for the same period has already been done;

(g) Even the records, which are available online are beings sought such as returns, challans etc.

(h) Assessee are being forced to prepared records, which does not required under the law, such as reconcilartions etc,

(i) Various self styled forms are prepared by officers which are not known to the law;

11. ……In order to reduce litigation in direct taxes, I propose to make certain legislative and administrative changes.

13. As an administrative measure, I propose to set up a **High Level Committee** to interact with trade and industry on a regular basis and ascertain areas where clarity in tax laws is required. Based on the recommendations of the Committee, the Central Board of Direct Taxes and the Central Board of Excise and Customs shall **issue appropriate clarifications**, wherever considered necessary, on the tax issues **within a period of two months**.

WHEN PENALTY PROCEEDINGS CAN BE INITIATED

In **Spandana Spoorthy Financial Ltd. v C.C.C.Ex. & ST, Hyderabad-IV 2014 (35) STR 183 (AP)** held that "2. According to us, when the appeal is admitted for hearing and the order of the assessment is under scrutiny, unless the order of assessment reaches its finality, the question of initiation of penalty proceeding does not and cannot arise."

No more Audit by Departmental Officers and CAG, under Service Tax Rules – High Court consistent views.

The Delhi High Court by judgment dated 04 August 2014 in W.P.(C) 3774/2013 in the matter of Travelite (India) v UOI & Ors. strike down rule 5A(2) empowering audit by CAG as well as by Service Tax Department- Big relief to Assessee from high handedness of Central Excise officers. The Hon'ble Delhi High Court by its judgment dated 04.08.2013 held as under"

"11. This Court is us thus of the opinion that any attempt to include provision for such a general audit through the back door, such as through the impugned rule, is ultra-vires the rule making power conferred under Section 94(1).Rule 5A(2) must consequently be struck down".

"12. Likewise, this Court finds the impugned CBEC instruction, being in furtherance of Rule 5A(2), which rule is ultra-vires the Finance Act, 1994, is void for the same reasons". **Contd…….**

"15. The Service Tax Audit Manual, 2011 is merely an instrument of instructions for the service tax authorities; it is but obvious that is not a statutory instrument and has no statutory force."

In ***A.C.L Education Centre (P)Ltd. v. Union of India*, 2014 (33) STR 609 (All.)**, while the High Court held that Rule 5A(2) is not ultra vires as the same is in consonance with the section 72A. In this case additional solicitor general of India submitted before the court that "**The audit will be performed by a qualified Chartered Accountant**." The High Court observed that "24. Rule 5A, sub-rule (2) states that every assessee shall, on demand, make available to the officer authorised or the audit party, records, trial balance and income-tax audit report, if any. So here, the officer will demand the documents just to facilitate the correctness of books of accounts and ultimately, the audit will be conducted by the Audit Party headed by the Chartered Accountant/Cost Accountant, as the case may be, deputed by the Commissioner." It was further observed that "In case of Government Autonomous Body, the function of the audit has been assigned to the Comptroller of Auditor General of India."

The High held that "26. From the above, it is crystal clear that in case of private assessee, the Commissioner will refer the matter to an officer to collect the material or Chartered Accountant for the purpose of audit. Thus, for the purpose of audit, the material can be collected either by the officer authorized by the Commissioner or by the Auditor himself. But, audit will be performed only by the Chartered Accountant." The High Court also held that "28..The manner for conducting the audit is as per the accounting standard provided by the Institute of Chartered Accountant of India. The audit report will be made available to the assessee, as per law."

In ***SKP Securities Ltd v Dy. Director (RA -IDT) & Ors*** **reported in 2013 (29) STR 337 (Cal.)** held that "Mr. J. K. Mittal appearing on behalf of the petitioner submitted, and in my view, **rightly that there is no provision in the CAG Act which enables the Comptroller and Auditor General of India to audit the accounts of a non government company** which is not operated out of the funds of the Union of India or any State Government or any Union Territory or any entity owned and/or financed by them".

Multiple Taxation: Levy of Service Tax and VAT both on supply of food etc. in a canteen or restaurant

- in ***K. Damodarasamy Naidu & Bros. v State of T.N.*, (2000) 1 SCC 521** [decided on October 12, 1999] issue before Constitution bench of the Supreme Court was entitlement of the states to levy tax on sale of food and drinks. In this case it was argued that, tax on food served in restaurant could not be levied on sum total of the price charged by restaurant to the customer as restaurants in addition to food also provide services in various forms and it was suggested that the restaurant food bill should be split up between the amount charged for services and amount charged for food. As per sub-clause (*f*) of clause (29-A) of Article 366 permits the States to impose a tax on the *supply* of food and drink. The supply can be by way of a service or as part of a service or it can be in any other manner whatsoever. **Contd……**

The supply or service can be for cash or deferred payment or other valuable consideration. The Constitution Bench held that "The words of sub-clause (*f*) have found place in the Sales Tax Acts of most States and, as we have seen, they have been used in the said Tamil Nadu Act. The tax, therefore, is on the *supply* of food or drink and it is not of relevance that the supply is by way of a service or as part of a service. In our view, therefore, the price that the customer pays for the supply of food in a restaurant cannot be split up as suggested by learned counsel. The supply of food by the restaurant-owner to the customer though it may be a part of the service that he renders by providing good furniture, furnishing and fixtures, linen, crockery and cutlery, music, a dance floor and a floor show, is what is the subject of the levy. The patron of a fancy restaurant who orders a plate of cheese sandwiches whose price is shown to be Rs 50 on the bill of fare knows very well that the innate cost of the bread, butter, mustard and cheese in the plate is very much less, but he orders it all the same. He pays Rs 50 for its supply and it is on Rs 50 that the restaurant-owner must be taxed." As per the said Constitution bench decision, despite having the portion of services, sales tax is to be levied on the entire value of the food bill on the food served in restaurant. Thus, the Constitution bench has specifically denied the splitting of such transaction between food and service

However, three member bench of **Supreme Court in the case of *BSNL v UOI,* AIR 2006 SC 1883 : (2006) 3 SCC 1; 2006 (2) STR 161 (SC) [decided on 02.03.2006]**, it was held that "After the Forty-sixth Amendment, the sale element of those contracts which are covered by the six sub-clauses of clause (29-A) of Article 366 are separable and may be subjected to sales tax by the States under Entry 54 of List II and there is no question of the dominant nature test applying." Therefore, while BSNL decision permit splitting of transaction in all six cases including supply of food, etc in a restaurant, wherein Constitution bench decision in *K. Damodarasamy (supra*) such splitting was not permitted, hence it appears that the BSNL judgement running counter with the above-mentioned Constitution bench decision, as while rendering the judgement in *BSNL (supra)*, the larger bench of the Supreme Court did not notice the above-mentioned Constitution bench decision in *K. Damodarasamy (supra)*

- In ***Indian Coffee Worker's Co-op. Society Ltd. v CCE&ST, Allahabad*, 2014 (34) STR 546 (All.)**, Society was running a Canteen in the premises provided by NTPC/LANCO, whereas in the Canteen prescribed rate were charged from the staff members of NTPC/LANCO along with the VAT, however, NTPC/LANCO paid to Society salaries of their staff. The Department alleged thatit is an activity as outdoor catering services and demanded service tax. The High Court in this case held that NTPC/LANCO have given the services of the society as a caterer and the society is an outdoor caterer because service in connection with the Catering provided by it at a place other than a place of the society. **Contd……**

Hence the societies subject to levy of service tax and rejected the contention of the society that it is liable to pay VAT on the sale involved hence it is not liable to pay service tax. The High Court in this case, considering the constitutional bench decision of the Supreme Court in the case of K. Damodarasamy Naidu observed that the said judgement in fact supports the principle that a tax on supply of food and drink is not a tax on services. The Tribunal in this case - *Indian coffee workers Co-op Society Ltd. v CCE, Allahabad*, 2014 (33) STR 266 (Tri.-Del.) - held that “It is the admitted position that the appellant had received consideration in money from the NTPC and Lanco for providing outdoor catering service to them, within the meaning of the said expression as defined in the relevant provisions..”, hence upheld the demand.

- However, this decision appears to be in sharp contrast to the decision in the case of ***CST, Bangalore v The Grand Ashok*, 2013 (31) STR 528 (Kar.)**, wherein the Karnataka High Court held that "a contract for outdoor catering *"is a composite contract which falls under sub-clause (f) of clause (29-A) of Article 366 of the Constitution of India and service tax is payable on service aspect and sales tax is payable on deemed sales aspect and it is not an indivisible contract.""* In the said judgment of *The Grand Ashok (supra),* revenue challenged the order of the Tribunal holding that no service tax is leviable on cost of goods supplied while providing outdoor catering services. The High Court, while referring to its earlier decision, decided the matter in favour of assesse, wherein it was held that assesse is liable for service tax alone on service portion and there has to be bifurcation with regard to the said goods and service provided. It was also held that it does not empower the State Government to levy tax on the entire amount mentioned in the bill and sales tax could be imposed on the cost of food articles arrived at and the remaining extent including transportation is to be treated as liable for service tax

- In ***Indian Hotels and Restaurant Association v Union of India*, 2014 (34) STR 522 (Bom.)**, the Honorable High Court has held that Parliament is competent to impose a service tax in question while dealing with the constitutional validity of levy of service tax on restaurant under clause (zzzzv) of section 65 (105) of the Finance Act, 1994, as introduced by the Finance Act, 2010. The High Court held that tax on sale of goods involved in restaurant service does not mean that a service tax cannot be levied on the act of serving food at a restaurant. Whereas, in ***Kerala Classified Hotels and Resorts Association v. Union of India*, 2013 (31) STR 257(Ker.)**, on the basis of constitutional bench decision in the case of *K. Damodarasamy Naidu & Bros. v. State of T.N.*, (2000) 1 SCC 521 and held that (para 19) "The very purpose of incorporating the definition of tax on sale or purchase of goods in Article 366 [366(29-A)(f)] was to empower the State Governments to impose tax on the supply, whether it is by way of or as a part of any service of goods either being food or any other article for human consumption or any drink either being food or any other article for human consumption or any drink either intoxicating or not intoxicating whether such supply or service is for cash, deferred payment or other valuable consideration.” Therefore it was held that “Apparently, the transfer is during the course of a service and when the deeming provision permits the State Government to impose a tax on such transfer, there cannot be a different component of service which could be imposed with any service tax in exercise of the residuary power of the Central Government under Entry 97 of List I of the Constitution of India.” And it was held that service tax on supply of foods etc. in a restaurant beyond the legislative competence of the Parliament

- In **Valley Hotel & Resorts v CCT, Dehradun 2014 (35) STR 28 (Utarakhand)**, assesse was engaged in Hotel business providing boarding and lodging facilities and also providing restaurant services. As the service tax was being levied on 40% of billed value, hence asked VAT department not to charge VAT on said 40% of bill value, as the same has already suffered service tax, but VAT department dismissed said plea. The High Court held that "Value Added Tax can be imposed on sale of goods and not on service. Service Tax can be taxed by Service Tax Laws. The authority competent to impose service tax has also assumed competency to declare what is service. The State has not challenged the same. Therefore, where element of service has been so declared and brought under the service tax vide Government of India notification dated 6-6-2012, (i.e. 40% of bill amount to the customers having food or beverages in the restaurant was made liable to service tax) no value added tax can be imposed their on." In this case VAT Department was directed to pass such order in the light of aforesaid observations.

- In **Hotel East Park v UOI 2014 (35)STR 433 (Chhattisgarh)** validity of section 66E(i) of the Finance Act, 1994 was challenged, whereby service tax is being levied on “service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.” In this case court held that such a provision is valid under the law and intra virus the Constitution. However the court held that “12…. The Parliament cannot impose tax on sale and purchase within a state (except on newspapers). Similarly State cannot tax a service.” “21. The entire idea of inserting of Article 366(29A)(f) was to bifurcated into two parts, namely, service part and sale of goods. This is also clear from the wordings of Article 366(29A)(f) of the Constitution.” **Contd…..**

“23. The objects and the reasons as well as the historical background of Article 366(29A)(f) of the Constitution show that the intention behind substituting this sub-article was to separate the value of the goods food and drinks from the service part. It was his intention that the service part shall be subsumed in the definition of sale nor interpretation of Article 366(29A)(f) lead to this conclusion.” In respect of constitutional bench decision in the case of K. Damodarasamy Naidu, the High Court observed that in this case issue involved was power of State to levy tax on food or drinks and “This case is not relevant on the question whether the Parliament can impose service tax on the service element of the sale or not.” In this backdrop, it was held that “30. We are afraid, Article 366(29A)(f) of the consideration does not indicate that the service parties subsumed in the sale of the food; it rather separates sale of food and drinks from service.” **Contd…..**

It was also observed that “but difficult part is how much is the service part and how much is the sale part.” It was also observed that “ 38. We have some reservations about the rule in quantifying fixed sum towards service and its functioning in the restaurant, and with the tax authorities under the VAT-Act.” It was suggested that state governments should frame the rule for bifurcations of the service element and such rule should be in conformity with the buyer derogation given under service tax law so as to ensure that VAT is not being charged on the value of service on which service tax is being charged, so that consumers are not unnecessarily doubly taxed over the same amount.” The High Court also observed that “40….. They should be coordination between the State and the Central Government authorities.”

Surprisingly, in none of aforesaid judgments rendered by the High Courts, the Constitutional Bench decision in ***20th Century Finance Corporation Limited v. State of Maharashtra*, (2000) 6 SCC 12 : (2000) 119 STC 182 (SC) : AIR 2000 SC 2436 [decided on May 9, 2000]**, was not considered wherein the Hon'ble Supreme Court elaborated upon the scope of Article 366 Clause (29A) and held that under sub-clause (f), tax is on supply of services and the supply of services will be deemed sales in the cases of sub-clauses (f). If that be a position of law held by the Constitutional Bench of the Supreme Court, then levy of service tax on supply of foods or any other article for human consumption or any drink in a restaurant itself is questionable.

Whether such supply of goods to SEZ units was an 'export' and make them entitle for Refund under Rule 5 of Cenvat Credit Rules – Contrary decisions of Tribunals

In **Tiger Steel decision, decided on 08.07.2010, reported in 2010 (259) E.L.T. 375 (Tri.-Mum.)**, held that the term 'export' used in Rule 5 of the CENVAT Credit Rules, 2004 stands for 'export', which is 'physical export' out of the country, and not the supply to SEZ, hence not entitled to refund of Cenvat, but **said decision was stayed by order dated 15.12.2010 reported in 2011 (263) E.L.T. A104 (Bom.)**, yet followed on 05.04.2013 by Tribunal in **Everest Industries reported in 2013 (31) STR 189 (Tri.-Del.)** and held that supplies made to SEZ cannot be treated as export and not entitled to refund of Cenvat credit.

Whereas, in **Intas Pharma decided on 17-6-2013 reported in 2013 (32) STR 543 (Tri.-Ahmd.)**, it was held that in relation to taxable services provided to a developer or unit of SEZ, service provider is entitled for refund of service tax paid on such services. **It may be noted that judicial member in *Everest Industries* (supra) was the same who passed order in *Intas Pharma* (supra)**. In *Tata Consultancy,* decided on 02.07.2012, reported in 2013 (29) STR 393 (Tri.-Mumbai), service provide to SEZ was treated as export and held asssesee is entitled to claim exemption from service tax.

In ***Everest Industries Ltd. v CCE, Meerut-I*****, 2013 (31) STR 189 (Tri.-Del.) [decided on 05.04.2013]** issue involved in this case was eligibility of refund claimed by the appellant under Rule 5 of the Cenvat Credit Rules in respect of inputs/input services used in final products supplied to SEZ and further question was whether supplies made to SEZ can be treated as export. The Tribunal relying on its decision in the case of *CCE, Thane-I v. Tiger Steel Engineering (India) Pvt. Ltd.*, 2010 (259) E.L.T. 375 (Tri.-Mum.) held that the supplies made to SEZ cannot be treated as export for the purpose of Rule 5 of the Cenvat Credit Rules and accordingly appellant is not entitled to refund of Cenvat credit in respect of inputs/inputs services used in the manufacture of final products supplied to SEZ unit.

Whereas said decision of the Tribunal in ***Tiger Steel* (supra) was already stayed by the Bombay High Court** by order dated 15.12.2010 inter alia holding that "6. In these circumstances, in our opinion, it would be just and proper to stay the operation of the impugned order passed by the CESTAT dated 8th July 2010" vide *Tiger Steel Engg. (I) Pvt. Ltd. v. Commissioner*, 2011 (263) E.L.T. A104 (Bom.)]. Therefore, placing reliance on the order dated 08.07.2010, which was stayed on 15.12.2010, while passing (after more than 2 years), the final order dated 05.04.2013 is not correct under the law. However, Single Bench of the Tribunal in *Intas Pharma Ltd. v CST, Ahmedabad*, 2013 (32) STR 543 (Tri.-Ahmd.) [decided on 17-6-2013], held that SEZ Act has overriding effect, therefore it was observed that "the immunity to Service Tax in respect of taxable services provided in relation to SEZ is a legislatively enjoined immunity.

Therefore, any Service Tax paid/remitted by a service provider is liable to be refunded to the provider who has remitted Service Tax in relation to taxable services provided to a developer or unit, to carry on authorized operations in a SEZ" and refund claimed is allowed by the Tribunal. It may be noted that judicial member in *Everest Industries* (supra) was the same who passed order in *IntasPharma* (supra). In *CCE, Thane-I v. Tiger Steel Engineering (India) Pvt. Ltd.*, 2010 (259) E.L.T. 375 (Tri.-Mum.), [decided on 08.07.2010],in was held that '11… However, the question arises as to whether such supply of goods to SEZ units was an 'export.' At no time was the term 'export' defined under the Central Excise Act or any Rules framed thereunder. The definition of 'export' given under the Customs Act has been traditionally adopted for purposes of the Central Excise Act and the Rules thereunder.

Therefore, in the absence of a definition of ‘export’ under the Central Excise Act, the Central Excise Rules or the CENVAT Credit Rules, 2004, we hold that, for purposes of the CENVAT Credit Rules, 2004, one should look for its definition given under the Customs Act. The fictionalized definition of “export” under Section 2 (m) (ii) of the SEZ Act cannot be looked for as it purports only to make the SEZ unit an exporter. In other words, the term ‘export’ used in Rule 5 of the CENVAT Credit Rules, 2004 stands for ‘export’, which is ‘physical export’ out of the country, envisaged under the Customs Act. We take this view because, as we have already indicated, anybody other than SEZ unit can not be allowed to claim any benefit under the SEZ Act/Rules. Viewed from this angle, the respondent cannot be held to be entitled to refund of accumulated CENVAT Credit on the inputs used in or in relation to the manufacture of the ‘pre-fabricated buildings” supplied by them to the SEZ units.”

Therefore, in the absence of a definition of ‘export’ under the Central Excise Act, the Central Excise Rules or the CENVAT Credit Rules, 2004, we hold that, for purposes of the CENVAT Credit Rules, 2004, one should look for its definition given under the Customs Act. The fictionalized definition of “export” under Section 2 (m) (ii) of the SEZ Act cannot be looked for as it purports only to make the SEZ unit an exporter. In other words, the term ‘export’ used in Rule 5 of the CENVAT Credit Rules, 2004 stands for ‘export’, which is ‘physical export’ out of the country, envisaged under the Customs Act. We take this view because, as we have already indicated, anybody other than SEZ unit can not be allowed to claim any benefit under the SEZ Act/Rules. Viewed from this angle, the respondent cannot be held to be entitled to refund of accumulated CENVAT Credit on the inputs used in or in relation to the manufacture of the ‘pre-fabricated buildings” supplied by them to the SEZ units.”

Whereas, in ***Tata Consultancy Services Ltd. v. CCE&ST (LTU), Mumbai,* 2013 (29) STR 393 (Tri.-Mumbai) [decided on 02.07.2012]** it was held that "Services provided to a SEZ or unit in the SEZ is deemed as export as per the provisions of Section 2(m)(ii) of the SEZ Act, 2005 and as per Rule 31 of the SEZ Rules, 2006, the appellants are entitled for exemption from payment of service tax on the services which are used or provided to a unit in the SEZ. As per Section 51 of the said SEZ Act, the said provisions prevail over the provisions contained in any other law for the time being in force. It is the avowed policy objective of the Government of India that exports should not bear the burden of taxes. If this policy objective has to be sub-served and the objective realized broader view of the provisions relating to refund has to be taken."

Whether Commissioner can decided the matter even in respect of the services render in location of other jurisdiction - contrary decisions of Tribunals

In ***Vihar Aahar Pvt. Ltd. v. CST, Ahmedabad*, 2013 (32) STR 563 (Tri.-Ahmd.)**[decided on 31.10.2012] adjudicating authority also confirmed the demand in respect of the services rendered at Mumbai, Kanpur and Karnataka. The tribunal in this case held that "we find that the adjudicating authority has confirmed the demands which are beyond his jurisdiction and falls within the jurisdiction of various other Commissionerates. We are not shown any notification or circular issued by Board authorizing or directing the Ahmedabad-I Commissioner to issue show cause notice and adjudicate the same. In the absence of any such notification, in our view, the jurisdiction exercised by Commissioner of Service Tax, Ahmedabad-I for confirming demands of other Commissionerates seems to be beyond his jurisdiction."

Whereas in ***Karamchand Thapar& Bros. (Coal Sales) Ltd.v. CST Kolkata*, 2013 (32) STR 577 (Tri.-Kolkata)** [decided on 02.04.2013], the question of jurisdiction was raised by the appellant that "para 5.5…the Commissioner, Service Tax, Kolkata does not have jurisdiction to adjudicate and confirm Service Tax for the services rendered from their branch office and payments received at those locations. "However, the Tribunal rejected said contention of the Appellant by holding that "we do not find merit in the argument of the ld. Sr. Advocate for the Appellant that the Commissioner would assume jurisdiction only when they exercise option for centralized Registration, on account of either having centralized billing system or centralized accounting system, in adjudicating the allegation of non-payment of Service Tax on the gross taxable value of the services received and recorded in their consolidated Profit & Loss account, prepared at the Head Office at Kolkata.

The Tribunal held that “As per Section 66 of the Finance Act, 1994 Service Tax is chargeable on the value of taxable service received by the assessee and the appellant’s registered office being at Kolkata and their profit and loss account and balance sheet had been accordingly, prepared at the Kolkata office, on the inputs received in the form of Trial balances from the respective branch offices, as per the provisions of Companies Act, hence, there cannot be any doubt that there has been a centralized accounting system at Kolkata. Thus, we are of the opinion that the Commissioner has jurisdiction to decide the issue of non-payment of Service Tax on the taxable value received by the Appellant for the services rendered through various branch offices and the value of such services duly accounted for, finally in their consolidated Balance Sheet and Profit & Loss account, prepared at Kolkata. Needless to mention, sub-rule (2) & sub-rule (3A) of Rule 4 of the Service Tax Rules, 1994 had been designed for the convenience of the taxpayers and for easy administration of the Finance Act, 1994 and in particular to avoid overlapping of jurisdiction and conflicting views in assessment of Service Tax of the same assessee rendering services from different locations.”

Therefore, in the later decision in *Karamchand Thapar* (supra) decided on 02.04.2013 it was held that the Commissioner has the jurisdiction even in respect of the services rendered from the branch offices located at other adjudication, however in the earlier decision *ViharAahar* (supra) decided on 31.10.2012, it was held that confirming the demand in respect of the services rendered in other location is beyond the adjudication of the Commissioner. Further there are several other decisions of the various benches of the tribunal wherein the view has been taken that the Commissioner cannot confirm the demand in respect of the services rendered in the duration of the other Commissioners vide *Integral Construction Company (infra); Helios Food Additives (infra). Further, in the case of Karamchand Thapar (supra)*, the tribunal rendered the decision on the basis that "there cannot be any doubt that there has been a centralized accounting system at Kolkata. Thus, we are of the opinion that the Commissioner (Kolkata) has jurisdiction" whereas in the case of ***CCE, Guntur v. Integral Construction Company,* 2010 (17) STR 380 (Tri.-Bang.)**, the Appellant was doing the activity at Bilaspur (M.P.) whereas issue was adjudicated at Guntur Commissionerate on the basis that the company had a centralized billing system at Vijaywada. It was held that Guntur Commissionerate has no jurisdiction to proceed against the company, the default if any at other Commissionerate. The **Tribunal in the case of *CCE, Kolhapur v Helios Food Additives P. Ltd.,* 2012 (25) STR 107 (Tri.-Mumbai) has followed the decision in the case of *Ores India Pvt. Ltd.*** (supra) and held that the Commissioner of Ratangiri has no jurisdiction in the case where the services has been provided at Mumbai and the registered office of the service provider is also situated in Mumbai. Therefore it appears that the recent tribunal decision *Karamchand Thapar (supra)* run counter to the earlier decision of the tribunal, therefore such a matter need to be decided by the larger

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Whether territorial jurisdictional objections can be raised first time before the Tribunal- serious inconsistency in these two decisions, whereas member technical was same in both the decisions

In ***Indian Coffee Workers Co-op Society Ltd. v, CCE*, *Allahabad*, 2014 (33) STR 266 (Tri.-Del.)** first time before the Tribunal, orally objection was taken about the territorial jurisdiction of the Commissioner to initiate proceedings, which was rejected by the tribunal on the ground that such objection was not taken in the court of first instance at the earliest possible opportunity by referring to sections 21 of CPC, even though it was noted that CPC provisions are not applicable to the proceeding under the Finance Act, 1994.

This decision of the Tribunal run counter with other decision of division bench of the Tribunal ***Nylex Traders v. Commissioner of Customs (Preventive), Mumbai,* 2011 (274) ELT 71 (Tri.-Mumbai)**, which in turn rely on the **Supreme Court in the case of *CST, U.P. v Sarjoo Prasad Ram Kumar,* [1967] 37 STC 533 (SC)**, wherein, the Tribunal noted that the jurisdiction objection was not taken before the Adjudicating Authority while replying to the Show Cause Notice, however, the Tribunal after considering the above-mentioned Supreme Court decision held that the party can be allowed to raise the jurisdiction objection in their appeal before the Tribunal. It is also to be noted that member technical in both the decisions of the Tribunal was the same. **Therefore it appears that there is a serious inconsistency in these two decisions.**

In the words of Mahatma Gandhi

There is a higher court than courts of justice and that is the court of conscience. It supercedes all other courts.