INDIRECT TAXES CASE STUDY

FOR

CA FINAL NOV 2012

COMPILED BY

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Source / Journals Referred:

- **The Chartered Accountant Journal by ICAI.**
- **BCAJ (Bombay Chartered Accountant Society) Monthly journal**
- **Income tax Review: Monthly journal of The Chamber of Tax Consultants.**
- **All India Federation of Tax Practitioners: Monthly Journal.**
- **S.T.R. : Service Tax Review.**
- **E.L.T. : Excise Law Times.**

All the case decisions compiled from above magazines / sources are selected on the basis of their practical applications in the appellate proceedings before various revenue authorities. These cases are pronounced between the periods Oct 2011 to June 2012 specifically applicable for CA FINAL Nov 2012 term.

You can expect direct question based on these case studies.

Best of Luck.

SERVICE TAX

❖ Taxability of various services provided by telecom operators like ring tones, music downloads, SMS texts, monthly rentals, postpaid charges etc : State of AP vs. Bharat Sanchar Nigam Limited [AP HC] [IMP]

The High Court in this case held as under;

- Ring tones, music downloads, SMS text message and wall papers, etc. involves transfer of data (textual, audio, visual etc.) and/or accessibility (ability to access) of such data or content in network of service provider. They fall within the ambit of "telecommunication services" as defined in section 2(K) of Telecom Regulatory Authority of India Act 1997 and section 65(109a) of FA 1994. Ringtones, music downloads, wall papers, music clip, etc. fall within definition of "Development and Supply of Content" under section 65(36a) and constitute taxable service under section 65(105)(zzzb).
- If telephone instrument, mobile handset, modems and caller ID instrument are procured by subscribers from suppliers, other than service providers or their distributors/franchisees, monthly charges paid to service provider, would fall within "Telecommunication Services" liable to service tax.
- SIM card recharge coupon vouchers, mobile telephone rentals on post paid connections, value added service such as ring tones, music downloads, wall papers, etc. and proceeds received on sharing of infrastructure are not goods whose sale or transfer of right to use is chargeable to tax.
- Non Refundable deposits collected by telecommunication service provider against supply of telephone instruments, batteries, accumulators, etc. as disguised from of consideration either for their sale or transfer of right to use. They from part of sale consideration subject to tax under VAT.
- Refundable deposits collected by telecommunication service providers from post paid subscribers as security for payment of dues towards STD or ISTD facilities do not fall within the ambit of either 'sale' or 'goods' and are not liable to tax under VAT.

❖ Service tax on subvention charges : EM Pee Motors Ltd. vs. CCE [CESTAT Delhi]

Facts:

The assessee acted as an agent of ICICI bank for promoting vehicles loan for which it was paid commission. Out of the commission paid by the Bank to the assessee, they were in fact paying some amount to the loan seekers as an incentive [subvention] for taking the loan through them. This amount is hereinafter referred to as 'subvention'. ICICI issued TDS certificate (under income tax) on the gross amount, the assessee accounted the gross commission as receipt and the subvention as an expense. While paying service tax for amounts received as commission from the bank, the assessee deducted the amounts of subventions from the amount received from the bank and paid service tax only on the remaining portion of the commission. The Department has made out a case that they should have paid tax on the full amount received from the bank and issued a show cause notice to the appellant demanding tax which was short paid.

Decision:

Tribunal held that the full amount paid by the bank for service rendered by the assessee, should be subjected to service tax.

❖ An agent appointed by Airport authority of India for collection of admission charges is considered as provider of airport services and hence liable to service tax: P C paulose Sparkway enterprises vs. CCEx (SC)

Facts:

The assessee entered into a license agreement with the Airport authority of India (AAI) under which they were authorised to collect airport admission ticket charges and were granted space at the Airport. All the expenses to provide such services to passengers and visitors were borne by the assessee. Moreover, the assessee has to bear out taxes etc. Department contended that assessee was responsible to discharge service tax liability whereas the assessee was of the view that AAI, the principal service provider was liable to service tax.

Decision:

The assessee is authorised by the AAI to provide services and therefore, it step into the shoes of the AAI and is liable to pay Service Tax.

❖ Refund cannot be denied when Service Tax paid subsequently found not payable due to threshold exemption: Jageti & Co vs. CST [Ahmadabad CESTAT]

Facts:

In the given case, service tax was demanded from the assessee on the ground that the assessee had exceeded the limit provided for exemption. The assessee immediately paid service tax along with interest. Subsequently, it was discovered that the assessee was within the limit of threshold exemption and therefore the tax was not payable. Consequently, the assessee claimed refund. The claim was rejected by the department on the ground that the fact of exemption was not mentioned in the invoice and therefore, the value indicated in the invoice was inclusive of service tax element. The department in support of its claim also stated that since service tax paid had been debited to Profit and Loss Accounts, therefore it had to be held that service tax liability had been included in the value of services charged in the invoices.

Decision:

The Tribunal held that the view taken by the Department is not appropriate. How can the assessee mention the amount of tax when he was exempt from tax? Moreover, mere non-mention of service tax exemption on the invoice does not mean that the assessee has collected any amount of service tax. Also, the fact that service tax paid was booked as expenditure does not mean the appellant was in fault. The order rejecting the refund claim of the assessee was held to be non-sustainable.

❖ Reimbursement of expenses to be included in the value of taxable services provided the same is required to spent in order to provide taxable service : Harveen & Co. vs. CCEx [CESTAT Delhi]

Facts:

Assessee was providing clearing and forwarding service to M/s Whirlpool India Private Limited during the period April 2001 to September 2005 and was receiving payment as commission/service charges. Apart from this, the Assessee was also receiving amount for service charges for employment, freight for distribution/ transportation of goods, loading/unloading of goods, phone expenses, etc. Assessee was require to arrange transportation of goods for which the appellant was paid fixed remuneration. Although as per the agreement, this charge was called freight charges, the was no actual basis. The Department was of the view that the remuneration received as freight charges was also remuneration for clearing and forwarding services and they further stated that various expenses reimbursement to the appellant were nothing but consideration for the providing clearing and forwarding services. The Department further was of the view that these amounts should be added to the value of commission received by the appellant and the service tax should be paid on such gross receipts and demand for service tax was made by the department along with interest and penalty.

Decision:

It was held that without engaging clerk and utilizing telephones and having godowns for storing the goods and without paying the loading and unloading charges, the appellant could not have rendered the clearing and forwarding services and even if these expenses were separately billed to the client, the expenses will form a part of value of taxable services. In case of transportation services, they were provided by the person operating the vehicles and there was no proof of the fact that the appellant had the responsibility to deliver the goods at the door steps of the client. For freight revenue, it was connected that it could be considered as reimbursable expenses so long as the actual freight amounts were claimed. For expenses of pre-dispatch inspection, octroi and detention charges, it was held that these expenses were not towards any activity that would constitute service rendered by the appellant and therefore, excludible. Abatement from gross receipt received could be allowed for the expenses subject to production of vouchers for such expenses.

❖ Refund of credits pertaining to past periods can be allowed in subsequent months: CCEx vs. Chamundi Textiles (silk mills) Ltd. [CESTAT Bangalore]

Facts:

Assessee was a 100% EOU engaged in the export of silk fabrics. Most of their production was exported and therefore, the respondent was not able to utilize the accumulated credit and they filed refund claim for such credit under Rule 5 of the CENVAT credit Rules, 2004 (CCR). The department rejected the claim since the claim pertained to credits for the input services which had not been used in goods actually exported. Moreover, certain credit was denied on input service invoices which were raised on the head office or where only photocopies of invoices were available or where the invoices were not in the name of the respondent.

Decision:

Quoting Para 3.3 of CBEC Circular dated 19-01-2010, the Tribunal held that there is not bar on refund for the credit pertaining to the input services availed in the previous period. Regarding eligible documents the Tribunal held as under:

- Input services invoices raised on head office held, credit can be allowed if the services are received by the respondent and the respondent can satisfy the authorities that the services have been received by them.
- Photocopies of invoices, invoices not containing name of assessee, Held, and such documents are not eligible documents.
- Documents in the name of another entity but on account of the assessee. Held, credit cannot be denied on such invoices.

❖ Tax payable under reverse charge on services received from abroad, can be paid from CENVAT credit account : CCEx vs. Arvind Fashion Ltd [Kar HC]

Facts:

The assessee had paid service tax as a receiver of intellectual property service using CENVAT credit on advertisements, manpower recruitment, repairs and maintenance, construction services, etc. The Tribunal held that though the assessee is a recipient of service in law, as the service provider is outside the country, the tax is levied on him. But to discharge such liability, he can use CENVAT credit which is to his credit. The revenue filed appeal against the Tribunal's order.

Decision:

In law, though the person is a service recipient, he is treated as service provider and is levied tax. To discharge his liability, he is entitled to use the CENVAT credit available with him. Decided in favour of the assessee.

❖ Cenvat Credit taken before payment of Service tax, cannot be denied: J K Sugar Ltd vs. CCEx [Kar CESTAT]

Assessee in this case had taken Cenvat credit before payment of service tax. The same was disputed by the department. Tribunal held that taking the credit before payment of service tax is only technical lapse and such on lapses credit cannot be denied.

❖ Cenvat Credit cannot be denied on the basis of Zerox copies of the invoices: CCEx vs. Shah Precicast (p) Ltd [CESTAT Mumbai]

Facts:

Assessee availed credit on the basis of Xerox copy of the bill of entry. A show case notice was issued for wrong availment of credit on the basis of Xerox copy of the bill of entry. Penalty also was imposed. Assessee contended that the original copy of the bill of entry was not available with them and they had lodged a police complaint. Further they put in efforts to obtain a certified copy of the bill of entry from the commissioner who denied their request.

Decision:

It was held that the assessee were entitled for CENVAT Credit availed by them on the strength of Xerox copy, because they had made efforts to obtain a certified copy of the bill of entry which was denied to them. Also it was not disputed that the goods had suffered duty and they had been used in the manufacture of final product. The Credit could not be denied on the basis of mere technical violence.

❖ Cenvat Credit can be availed on the basis of delivery notes: CCE vs. Saturn Industries [Kar HC]

Facts:
Assessee claimed CENVAT of the duty paid on the basis of the delivery notes. The revenue in its appeal against the Tribunal's order contended that delivery notes cannot be considered as valid legal document for availment of the credit.

Decision:
It was held that benefit cannot be denied on the ground of non-compliance with procedures when sufficient evidence about the duty payment on input was available on records.

❖ No interest can be charged when Cenvat Credit wrongly availed and reversed before its utilization CCEx vs. Dyna Flex (p) Ltd [Guj HC]

Facts:
Assessee is engaged in manufacture of poly bags/flat films. During the course of Audit, it was observed that the assessee wrongly availed CENVAT credit. The assessee reversed the said credit account and failed to pay the interest on the credit account and failed to pay the interest on the credit availed by it. A show case notice was issued for the recovery of interest. The adjudicating authority held that show case notice as dropped. The Department filed an appeal before the commissioner (appeals) who dismissed the appeals & before the Tribunal which also was dismissed.

Decision:
HC held that when an entry has been reversed before utilization the same amounts to not taking credit and accordingly no interest can be charged.

❖ Cenvat Credit on Service tax paid for landscaping of factory garden is allowable : CCEx vs. Millipore India (p) Ltd [Kar HC]

Facts:

Assessee, a manufacturer of excisable goods claimed credit of service tax paid on various services availed like: medical and personal accidental insurance, personal vehicle services, landscaping of factory garden, etc. Revenue denied the credit and the order was also upheld by the CCE (Appeals). The Tribunal held that the aforesaid services fall within the phrase 'activities' relating to business' and therefore the assessee was eligible to claim the credit. Against such order, the revenue preferred appeals before High Court.

Decision:

Affirming the order of the Tribunal the Court held that in view of CAS-4, the above services are taken into consideration while fixing the costs of the final products and in such a case, the assessee would be entitled to the CENVAT credit of the tax paid on such services. The Court also observed that the definition of the input service is very abroad. What is contained in the definition is illustrative in nature. Landscaping of factory garden falls within the concept of 'modernization, renovation, repair, etc.. It is social responsibility and statutory obligation of employer to maintain eco—friendly environment. Moreover, medical and personal accident premium, vehicle insurance, etc. from part of salaries of employer and are activities relating to business. Therefore, the Tribunal's order was upheld allowing credit of such items.

❖ Erection of tower sites and leasing it to telecom operators does not attract Service Tax: Essar Telecom Infrastructure vs. UOI [Kar HC]

The assessee was engaged in erection of tower sites and leasing out space on such sites to various telecom / cellular operators. High Court held that though the towers were fixed to earth and could not be treated as mobile, they cannot also be treated as immovable property to contend that it is only service rendered and not transfer of right to use goods. Expect platform to fix equipment / tower the structure does not acquire character of immovable goods to detract application of Vat Act. Only semblance of service was being rendered and factually it was movable super structure lent to various telecom companies whereas maintenance and other control over equipment was still retained by assessee till expiry of term either for cash or liquidated payment or some other consideration, it was only transfer of right of goods, which attract VAT Act and was within Article 366 (29A)(d) of Constitution of India. Though incidental service was involved, in pith and substance, what was being lent was right to use goods and super structure raised. Accordingly will not fall under the purview of Service Tax.

❖ Refund of Service tax wrongly paid on construction services: CCE vs. KVR Constructions [Kar HC]

The assessee in this case claimed refund of service tax paid wrongly on construction service. The High Court observed that, department has not disputed that, it was not payable due to exemption Notification, and that it was not passed on. The High Court held that, department did not have legal authority to collect service tax and if did, it could be challenged as unconstitutional. Mere Payment of amount could not authorize Department to regularize /validate and retain it. Department's plea that filing of claim under form R indicated that assessee intended to claim refund of duty and they could not latter claimed that it was not a duty, has been rejected by the court. In this view , refund could not be rejected on ground of limitation under section 11B of CEA, 1994.

❖ Rebate on export cannot be denied merely because the assessee had not taken Service Tax registration no. : Wipro BPO Solutions vs. CST [CESTAT Delhi]

Facts:
The assessee in this case claimed rebate on export of services under Notification No. 12/2005-ST. Department had rejected the claim by stating that assessee have not followed the procedure prescribed for claiming rebate as prescribed in the Notification No. 12/2005-S.Tand they did not obtain the Service tax registration under the Service Tax Rules. Matter ultimately travelled to tribunal.

Decision:

- Non-mentioning of some inputs or input services specifically in a declaration, can be condoned by sanctioning authority, if on the basis of inquiry and invoices submitted he is satisfied that the same had been received.
- If a declaration has not been filed at all or filed after completion of export, authority sanctioning rebate would have had no opportunity to verify likelihood of evaluation of duty. In such case, exporter cannot ask sanctioning authority to verify receipt of inputs from records. Purpose of filing of declaration is to prevent evasion of duty by misuse of rebate and in that view even though its non-filing is only procedural, rebate would not be admissible.
- Rebate claim could not be rejected just because assessee did not have service tax registration. Service tax registration is not a precondition either under rule 5 of ESR, 2005 or Notification No. 12/2005-ST.
- In case where entire output services are exported out of India, exporter of service is neither liable to pay service tax in terms of rule 4 of ESR, 2005 nor liable to obtain registration in terms of section 69 of FA, 1995.
- Registration is linked with liability for paying service tax and not with mere providing taxable services. Person providing taxable service is liable to obtain service tax registration only if he was liable to pay service tax.

❖ Export of Services vis s vis commission received in Indian rupees : National Engineering Industries Ltd vs. CCEx [CESTAT Delhi]

Facts:
The assessee was an agent of a foreign company called GMC. The assessee sourced contracts from Indian Railway for GMC for a commission. The commission was denominated in USD which was payable by GMC in INR through Indian Railways. Thus, from the amount of USD payable to GMC by Indian Railways, Railways deducted the USD equivalent of the commission payable to the assessee and remitted the net amount of USD to GMC and paid commission in INR to the assessee. The assessee did not pay service tax on its service claiming the same to be in the nature of export. The department denied the export claim on the basis that the commission was received in INR.

Decision:
Hon'ble Tribunal allowed the assessee's claim and held that the condition of receipt in convertible foreign exchange was applicable only if the Foreign Service recipient had a commercial or industrial establishment or office in India. Since GMC did not have an office or establishment in India, services provided by assessee would be held as exporter even if money was not received in foreign exchange.

❖ Penalty u/s 76 cannot be reduced to below the minimum limit : CCE vs. S J Mehta & Co. (Guj HC)

Facts:
The assessee paid service tax along with interest after due date of payment. They also filed a belated Service Tax return. Due to the lapses, penalty of Rs. 88,000/- u/s 76 was imposed. The assessee in the appeal get the penalty amount reduced to Rs. 25,000/- , which was also confirmed by the tribunal, against which department moved to HC.

Decision:

High Court had taken a view that on a conjoint reading of section 76 and section 80 of the Act, there exists no discretion to the authority for levying a penalty below the minimum prescribed limit. Following this decision, the order of the tribunal was set aside remanded to ITAT.

❖ No penalty, when assessee suo - moto paid the taxes along with interest : Hajarilal Jangid vs. CCEx [Mumbai CESTAT]

The Hon'ble Tribunal held that when the assessee had suo motu paid tax along with interest and also filed return after payment of late fee, no show cause notice could be imposed served on the assessee in terms of Section 73 (3) and accordingly, no penalty can be imposed under Section 76, 77 and 78 as there was no willful misstatement or suppression of facts on the part of the assessee.

❖ No penalty if assessee proves his bonafides by a reasonable cause : Bajaj Travels Ltd. vs. CST [Delhi HC]

Facts:

Departmental officers had visited the premises of the assessee where certain discrepancies were found. Within two days of the survey, the assessee had deposited entire tax and also interest. Penalty u/s 76 & 78 has been imposed on the assessee. The matter ultimately travelled to HC.

Decision:

HC held that prior to amendment to section 78 w.e.f.16-5-2008, section 76 and 78 operated in two different fields and penalties was impossible under both separately, even if offences were committed in course of same transaction or arose out of same act. Onus to prove "reasonable clause" for failure to pay Service Tax is on assessee. They have to show that there was sufficient and proper reasons which occasioned their making of short deposits of Service Tax was sufficient to invoke section 80. Bona fide implies absence of fraud or unfair dealing. Equivalent to this phrase is 'honesty". Reasonable cause in common parlance means cause or ground which was not unreasonable. Accordingly penalty deleted.

CIRCULAR:

Service tax rate applicable on air tickets issued before 1st April, 2012 for journey after 1st April, 2012: (Circular No. 155/6/2012-ST. Dated April 9, 2012)

Clarification was sought whether collection of differential service tax on tickets issued before 1st April, 2012 for journey after 1st April, 2012. CBEC clarified that air tickets issued in any form is recognized as an invoice by virtue of proviso to rule 4A of service tax Rules, 1994. CBEC further clarified that if payment of such tickets is received by airlines (whether directly or through IATA agent) before 1st April, 2012, the applicable tax rate would be 10% as provided in rule 4 of point of taxation Rules 2011. Airlines need not recover the different tax in such cases. In case where such differential tax is collected and not refunded to the customers, airlines will be required to pay such amount to the credit of the central government under section 73A of the finance Act,1994.

CENTRAL EXCISE

❖ Wind Mills to be treated as Captive Power plants for Cenvat credit: Rajratan Global Wires Ltd. vs. CCE [CESTAT - Delhi] **[IMP]**

Facts:
Assessee manufactured stranded wire in their factory and received electricity from their windmills at dewas through wheeling arrangement in terms of agreement with the M. P. State Electricity Board. Assessee availed the services of erection, installation and commissioning, repair, maintenance and also insurance and took CENVAT Credit of service tax paid on these services. The Department was of the view that since windmills were located far away from the factory and the power generated by the windmills was not directly received in the factory, assessee was not eligible to CENVAT Credit. The matter ultimately travelled to Tribunal.

Decision:
In case of wind-power generator, it may not be possible to locate it in the vicinity of factory as wind-power generators have to be located at places where wind with sufficient speed is available throughout the year. Assessee's factories were situated far away from the windmills and they had obtained permission from M. P. State Electricity Board and in the permission, wind mills were mentioned as for captive use by the assessee. Therefore it was held that windmills were to be treated as captive plant service of erection, installation and commissioning, repair and maintenance and also insurance used in respect of the same are eligible for CENVAT Credit. Services received had clear nexus with the business of manufacture since electricity generated by the windmills was used for running assessee's factories.

❖ Dispatching order through "Speed Post" is not a sufficient compliance of section 37C: Amidev Agro (p) Ltd vs. UOI [Bombay HC]

The High Court in this case held that, sending of order by "speed post" is not a sufficient compliance to the provision of section 37C(1)(a) of CEA, 1944. Order is to be served on the assessee or his agent through Registered post AD or by other mode of service specified in section 37C. The Tribunal order dismissing the appeal by accepting dispatch of order by "Speed Post" as valid service is set aside.

❖ Wrong availment of Cenvat credit does not attract unless it is utilized against legally due taxes of Government: CCEx vs. Bill Forge (p) Ltd [Kar HC]

The High Court in this case held as under:

- Since the assessee had not taken benefit of wrong entry in their account books, there was no liability to pay interest. Once entry was reversed, it is as if that CENVAT credit was not available.

- Wrong availment of credit does not attract interest liability, which arises from the date credit is taken on utilized wrongly. It is only when credit has been taken and duty legally due to Government is not paid, Government would sustain loss to that extent. Liability to pay interest arises under section 11AB of CEA, 1994 from date amount become due, to compensate Government. Without liability to pay duty, liability to pay interest does not arise.
- Taking of credit means actually taking credit in account books while clearing finished goods. It is not merely entry in account books showing entitlement to credit. It is more so as word used in Rule 14 of CCR, 2004 are 'taken' or 'utilized' and not 'valid'. If before utilization of credit, entry has been reversed, it amount to not taking credit on inputs.

❖ 50% of balance Cenvat Credit can be claimed on subsequent year despite the fact that goods is still lying in the factory floor for installation : BPCL vs. CCEx [Mumbai CESTAT]

Facts:

The question of law referred to the larger bench was, whether an assessee is eligible to avail the credit of balance 50 % of the credit in respect of capital goods in the subsequent financial year without installing the same and putting it to use. The issue thus involved related to interpretation of provision of Rules 4 (2)(b) of CCR as to whether the situation of capital goods would be regarded as possession of capital goods and use for the manufacture of final products in such subsequent year's.

Decision:

Bombay High Court in Ispat's case, held that since the Tribunal had held that the expression 'possession and use of the manufacture of final product' have to be read together and would denote that the good were available for use in the manufacture of final products and since the finding of the fact was that capital goods were under erection process, no substantial question of law had arisen and therefore the appeal was dismissed. In terms of the above decision of the Bombay High Court, it was held that the condition under the relevant Rule for taking 50% credit in subsequent financial year when capital goods are lying in the factory for installation and under the process of erection had to be interpreted as capital goods in possession and use for manufacture and accordingly the Division bench was directed to decide the appeal on merits.

❖ Cenvat Credit cannot be denied when the inputs sent directly to processors to save transport cost: CCEx vs. Hindustan Motors Ltd [CESTAT Delhi]

Facts:

Assessee purchased the brake assemblies and took the credit on the basis of invoices issued to them. The goods were not sent to the factory of the assessee, but were dispatched to a job-worker processors at Pune from whom the assessee was getting finished goods produced which in turn was used for the further manufacturing of excisable goods in the factory of the respondent. The Department was of the view that the assessee was not eligible for CENVAT credit as the brake assemblies had not been physically received in their factory. The Department filed an appeal against the above order on the ground that since brake assemblies purchased by the assessee from the supplier had not been received but dispatched to the processor for being fitted with rear/front axles being supplied to the assessee, hence the not eligible for CENVAT credit.

Decision:

If the assessee had first transported the brake assemblies to their factory and then sent the same to the processor for being fitted with rear/front axles being supplied by them, they would be entitled to CENVAT credit to brake assemblies on the basis of invoices issued by the supplier. To avoid transportation cost, assemblies were sent to the processor. Hence the CENVAT credit cannot be denied as there was no intention to evade payment of duty by taking wrong CENVAT credit.

❖ Indicating the name of the manufacturer on the packaging of the product will not amount to affixing a brand name or not for cancelling the SSI exemption: CCEx vs. Synotex Industries Ltd. [Kolkata CESTAT]

Facts:

M/s Synotex Industries got manufactured chemicals such as Zinc Oxide Phosphate, Zinc Chrome, etc. on job work basis from M/s Allied Chromes & Chemicals from 1999 onwards and marketed the same. On the packages of the product, it was found that the following was embossed viz, "manufactured by M/s. Allied Chrome and chemicals (P) Ltd." It was further printed on the package that the product was "marketed by M/s. Synotex Industries." M/s. Synotex Industries claimed the benefit of small scale exemption under the aforesaid Notification. The adjudicating authority denied the exemption on the ground that since the manufacturer's name is indicating on the package, it amounted to affixing the brand name of the other person on the product and therefore it was hit by the provision of para 4 of the Notification. The original adjudicating authority adjudicated the case and denied the benefit of aforesaid Notification and confirmed a duty demand of Rs. 1, 11,994/-

Decision:

HC held that that if the Revenue's plea that indicating the manufacturer's name would amount to affixing brand name is accepted, then all the goods contained manufacturer's name would be branded goods which is highly illogical. In fact in respect of the packaged goods, there are statutory requirement that the manufacturers or packer's name and address should be indicating on the packages of the goods under the standard of weights & measures Act, 1976 and the rules made thereunder. Indicating the name and address of the manufacturers on the packages cannot be constructed as affixing the brand name. The appeal filed by the Department was dismissed.

❖ Brand Promotion services vis a vis denial of SSI exemption : Fashion Square vs. CCEx (CESTAT Delhi)

Facts:

The assessee was a consignment agent appointed by 'Koutons Retails India Ltd' for the sale and marketing of 'Charlie Outlaw', a brand of readymade garment and not for the Kouton's goods. Department argued that service tax was leviable on the assessee as it provided taxable service of promotion of branded goods and that the taxable services provided by a person under a brand name or trade name, whether registered or not, of another person are expressly disallowed to take advantage of the exemption given to the small services providers under notification no. 6/2005 ST dated 01-03-2005.

Decision:

In the absence of any evidence to show that assessee was promoting or marketing branded goods of M/s Kouton's, it was held that the assessee sold the goods in its outlet as a trader consignment agent. Accordingly, assessee being a small taxpayer was entitled to the exemption benefit under notification no. 6/2005.

- Input services used outside the factory eligible for CENVAT credit if nexus with manufacture is established : CCEx vs. Ultratech Cement Ltd. (MUM)

Facts:

A manufacturer of cement claimed CENVAT credit on repairs and maintenance services of River Pump used for generation of electricity outside the factory premises. Such electricity was used in the manufacturing of final product. CENVAT credit was denied on the basis that services are received outside the factory premises and did not have nexus with the manufacture of final products.

Decision:

The definition of input services does not deny credit if services are utilized outside the factory premises. The nexus in this case with manufacturing of final product is established indirectly. In the case of the appellant for similar issue, the tribunal had allowed CENVAT credit. Input Services used outside the factory premises are eligible.

Friends, In case of any query including Full text of the decisions, please feel free to mail me at bikashbogi@yahoo.co.in. or contact me at +91-9930934403, or post in my blog : bikashbogi.blogspot.com

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