

CASE LAWS

SERVICE TAX JUDGEMENTS

① Home Solution Retail India Ltd. Vs. Union of India + Others [2009]
⇒ Delhi High Court in the case mentioned above has held that no service tax is payable on renting of immovable property as super structure. However, if any, additional facilities like Air-conditioner, Office furniture, office equipments, other facilities have been rented out along with immovable property, then in that event, then only to the extent of value of such facilities shall be liable to service tax in view of the fact that the service tax is a value added tax.

② Shirsagar Veg. Restaurant Vs. Asstt. Commissioner of Income tax [2009]

⇒ The Bombay High Court has set aside an order passed by the ITAT (directed the ITAT to re-hear fresh) only on the ground that there was a delay of four months after conclusion of hearing in passing the final judgement - without giving any reason for delay. Further held that the Final judgement should be speaking one and merely observing that findings of the lower authorities do not call for any interference is not enough.

③ C.C.E. Vs. IJ Muthu Foods (P) Limited.

⇒ The refund of Cenvat Credit on input services such as general insurance, export clearances, courier, export freight, technical services and clearing charges in respect of export consignment is clearly permissible to the assessee.

④ Ruchi Health Foods Ltd. Vs. C.C.E.

⇒ The paint used for protecting plant is eligible as input for availing Cenvat Credit. The electrodes used in the factory is eligible for Cenvat credit. The computer used to monitor equipment involved in manufacturing process and material movement, would be eligible as "capital goods" for ~~available~~ availing Cenvat credit.

⑤ Philips Electronics India Ltd. Vs. C.C.E.

⇒ The defects in invoices which are used for availing Cenvat credit are rectifiable. The Cenvat credit cannot be disallowed merely on the basis that some information is missing from the Invoice.

⑥ Aneja Property dealers Vs. C.C.E.

⇒ In case ~~if~~ show cause notice has to be issued either for short levy or non-levy, provision of law, as prevailing at the time of initiation of proceedings, would be attracted, although some different provision of law were applicable during the period for which, the show cause notice has been issued for short levy on non levy.

⑦ Rohan Builders Limited Vs. C.C.E. [2009]

③

⇒ The Tripartite Agreement envisaging first party i.e. appellant as property developer, second party contractor and the third party i.e. flat purchaser. It was held that development includes construction of residential complex and the contention of the appellant that there is only sale of property undertaken is liable to be rejected. Since the service tax along with interest was paid before issuance of SCN - penalty not liable leviable because of doubt on the issue of liability and also due to interpretation of legal provision involved.

⑧ HSBC Securities & Capital Markets India Ltd.

Vs.

C. C. E. [2009]

⇒ The Corporate advisory and Due Diligence services provided pertaining to acquisition of shares of a Listed company provided by appellant clearly falls within the "Management consultant Service" but w.e.f. 16.7.2001 and, therefore, no tax is payable for period prior thereto.

⑨ Nirma Ltd. Vs. C.C.E. [2009]

⇒ The Cenvat credit of service tax paid on CHA and C+F Agent (i.e. after the goods left the factory for export) has no relation to the manufacture and clearance from the factory and, therefore, Cenvat Credit of service tax paid on two services would not be available.

(10) C.C.E. Vs. Manikgarh Cement Limited [2009]

⇒ The Cenvat Credit of Service tax paid on the input services such as repair/maintenance, civil construction, man power recruitment and clearing services used in the residential colony of workes of manufacturer (and not at the factory building) would still be allowable.

(11) Bhagwan Singh Vs. C.C.E. [2009]

⇒ The Assessee having contract carrier permit and has allowed his vehicles to be used by various companies for carrying their employees to their respective factories, it cannot be said that the assessee is liable to service tax as provider of "Tour Operator Service".

(12) Nahar Spinning Mills Ltd. Vs. C.C.E. [2009]

⇒ The assessee act as Commission Agent i.e. procurement of orders from the prospective buyers and informing the same to the Company - Such services to be held to be covered under the definition of "business auxiliary services".

(13) Neo Foods Pvt. Limited Vs. Commissioner of Custom [2009]

⇒ The 100% EOU is unable to utilise the Cenvat credit in respect of Service tax so paid on input service for manufactured of their finished products which were exported, they would be entitled to seek refund of the Cenvat credit pertaining to service tax so paid and the same could not be utilised.

(14) C.C.E Vs. TPL Plastech Ltd. [2009]

(5)

⇒ Cenvat Credit of service tax paid on the Mobile phones sought to be disallowed by the department on the ground that they are not used in relation to manufacture of goods, is rejectable in view of the judgement of High Court allowing the Cenvat credit of Service tax paid on Mobile phones.

(15) C.C.E. Vs. Agarwal Distillers (P) Ltd. [2009]

⇒ The activities of packing and bottling of liquor are not liable to Service tax.

(16) Art Leasing Ltd. Vs. C.C.E. [2009]

⇒ The construction service brought to net of service tax only on 15.06.2005 and the contract was entered prior to 15.06.2005 and, therefore, no service tax would be leviable on the amount so received by the virtue of judgement of Tribunal in the case mentioned above.

(17) C.C.E. Vs. BSBK Pvt. Ltd. [2009]

⇒ The mobile phone provided to director for use for rendering services to the company and there is evidence that the amount under the bills have been paid by the Company, the company is entitled to claim cenvat credit of service tax on such mobile phones.

(18) C.C.E. Vs. T. G. Kirloskar Automotives (P) Ltd. [2009]

⇒ The service tax paid on bills of mobiles provided to officers of the company, can be claimed as cenvat credit and the contention of the department that the mobiles phones could also be used for personal purposes, is liable to be rejected.

(19) Transformers & Electricals Kerala Vs. C.C.E. [2009]

⇒ In the event of divisible contract i.e. (a) one for manufacture and other for installation and commissioning. The service for installation and commissioning would fall under 'Consulting Engineering Service'. The Excise duty would not be payable on the amount on which the service tax is payable by the Assessee.

(20) S.P. Rubberchem Agency Vs. Union of India [2009]

⇒ On an interim passed by the Tribunal in the year 1999 calling upon the assessee to deposit a sum of Rs. 47.50 lacs, only a small amount was deposited and remaining amount of Rs. 32.50 lacs was deposited in the year 2009 i.e. after 10 years, on a writ petition being filed by the assessee for an order of restoration of his appeal which was dismissed due to non-compliance of the order of pre-deposit, the appeal of the assessee would be liable to be restored and heard on merits.

(21) Tiger Security Service

Vs.

C.C.E. [2009]

⇒ If in the show cause notice, the department has mentioned sections 66(1) of Finance Act, 1994 which is a charging section and not the section which provides ~~the~~ for recovery of tax not paid, the said SCN is defective and the demand of service tax on security agency service is liable to be set aside.

(22) Vivek Enterprises

(7)

Vs.
C.C.E [2009]

⇒ Due to non-deposit of amount of pre-deposit ordered by the Commissioner (Appeals), the appeal was dismissed. The Tribunal held that the appeal should not have been dismissed mechanically and the appeal of the appellants should have been considered when the appellant has, on merits, a strong case and due to the reasons that the commissioner (Appeal) has not recorded proper findings on merits.

(23) Sky Gourmet Pvt. Ltd.

Vs.
C.C.E. [2009]

⇒ When the service tax is payable under "Outdoor Caterer Service" for supply of goods to in-flight catering, then the value of foods and beverages is liable to be excluded from the total value of ~~foods~~ contract on the service tax is payable since the party has paid the "Sales Tax" on the quantum of food and beverages.

(24) URC Construction (P) Ltd. Vs. C.C.E. [2009]

⇒ When the contractor has undertaken a contract for civil construction for Central Govt. or State Govt. or P.S.U. and the premises so constructed shall not be used for industrial or commercial purposes and despite introduction of Works contract, prima-facie demand of service tax on the Contractor is not maintainable since the definition of "Commercial Construction Service" has not been amended.