Avinash Poddar's

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16	Section 65(55b) of Finance Act 1994	Saint-Gobain Gyproc India Ltd. V. Commissioner Of Central Excise, Rohtak	Goods being manufactured using the technology of foreign collaborator
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18	Section 35G of Central Excise Act read with Section 83 of Finance Act 1994	Commissioner Of Customs V. Chettinad Cement Corporation Ltd.	Matter referred to Larger Bench of Tribunal is not appeallable at High Court

3.3 Case Laws related to Customs

Sr. No.	Relevant Section	Case Name	Issue
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2	Section 111 of Customs Act 1962	Rosy Blue (India) (P.) Ltd. V.Commissioner Of Customs, Csi Airport, Mumbai"	Misdeclaration of non dutiable diamonds would lead to confiscation and penalty
3	Section 127B of Customs Act 1962	Addl Commissioner Of Customs Vs Shri Ram Niwas Verma"	Smuggling of Gold

4	Section 135 of Customs Act 1962	Gerson Da Cunha V. Commissioner Of Customs"	Penalty & Prosecution for evasion
5	Section 125 of Customs Act 1962	Gerson Da Cunha V. Commissioner Of Customs"	Invocation of Extended Period

1.0 Articles

1. Analysis of Case Law - M/S Vishnu & Co Pvt Ltd & Anr Vs. Superintendent Central Excise - by CA Avinash Poddar

M/s VISHNU & CO PVT LTD & ANR vs. SUPERINTENDENT CENTRAL EXCISE

Citation : 2015-TIOL-1946-HC-DEL-CX

Issue: Where the assessee has an alternate and efficacious remedy to seek discharge from Trial Court whether High Court shall use its jurisdiction under section 482 of CrPC.

Authored by CA Avinash Poddar, Managing Partner, A A P & Co.

Issue: Remedy when available through Trial Court, whether High Court will use its jurisdiction

High Court of Delhi has denied exercising its inherent jurisdiction under section 482 of the CrPC because the petitioners have asked for quashing of FIR on the ground that CESTAT has set aside the demand of duty. High Court has observed that the petitioners have alternate and efficacious remedy to seek the discharge from Trial Court.

In Favour of: Revenue (Petition disposed of)

Facts of the Case -
Petitioner has sought the Quashing of FIR No.79/1/2007 under Sections 9/9AA of the Central Excise Act, 1944 titled Sandeep Jain v. M/s. Vishnu and Co. Pvt. Ltd. & Anr. in this petition on the ground that the demand of duty has been set aside by the Custom Excise and Service Tax Appellate Tribunal (CESTAT).

Therefore, the continuance of proceedings arising out of the complaint in question is an exercise in futility.

Petitioners have appeared before the trial court and pre-charge evidence is in progress and the next date of hearing is 2nd December, 2015.

The order setting aside the demand for duty is sub judice before a Division Bench of this Court

Petitioners have relied upon decisions in *Biharaj MFG. Co. P. Ltd. v. Commissioner of Central Excise 2007 (94) DRJ 705, Anil Mahajan & Anr. v. Union of India & b Anr. 2008 (101) DRJ 473 = 2008-TIOL-139-HC-DEL-CUS* and *Radheyshyam Kejriwal v. State of West Bengal and Anr. [2011] 4 S.C.R. 889.*

Matter in Question (No. 1) – Whether in this situation where case is already with Trial Court, honorable High Court shall use its jurisdiction under section 482 of CrPC.

In the present situation the Honorable High Court has observed that since petitioners have an alternate and efficacious remedy to seek discharge from trial court by urging the pleas taken herein, therefore, this Court is not inclined to exercise its inherent jurisdiction under Section 482 of Cr.P.C.

Reliance was placed on the decision of the Apex Court in Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors. (2011) 12 SCC 437, which is as under: -

"It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

Honorable High Court by applying the dictum of the Apex Court in Padal Venkata Rama Reddy (supra) as referred to hereinabove, this petition is disposed of with liberty to petitioners to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order.

Further it was observed by the Honorable High Court that if the trial court finds that no case is made out against petitioners, then this order will not stand in the way of trial court to discharge petitioners. Needless to say, if trial court chooses to frame charges against petitioners, then petitioners shall be at liberty to avail of the remedy as available in law, if so advised. It is made clear that this Court has not considered the merits of this case and it is left open for the trial court to do so after considering the pleas raised in this petition and decisions relied upon by petitioners.

Therefore as per the honorable High Court, the petition and the application is accordingly disposed of while refraining to comment upon merits, lest it may prejudice petitioners before trial court.

Conclusion

As per this case it could be said that if any other mode or remedy is available to the litigant then the honorable high court shall refrain from using its inherent jurisdiction as per section 482 of the CrPC.

2. Analysis of Case Law - M/S Saibaba Telefilms Pvt Ltd Vs. Commissioner Of Service Tax, Mumbai - by CA Avinash Poddar

M/s SAIBABA TELEFILMS PVT LTD vs. COMMISSIONER OF SERVICE TAX, MUMBAI

Citation : 2015-TIOL-1752-CESTAT-MUM

Issue: Program titled "Antakshari" was produced by the appellant for Star India. Commission was received from them but the service tax was not discharged under the category of *Program Producers Service.*

Authored by CA Avinash Poddar, Managing Partner, A A P & Co.

Issue: Charging of Service Tax on the Commission for film producing under the category *Programme Producers Service.*

CESTAT Mumbai has considered this matter on merits and has upheld the demand and also the penalty under section 76 and 77 but since the entire amount was recorded in the books of accounts CESTAT has taken a considerate view and invoked Section 80 for giving the waiver from penalty under section 78 of the Finance Act 1994.

In Favour of: Partly in favour of assessee.

Facts of the Case -

The appellant herein had produced a programme i.e. "Antakashari" for Star India and received consideration from them but did not discharge the service tax liability.

The said evasion of the service tax liability was noted by the department and on being pointed out the appellant paid the service tax liability along with interest which has been accepted by the adjudicating authority.

The adjudicating authority after following due process of law adjudicated the show-cause notice issued to appellant by confirming the demands raised along with interest, appropriated the amounts paid by the appellant against the demands and interest. He imposed penalties under Section 76 and 78 of the Finance Act, 1994.

The period involved in this case i.e. service tax for the period February to August 2007, the Counsel would submit that show-cause notice was issued on 08.10.2007. Further it is to be noted that for the period from 31.03.2006, appellant is required to file the returns by 25.04.2007 and for the period April 2007 to September 2007, appellant is required to file the service tax returns by 25.10.2007.

Purpose of mentioning specific dates is to claim relief of non-imposition of penalty under Section 80 of the Finance Act, 1994 as there is no intention to evade service tax;

Appellant had filed the returns with the authorities but due to financial crisis could not deposit the amount with the Central Government. This shows that the service tax liability was properly recorded in the books and thus intentional evasion not there.
As per the learned D.R. the appellant has collected the service tax and not paid. Therefore as per him the financial crisis cannot be a reason for delay in payment of tax. Since the appellant had utilized the service tax amount collected from the client for their business purposes this automatically attracts penal action.

Honorable Bench of CESTAT observed and held that the service tax liability and interest thereof are correctly determined by the adjudicating authority and that the appellant is not seriously contesting the service tax liability.

Further it is observed that the penalties imposed under Section 76 and 78 of the Finance Act, 1994.

Appellant had in fact filed ST-3 returns for the period February to March 2007 and from April to September 2007 to the authorities, indicating therein the taxable services provided by them and the service tax amount charged and collected by them from service recipient. In our view the penal provisions of Section 76 and 77 would be clearly applicable in the facts and circumstances of this case. The adjudicating authority is correct in invoking the provisions of Section 76 and 77 for imposing the penalties. We do not find any reason to interfere in such an order of the adjudicating authority accordingly we uphold that imposition of penalties under Section 76 and 77 of the Finance Act, 1994.

Further the CESTAT observed in relation to penalty imposed under Section 78 of the Finance Act, 1994 that the adjudicating authority in the impugned order has categorically recorded that the appellant had reflected the amounts collected by them as service tax in their Books of Accounts. Therefore if appellant had recorded the amount in their Books of Accounts as service tax collected by them and filed returns indicating therein the amounts involved as service tax, it cannot be said that the provisions of Section 78 of the Finance Act would be applicable in as such there is no intention to evade service tax liability. In our view the provisions of Section 78 do not get attracted in the case in hand. Accordingly, we by invoking the provisions of Section 80 of the Finance Act, 1994, set aside the penalty imposed by the adjudicating authority under Section 78 of the Finance Act, 1994.

Conclusion

As per the observation of CESTAT in this case it could be said that wherever things are categorically recorded in the books and if due to any financial crisis the payment is not made by the assessee there is no suppression of facts and hence the penalty under section 78 shall not be invoked.

2.0 News & Updates

1. CAIT urges Sonia Gandhi, Opposition leaders for cooperation on GST

NEW DELHI: Traders body CAIT today urged Congress President Sonia Gandhi and other Opposition leaders to cooperate in the smooth passage of constitution amendment bill on Goods and Services Tax (GST) in Parliament to pave way for its timely implementation.

Expressing concern over the stalemate on the GST Bill in Rajya Sabha, the Confederation of All India Traders (CAIT) has "sent a communication to leaders of major opposition parties including Sonia Gandhi".

CAIT has urged "them to cooperate and ensure smooth passage of GST in Parliament to pave way for its timely implementation in the country".

The roadblocks for GST are giving dismal picture of one of the most important tax reforms in the country, it said in a statement.

GST has much value to the trading community since it is deeply webbed into plethora of tax laws and regulations of multiple tax authorities, it said.

As GST is integration of various central and state-level taxes, the trading community hopes to get a simplified business environment, it added.

The implementation would help in improving ease of doing business and abolish colonial working of tax administration system.

Besides, the trading community will get rid from multiple taxes and multiple authorities thereby reducing the load of much paper compliance, the statement said.

"However, the political scoring has vitiated the reform to a great extent. It is the high time when a consensus must be evolved among the political parties to ensure safe and smooth passage of this economic reform," CAIT said.

The GST Bill is stuck due to political logjam in the Rajya Sabha where the ruling NDA does not have the majority.

Billed as the biggest indirect tax reform since 1947 which is expected to boost manufacturing, GST will replace central taxes like excise duty and service tax and state levies such as sales, value-added, entertainment and purchase taxes. All entry taxes like octroi will also be subsumed under GST.

(Ref - http://economictimes.indiatimes.com/articleshow/48713262.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

2. Government Has Referred GST to Select Committee, Says Venkaiah Naidu

PATNA: Union Urban Development Minister M. Venkaiah Naidu on Saturday said the government has referred the Goods and Services Tax (GST) Bill to a select committee to consider the demands of the opposition.

“The Land Acquisition Bill, GST and the Negotiable Instruments Bills were passed in Lok Sabha, but we couldn’t move ahead in the Rajya Sabha, as we don’t have a majority there,” said Naidu.

“In this situation, we referred the Land Bill to a joint committee and the GST to a select committee, taking into the consideration the demands of the opposition,” he added.

The government is expected to convene a special session of parliament to pass the GST Bill, a constitutional amendment, but only after a consensus is arrived at among all political parties, including the Congress Party and the Left Front.

(Ref-http://www.newindianexpress.com/nation/Government-Has-Referred-GST-to-Select-Committee-Says-Venkaiah-Naidu/2015/08/28/article2998261.ece)

3. Let’s discuss GST amendments, Congress tells Centre

The Congress party seems to be softening its stance on the Constitution Amendment Bill that would bring in the Goods & Services Tax.

Addressing mediapersons on Friday, Jairam Ramesh, senior Congress spokesperson and Upper House member, said: “GST is a good and simple tax. But this Bill is neither good nor simple.”

If there had been proper discussions, both the Congress and the government could have reached an agreement, he added.

Ramesh wondered why the Centre was reluctant to talk to leaders of the Opposition on the Bill and urged it to talk to former Prime Minister Manmohan Singh. He said the Bill can be passed only with the support of the Congress.

Ramesh said the Congress has objections primarily on five issues: a cap on the GST rate at 18 per cent;

addition of more items such as tobacco, alcohol and electricity in the GST list; doing away with the additional 1 per cent tax for manufacturing States, and compensation for States' local governments.

He termed the 1 per cent additional tax for producing States as a bribe to Gujarat. Ramesh asked Finance Minister Arun Jaitley why he is not holding talks with Singh and former Finance Minister P Chidambaram on the Bill. "The Finance Minister hasn't spent even an hour with Manmohan Singh. He should have taken his opinion on the Bill," he said.

"The government's Parliamentary strategy is not clever. It is clever by half. They should accommodate our concerns. They can agree on at least some of the crucial issues," Ramesh said.

Trade body's appeal
Meanwhile, the Confederation of All India Traders sent letters to all opposition leaders, including Congress president Sonia Gandhi, urging them to cooperate in the passage of the GST Bill.

"The roadblocks for GST are giving a dismal picture of one of the most important tax reforms in the country," the confederation said in the letter.
(Ref - http://www.thehindubusinessline.com/economy/lets-discuss-gst-amendments-congress-tells-centre/article7591450.ece)

4. Congress Awaits Rahul Nod for Future Plan on GST

NEW DELHI: The textile shares bounced up by 11 per cent on Thursday just on a promise from Textile Minister Santosh Gangwar, who stated that he was convincing Finance Minister Arun Jaitley to keep the sector in the lowest range of the Good and Services Tax. Not more than 12 per cent tax.

Many in the Opposition feel that the Government's initiative to open talks with the Congress and Parliamentary Affairs Minister Venkaiah Naidu's announcement that a special session on the GST was in the offing (as also his unveiling of the 98 shortlisted Smart Cities), were precisely taken for the same reason: to boost up the flagging economy, ravaged further by the bleeding stock market.

The Opposition leaders, particularly from the Congress, point out "there's a lesson to be learnt". The jumping of the textile shares on "a mere assurance from the Ministry" shows that the demand to the GST law was justified. The Congress, in its dissent note, and in its talks with the Government, has called for a 18 per cent ceiling on the GST and is insisting that it be included as a clause in the Bill itself.

The Government has been against it.

In the formal and informal talks Jaitley had with Congress deputy leader in the Rajya Sabha Anand Sharma; in Naidu's talks with the Congress leaders in the two Houses, Ghulam Nabi Azad and Mallikarjun Kharge, it was indicated that the Government was ready to accept some of the Congress suggestions as amendments.

However, it seems, the party's vice-president Rahul Gandhi "is not convinced" that the Government may stick to its commitment given the demands from the State Governments.

The Congress also wants to avoid a situation where it may be isolated in Parliament in opposing the GST.
(Ref - http://www.newindianexpress.com/nation/Congress-Awaits-Rahul-Nod-for-Future-Plan-on-GST/2015/08/28/article2997195.ece)

5. Despite delay, cos prepare for GST

A cloud of uncertainty may be hanging over the roll out of goods and services tax (GST), but that is not deterring India Inc from drawing up strategies for its implementation to get a competitive edge over rivals in terms of cost and market share.

Most corporate clients of business consultancy firms like PricewaterhouseCoopers (PwC), Deloitte and Ernst and Young (EY) have already began working on it and made some headway.

Uday Pimprikar, tax partner at EY said since GST law, which will subsume all central and state indirect levies into one, is going to mandate business transformation rather than just tax changes, "evolved clients have already commenced work on it."

"Clients acknowledge the enormity of the activity GST will mandate. More evolved clients are looking at GST from two aspects: First, if they don't handle GST implementation well, there is a material business disruption risk. So, it was very important for them to do it well to gain competitive advantage. Second, if they started early, cost optimisation benefit will kick in faster and also put them in an advantageous position for market share expansion," Pimprikar said.

He said corporates would not have much lead time if they waited till the last minute.

The National Democratic Alliance (NDA) government has set a deadline of April 1, 2016 for the rollout of GST. However, the Constitutional Amendment Bill is stuck as the opposition has blocked its passage in the upper house. Government is looking at every way to ensure that it sees the light of the day.

Anurag Mathur, partner – advisory – PricewaterhouseCoopers Pvt Ltd, said by planning ahead corporates were trying to get a lead over their competitors.

"If you want to get some leeway, you have to take the step before your competitor. So, if you (companies) are able to do a lot of these negotiations (with suppliers, vendors and others), you can be more competitive in pricing and costs optimisation. Till the time competitors respond, you would have either made more profit or sales and clearly be in a better position competitively," he said.

Mathur, however, said an action plan would emerge only once the draft legislation for the Bill comes through and there is clarity on the GST Act and its rules. That will happen only after it is passed in both Houses and ratified by 50% of the state assemblies, followed by formation of GST council, which will come out with its rules.

"There has to be clarity on legislation visible to a company for them to take the action. But that said, the preparation is being done now," he said. According to him, there was "significant seriousness at the management committee and Board levels."

"Boards are already sponsoring initiative around it," said the PwC executive.

M S Mani, senior director – indirect tax, Deloitte India, said many of his clients began preparing business remodelling plan six months and were in the process of finalising it.

"Manufacturing and pharma companies started six months back and have moved significant distance while financial service, software and other services firms are going slow or are yet to start," he said.

The areas that most corporates were looking at were supply chain re-engineering, vendor remodelling, warehouse consolidation, information technology (IT) or enterprise-wide resource (ERP) system reconfiguration, among others.

Pimprikar said a large part of the corporate action was concentrated on training and education of internal – employees – and external – vendors, dealers, distributors, shareholders and others – stakeholders.

"Clients are currently in the process of understanding what is the requirement for the GST and are doing a gap analysis," he said.
(Ref - http://www.dnaindia.com/money/report-despite-delay-cos-prepare-for-gst-2119593)

6. Opposition noncommittal on GST bill

Opposition parties are keeping the government on tenterhooks on backing the controversial GST bill at a time when the government managers are indicating of reconvening the Parliament session next month for the purpose.

While the main Opposition Congress on Monday remained noncommittal on supporting the GST bill unconditionally, the AIADMK, which has been maintaining distance from the anti-NDA parties in Parliament, has not modified its stand on it so far.

Besides the Congress, the Left, JD(U) and the RJD do not want to be friendly with the government on this issue before the Bihar polls. The Trinamul Congress, BJD, Samajwadi Party, NCP and others may back the bill on the floor but it will not pass without the Congress' support in the Rajya Sabha.

In fact, the Congress (68), JD-U (12), Left (10), DMK (4) and the RJD (1) are noncommittal on supporting the constitution amendment bill. Their total strength in the Upper House is 95. Moreover, the stand of the BSP (10) on this issue is yet become clear.

Although the BJP ministers and leaders are competing with each other in branding the Congress "anti-reforms" and "anti-GST bill", the Sonia Gandhi-led party has reminded them that the Congress is the author of this bill and the BJP had opposed for many years due to pressure from the then Gujarat chief minister Narendra Modi.

Meanwhile, accusing the BJP-led government of being in a "perpetual mode of confrontation", the Congress on Monday said that talk of a special session of Parliament was "not going to be viable" unless there was a change in its mindset.

Even as the Centre has announced that the controversial land ordinance, a bone of contention with the Opposition, would not be repromulgated, the Congress said that Prime Minister Narendra Modi should apologise to the nation as he has "wasted 10 months of development" by enacting the ordinance.

The Congress also warned the Prime Minister against using agencies of the government to target the Opposition and hoped that details of such alleged "abuse" would tumble out soon.

Speaking to reporters here, senior party spokesman Anand Sharma said that the Opposition would not be cowed down by such tactics. Cases by the CBI against former Congress chief ministers and ministers are "not accidental", he said without elaborating.

The CBI recently filed cases against former Rajasthan chief minister Ashok Gehlot and state PCC chief Sachin Pilot in an ambulance scam in which Karthi, son of former finance minister P. Chidambaram, too is an accused.

On the land bill, Mr Sharma said, "Where was the PM's concern for farmers when his government enacted the ordinance to change the UPA Land Act not one, not two, but three times."

Talking about the prospects of a special session of Parliament, he squarely blamed the government for "not engaging with the opposition in any constructive manner nor giving any meaningful proposals to end the deadlock".

"Even now, the government's attitude is one of confrontation... It is in a perpetual mode of confrontation", he said, adding that unless there was a change of mindset, talk of a special session was "not going to be viable".
(Ref - http://www.asianage.com/india/opposition-noncommittal-gst-bill-955)

7. Centre to review GST preparedness with state governments: Revenue Secretary Hasmukh Adhia

The Centre on Tuesday said it will review the preparedness to roll out the much-pending goods and services tax with state governments across the country, a show of confidence by the government in implementing the uniform tax proposal despite the bill still being stuck for parliamentary nod.

"We will review GST preparedness with all the states," Hasmukh Adhia told reporters after taking as Revenue Secretary.
The official's comments assume significance at a time when the just-ended Parliament session was adjourned sine die without a consensus on the GST roll out issue, after failing to reach an agreement with the Congress party and the Left Front.
The government is expected to convene a special session of Parliament to pass the bill, despite Bharatiya Janata Party lacking majority in the Rajya Sabha
The GST, tipped to be the biggest tax reform in modern India, aims to streamline taxes and would also ease the way companies do businesses and pay taxes at a uniform rate.
The revenue secretary also said the government would try and be fair in handling tax matters, including the contentious MAT issue, that is hurting India's image among foreign companies and investors.
"We will be just and fair in tax matters such as Minimum Alternate Tax," Hasmukh said.
About 68 foreign institutional investors have been issued notices to pay to the tune of Rs 602 crore in tax dues, for transactions held years ago. The new set of notices had already sent stock markets in panic and investors had pulled out their money. The government had then appointed A.P. Shah Committee to look into the issue. The committee has suggested keeping the FII away from the MAT ambit.
However, the government cannot take a final decision, as one of the companies – Castleton, a unit of GlaxoSmithKline has challenged the notice in Supreme Court of India. The judges are yet to decide on the dispute.
(Ref - http://www.financialexpress.com/article/economy/centre-to-review-gst-preparedness-with-state-governments-revenue-secretary-hasmukh-adhia/128668/)

8. What you can do now to prepare for India's new GST

Legislative delays will no doubt make the planned implementation date of April 2016 challenging, so businesses need to consider the areas that could be disrupted.

The Government of India first proposed that a number of indirect taxes levied on goods and services by the center and states be replaced by the goods and services tax (GST) a number of years ago. After several years of uncertainty, the GST project now seems truly underway, with a planned introduction date in April 2016. Now is the time for all businesses that operate in India to consider the impact of GST and start to prepare for the rollout.

"Businesses that are proactive in preparing for the GST early can gain a real competitive advantage by reducing disruption and maintaining and improving relationships with suppliers and customers alike."

The scope of GST is anticipated to be comprehensive, covering virtually all goods and services supplied in India, with minimal exemptions. Therefore, GST will have a far-reaching impact on virtually all aspects of operations and infrastructure, including contractual arrangements; pricing; supply chain design; staff training; and IT, accounting and tax compliance systems.

While we await the outcome of deliberations and the final passage of the GST bill by the Parliament (expected to be in August 2015), legislative delays will no doubt make the planned implementation date of April 2016 challenging. The timetable may be modified to reflect these actions. But, in our view, the delay (if any) will be not be substantial, and GST implementation looks certain for 2016. Businesses should take full advantage of this period to be better prepared for the rollout of GST when it happens.

Lessons learned from Malaysia GST

Malaysia introduced a new GST on 1 April 2015. One lesson from the Malaysian experience is that complete awareness and proactive preparation will be of paramount importance in handling this huge tax reform effectively.

Malaysian GST is a fairly simple tax, with a single rate, and taxpayers had a great deal of advance notice of the law and rules. However, the reality for many businesses was that the rollout was far from seamless because of a lack of awareness and preparedness; the new tax led to business disruption, operational issues and delayed compliance for many.

We believe that one reason for this lack of preparation was that the GST had long been discussed and repeatedly delayed. A typical response from many businesses was "It won't happen, so we will worry later," but this attitude meant that affected taxpayers deferred taking the necessary actions until it was too late and then they faced huge challenges and disruptions in implementation.

In fact, the need for preparation may be even greater in India than in Malaysia. The Indian GST will be unique and far more complex than the Malaysian tax, with a dual GST regime and levy of GST on inter-state supplies of goods and services, including intracompany stock transfers.

Besides, the proposed design has additional 1% origin tax on inter-state supplies of goods outside the GST chain, which will be non-creditable. In addition, by the time we have a clear idea of the GST law and rules, businesses will be left with just 60 to 90 days for implementation if the planned date remains as April. If businesses wait to act until then, our experience suggests that preparing in time will be very difficult indeed.

Business transformation

Although the introduction of GST is a tax reform, it should be approached as a complete business transformation because it will have an impact on every aspect of the business.

The key areas of business for GST introduction include:

Advocacy — tax policy discussions by industry sectors and individual taxpayers around issues such as the tax rate, the place-of- supply rules, the treatment of existing incentives and valuation

Indirect tax impact assessment — the strategic and operational impact of GST on revenue and procurement streams, costing and pricing of products and services, working capital and cash flows, and transitional provisions for carryforward of existing credits

Supply chain — operating model and network redesign across sourcing and distribution, contracting and process changes

Accounting and reporting — tax credits, payments, changes in accounting entries (including revised charter of accounts in compliance with Indian Accounting Standards), and a risks and control framework

Technology refresh — ERP and other system changes, GST reporting changes, system ready for audit and potential automation of GST compliance

Compliance — GST registrations, tax credit transitions, return reporting formats and statutory compliances, explore shared service and managed outsourced services for GST compliance

Program management — GST program planning across diverse stakeholders, program integration, budget management, quality assurance and timely communications

Change management and training — enabling business engagement, training staff and educating suppliers and customers, and facilitating business readiness

All of the actions outlined in the list are integral to how GST will have an impact on your business and how smoothly the transition takes place.

Conclusions

Businesses that are proactive in preparing for the GST early can gain a real competitive advantage by reducing disruption and maintaining and improving relationships with suppliers and customers alike. Each action will require early planning and timely execution to leverage this advantage, including managing budgets, resourcing and the overall success of the project.

However, these critical activities will clearly require significant investment by companies while they continue to focus on running their existing business operations, making this task hugely challenging. In recent months, we have seen that some Indian companies have woken up to this daunting task and are getting prepared. We are now seeing serious engagement at the C-suite level, with many companies discussing GST at the board level, identifying GST steering committees and making them accountable for executing this transformation.

We welcome this level of engagement and encourage other companies to follow suit. Starting the GST process early will help businesses to leverage the opportunities that the new tax system offers, ensure timely compliance and avoid disruption and panic at the later stages as GST day one approaches.

(Ref - https://taxinsights.ey-vx.com/archive/archive-articles/what-you-can-do-now-to-prepare-for-india%E2%80%99s-new-gst.aspx)

9. Will GST make things costlier or cheaper?

The goods and services tax (GST) is being talked about as the single most powerful tax reform that India will see. The objective is to end the regime of multiple taxes on goods and services and bring them under one rate.

The system will change from the current production-based taxation to being consumption-based. Along with bringing about a semblance of uniformity in taxes across states, this is expected to increase efficiency and compliance in the system. A recent note from HSBC Global Research stated that although the growth impact of GST on the economy is difficult to quantify, a positive impact of 100-150 basis points (bps) can be considered assuming an "ideal" GST. One basis point is one-hundredth of a percentage point.

The report added that not including goods like petroleum, electricity and alcohol can blunt this range by at least 20 bps. Nevertheless, it is expected that GST will have a positive impact on India's growth.

The government has a deadline of 1 April 2016 for implementation of GST, albeit a watered down version. Whether it is able to meet the deadline is debatable given the logjam in passing the Constitution amendment bill as a first step towards GST implementation.

In the meantime, let's understand if this were to get implemented, how will your spending pattern change. Will you pay more or less for goods and services than you do now?

Goods likely to get cheaper

What the GST will do at a basic level is replace all the indirect taxes that currently exist. The central excise duty, value added tax, service tax, octroi, luxury tax and so on will get substituted with one GST.

For manufactured consumer goods, the current tax regime means the consumer pays approximately 25-26% more than the cost of production due to excise duty (peak of about 12.5%) and value added tax. While there hasn't been any indication of a GST rate, experts suggest between 18% and 22%. Given this, basic goods are likely to become marginally cheaper.

Dharmesh Panchal, partner-indirect tax, PwC India, said, "In today's system, production of goods is taxed and the rates are high. Moreover, tax on tax adds to the cost build-up. With GST, overall taxes on goods are likely to come down making them cheaper." Consuming states will receive revenue from tax and producing states will get compensation.

Certain essential items such as raw food articles are not taxed at present and this is expected to continue. Bipin Sapra, tax partner, EY, said, "Where food articles presently don't have a value added tax or excise, GST is unlikely to apply." Hence, prices of essential food supplies may not change.

Processed food will continue to be taxed, but the applicable GST is likely to be lower than the current combined tax on such products. Hence, expect these to become slightly cheaper.

On the other hand, for goods where the current duty structure is lower, for example, small cars, which have an excise duty of only 8%, the impact of GST will most likely be opposite—these can get more expensive. Heavy vehicles such as SUVs and large cars that have an excise duty of 27-30% will see a marked drop in prices if GST is implemented in the expected range of 18-22%.

There is one more item to watch out for; petroleum. It has been proposed to keep this out of the GST umbrella for at least the first two years, which means petroleum prices aren't likely to change with the advent of GST and the variance in prices across states could also continue.

Sapra said, "With the cost of goods and services that are consumed in refining and distributing petroleum remaining high, indirect cost on goods distribution will also remain high and that might add up to the final cost of goods." So, the effect of petroleum cost will not change for the time being. But given that crude oil prices are falling at present, petroleum cost may not have a negative impact.

Lastly, prices of goods may not be completely uniform across states as there is talk of allowing states to have 1-2% variance in tax. "Let's assume that if the median GST rate is 20% and the Centre applies 10%, for the remainder, the states may be allowed, say, a range of 9-11% levy," said Sapra.

We will have to wait and see what this difference amounts to. Dinesh Agrawal, executive director, indirect tax, Khaitan and Co., said, "At present, the difference in prices of goods across states is more due to octroi and value added tax. Even if the variable tax of 1-2% for states comes into play with the GST, the difference won't be much. By and large, there should be one maximum retail price (MRP) as companies should be able to absorb this amount."

Services that could get costlier
Service tax rate at present is 14% and it applies to almost all services other than essential ones such as ambulance services, cultural activities, certain pilgrimages, sporting events, among others.

If GST is implemented, this rate will increase (given the expectation that GST will be 18-22%) making services more expensive. So, if you eat out often or travel a lot, your bill is likely to get higher.

"With overall taxation changing, the central government also has the task to balance its books. By and large, cost of services will go up but essential services for mass consumption could see a lower rate," said Panchal.

Investment management and insurance premiums, which attract a service tax currently, will also become costlier with the higher rate of GST.

Agrawal said, "All financial services will continue to be in the tax net. The question is how the value of a service will get computed. Initially, this value may be on the lower side resulting in a lower tax amount, and gradually it could be taken up."

Possible roadblocks
Will the GST really unify goods and services and remove distinction? Agrawal said, "The objective is to dilute the distinction between goods and services but some distinction may be needed, at least in the initial phase, so that the change in taxes for services isn't too sharp."

Before GST sees the light of the day, there are many creases to be ironed out. "Firstly, the constitution amendment bill needs to pass for GST to become a reality. Then the technology platform, which the government is working on, should be implemented, and the GST draft legislation needs to be released for discussion with all stake holders," said Panchal.

We also have to consider the impact of inflation. The HSBC Global Research report said that assuming GST at 20%, services would see a rise in tax rates while manufactured consumer goods may see a fall. The two are likely to offset each other resulting in a limited net impact on inflation based on the consumer price index. But actual impact on inflation can't be known with certainty as much depends on how the change in tax rates is passed on to consumers and what the actual GST rate is. If there is a partial pass through of higher taxes, impact could be limited, but if GST rate is higher than 18-22%, effect on inflation can be more than anticipated.

Apart from that, two levels of GST—state and Centre—also means multiple compliances. This could mean stricter compliance and audit but also an increase in cost of compliance. Globally, the norm is a single, central GST. "It's yet to be seen how the central government and state governments function on a common platform given the existing cultural and operational differences," said Agrawal.

The GST credit flow is proposed to be in a way that each person needs to input details of invoices issued containing details of the customer, for the next to receive credit. According to Sapra, if vendors aren't able to upload invoice details, then credit blockages can happen.

Mint Money take

Besides the political will to pass the necessary bills in Parliament, there are still many roadblocks to be crossed when it comes to implementation of this new tax regime. Whether it eventually makes life less costly and more efficient remains to be seen. But what is certain is that if your monthly budget is beyond just the essential consumer goods, there will be a one-time impact that will make your overall expenses increase when the new regime comes into force. Moreover, there could be an inflationary impact to deal with. The extent will depend on the GST rate and the pass through.

3.0 Case Laws

3.1 Case Laws related to Excise

Sr. No.	1
Relevant Section	Section 5A
Relevant Statute	Central Excise Act 1944
Issue	Surname of Director if used cannot be regarded as use of Brand Name
Sub Issue	SSI Exemption
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	SSI/Threshold Exemption - Assessee was denied SSI-exemption on ground that it had used brand name of another person - Tribunal recorded finding of fact that assessee was not using branded name of another person and name used was surname of Director of assessee-company viz., 'PETHE' - HELD : Tribunal's finding of fact clearly means that case does not fall within mischief of bar under Notification No. 1/93-CE - Hence, revenue's appeal was dismissed
Citation	[2015] 60 taxmann.com 294 (SC) Commissioner of Central Excise, Pune-II v. Pethe Brake Motors (P.) Ltd

Sr. No.	2
Relevant Section	Section 11B, read with Section 12A
Relevant Statute	Central Excise Act 1944
Issue	Payment of same about twice by assessee himself, Doctrine of Unjust Enrichment does not apply
Sub Issue	
Favour of	Partly in favour of Assessee
Issuing Authority	CESTAT Bangalore
Judgment	Refund - Doctrine of unjust enrichment - Assessee took ineligible credit of BCD and education cess of customs duty but reversed/paid back same on being pointed out by Department - Later, assessee again reversed same amount while removing goods to its sister unit operating under exemption, which could not have taken any credit - Assessee filed claim for refund on ground that same amount had been paid twice - HELD : Question of unjust enrichment does not arise, as assessee's action amounted passing of burden to oneself - Hence, refund claim was ordered but since interest was not paid at time of first reversal, interest due from assessee was directed to be adjusted against refund amount
Citation	[2015] 59 taxmann.com 410 (Bangalore – CESTAT Pearl Polymers Ltd. v.Commissioner of Central Excise, Bangalore (Adjn)

Sr. No.	3
Relevant Section	Section 4, ready with Section 35C
Relevant Statute	Central Excise Act 1944
Issue	Valuation under Central Excise
Sub Issue	Deductions on account of Turnover Discount, Interest in Receivables and Commission on sale
Favour of	Assessee
Issuing Authority	CESTAT Delhi
Judgment	Valuation under Central Excise - Transaction value - Cash Discount/Finance Cost/Interest - Tribunal allowed deduction of interest on receivables in computing assessable value but remanded matter for recomputation - On remand, department argued that interest could not be allowed as deduction, as interest was not actually reimbursed to customers - HELD : Revenue's contention that such interest was not actually reimbursed to customer cannot be appreciated inasmuch as there is no question of reimbursement of interest to customer - In any case, Tribunal having allowed said deduction and revenue having not challenged earlier order of Tribunal, revenue is debarred from taking said ground now

Citation	[2015] 59 taxmann.com 408 (New Delhi-CESTAT) Commissioner of Central Excise, Jalandhar v. Birla Vxl

Sr. No.	**4**
Relevant Section	Section 4
Relevant Statute	Central Excise Act 1944
Issue	Valuation under Central Excise
Sub Issue	Cost of transport whether includible in assessable value where goods delivered at Factory Gate
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Valuation under Central Excise - Transaction value - Exclusion of Cost of Transport/Transit Insurance - Where : (a) goods are cleared/removed at factory gate; and (b) sale of goods takes place at that stage, ownership can be said to have passed onto buyer at time of transfer of goods at factory gate - In that case, if assessee undertakes transportation work, thereafter, at instance of buyer and delivers goods at site, then, price cannot be loaded with transportation charges
Citation	[2015] 60 taxmann.com 292 (SC) Commissioner of Central Excise, Chennai-II v.Aeons Construction Products Ltd.

Sr. No.	**5**
Relevant Section	Section 11B
Relevant Statute	Central Excise Act 1944
Issue	Interest on Delayed Refunds
Sub Issue	Whether interest in refund of fine and penalty to be given
Favour of	Partly in favour of Assessee
Issuing Authority	Supreme Court
Judgment	Interest - On delayed refunds - Assessee paid duty, fine and penalty under protest - On assessee becoming entitled to refund thereof, Tribunal directed Commissioner to pay interest at 12 per cent on "amount of refund" - Department argued that interest was payable only on refund of 'duty' and not on 'fine and penalty' - HELD : There was force in revenue's submissions - Hence, appeals were partly allowed holding that interest at 12 per cent shall be paid to assessee on amount of duty and not on fine and penalty
Citation	[2015] 60 taxmann.com 293 (SC) Commissioner of Customs (Port), Kolkata v.Coronation Spinning India

Sr. No.	**6**
Relevant Section	Rule 57C read with 57D
Relevant Statute	CENVAT Credit Rules 2004
Issue	CENVAT Credit
Sub Issue	Exempted and dutiable goods or exempted and taxable services, obligation of assessee
Favour of	Assessee
Issuing Authority	High Court of Madras
Judgment	Cenvat Credit - Exempted and dutiable goods or exempted and taxable services, obligation of assessee - Assessee used input viz. 'Sulphuric Acid' (SA) for manufacture of 'Acid Slurry' - 'Spent Sulphuric Acid' (SSA) emerged as a by-product - SSA was cleared partly on payment of duty and partly without payment of duty - Department argued that input credit of SA relatable to 'SSA cleared without payment of duty' was reversible - HELD : In view of judgment in UOI v. Hindustan Zinc [2014] 45 GST 677/46 taxmann.com 45 (SC), SSA is not a 'final product' but only a mere 'by-product' and, therefore, rule 57C would not apply thereto - Further, as per rule 57D, SSA being of nature of 'waste, refuse or by-product', input credit is available even if SSA is exempted - Therefore, credit was allowed [Paras 11 to 18] [In favour of assessee]
Citation	[2015] 59 taxmann.com 319 (Madras) Commissioner of Central Excise,

	Pondicherry v. Advance Detergents Ltd.

Sr. No.	**7**
Relevant Section	Section 11B, 11BB
Relevant Statute	Central Excise Act 1944
Issue	Refund
Sub Issue	Interest
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Order of Tribunal was passed on 25.06.2007 holding that the credit of refund amount to Consumer Welfare fund is wrong and appeal was allowed with consequential relief - Revenue contention is that interest on refund is payable w.e.f 25.09.2007, that is after 3 months from the date of the CESTAT order. Held: Interest is payable from the date of expiry of 3 months from the date of receipt of application under s.11B(1) of the CEA, 1944 - Order passed by Commissioner(A) based on the ruling of the Bombay High Court in Ballarpur Industries - 2009-TIOL-34-HC-MUM-CX affirmed by apex court in Ranbaxy Laboratories - 2011-TIOL-105-SC-CX does not suffer from any illegality or impropriety - Revenue appeal dismissed
Citation	2015-TIOL-1807-CESTAT-MUM COMMISSIONER OF CENTRAL EXCISE, PUNE-I VsM/s GARWARE WALL ROPES LTD

Sr. No.	**8**
Relevant Section	
Relevant Statute	Central Excise Act 1944
Issue	Collection of Duty
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	When it is not disputed that the appellant is not required to discharge any CE duty on the goods exported by them and the revenue authorities have held that the amount debited is without any authority of law, the natural corollary would be that the amount is returned as Revenue can collect tax/duty only by authority of law - Order set aside and appellant directed to take the credit back in their CENVAT account
Citation	2015-TIOL-1814-CESTAT-MUM SMRUTI ORGANICS LTD Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-III

Sr. No.	**9**
Relevant Section	Rule 3(5C)
Relevant Statute	CENVAT Credit Rules 2004
Issue	Reversal of CENVAT Credit
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Bangalore
Judgment	Inputs supplied for manufacture destroyed in fire at Job worker's premises before reaching final stage of goods - Rule 3(5c) is not applicable since inputs and not the final product got destroyed - Nor remission of duty is involved - Appellant held is entitled to Cenvat credit of duty on said inputs destroyed in fire accident - Impugned order denying credit is set aside.
Citation	2015-TIOL-1823-CESTAT-BANG SREEPATHI PHARMACEUTICALS LTD Vs COMMISSIONER OF CUSTOMS, CENTRAL EXCISE AND SERVICE TAX HYDERABAD-IV

Sr. No.	**10**
Relevant Section	Rule 9
Relevant Statute	CENVAT Credit Rules 2004
Issue	Availment of CENVAT Credit
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Availment of credit of service tax paid

	by appellant under GTA services during the period 24.03.2005 to 15.06.2005 under TR-6 challan - credit denied on the ground that during the material time TR-6 challan was not prescribed as a valid document for taking credit under rule 9 of CCR, 2004. Held - Punjab & Haryana High Court in the case of Ralson India Ltd. and Bombay High Court vide order dated 18.02.2015 has decided the same issue in favour of assessee inasmuch as credit availed on such TR-6 challans has been held as admissible - Therefore, order of adjudicating authority is not sustainable and hence set aside
Citation	2015-TIOL-1821-CESTAT-MUM M/s SHRADDHA ISPAT PVT LTD Vs COMMISSIONER, CENTRAL EXCISE, GOA

Sr. No.	**11**
Relevant Section	Rule 6(3)
Relevant Statute	CENVAT Credit Rules 2004
Issue	CENVAT Credit in case where inputs used in exempted intermediate product and dutiable final product
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Chennai
Judgment	Exempted and dutiable goods or exempted and taxable services, obligation of assessee - Assessee took credit of duty paid on 'inputs' (aluminium ingots) used in manufacture of 'exempted intermediate product' (jig wires/rods), which, in turn, were used for manufacturing 'dutiable final products' (pins/safety pins) - Department argued that 'jig wires/rods' were capital goods and not 'intermediate products' - Assessee argued that captive consumption itself shows that goods were intermediate products - HELD : In this case, jig wires/rods were consumed in manufacture of Pins and were, therefore, intermediate products essential for manufacture of final product - Therefore, cenvat credit cannot be denied
Citation	[2015] 59 taxmann.com 356 (Chennai - CESTAT) Needle Industries (India) (P.) Ltd. v.Commissioner of Central Excise, Salem

Sr. No.	**12**
Relevant Section	
Relevant Statute	CENVAT Credit Rules 2004
Issue	Whether CENVAT Credit admissible in respect of Welding Electrodes used for repair & Maintenance of machinery
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Much water has flown on the issue - in view of Rajasthan High Court decision in Hindustan Zinc Ltd. 2007-TIOL-778-HC-RAJ-CX as upheld by Supreme Court which is squarely applicable to the present case, credit is admissible
Citation	2015-TIOL-1826-CESTAT-MUM M/s ULTRA-TECH CEMENT LTD Vs COMMISSIONER OF CENTRAL EXCISE PUNE

Sr. No.	**13**
Relevant Section	
Relevant Statute	CETA
Issue	Whether addition of an spice change the chapter under which namkeen falls
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Delhi
Judgment	Assessee engaged in manufacture of various namkeens and potato chips with different flavours - In order to give various flavours to these

	products, assessee procures various spices from market and make spice mixes as per their specifications - Whether classification of such mixtures of spices falls under Chapter 9 of CETA as claimed by assessee or under Chapter 21 as stated by Department - Such mixtures will have an essential character not necessarily that of single ingredient spice but of combination of such spices as per their proportion - Even if additional materials are added what is required is that these mixtures retain their essential character of various ingredients of spices - Further, essential character of spices are basically relating to aroma, taste and flavour - Further, Original Authority's finding that apart from spices, certain chemical ingredients, dilutants and additives and salts are used in different proportion in spice mix - Conclusion of Original Authority is not substantiated to the effect that how such addition of certain chemicals or additives has taken away the essential character of spice mix - Addition of ingredients like onion powder, garlic powder and tamarind, etc was considered as addition of other materials - Spice Board clearly indicates the garlic and tamarind as Indian spices, hence, addition of these items if at all cannot be a consideration for excluding classification for spice mixtures under Chapter 9 - Having closely examined the scope of entry under Heading No.2103 and scope of Chapter 9, it is concluded that spice mixtures produced by assessee are to be classified under Chapter 9 and not under Heading No. 21
Citation	2015-TIOL-1832-CESTAT-DEL M/s PEPSICO INDIA HOLDINGS PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, CHANDIGARH-II

Sr. No.	**14**
Relevant Section	
Relevant Statute	CENVAT Credit Rules 2004
Issue	Goods supplied to 100% EOU and Claimed Cash refund but revenue denied
Sub Issue	
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Appellant have supplied goods to 100% EOU and claimed cash refund of accumulated CENVAT credit under Rule 5 of CCR, 2004 - Contention of Revenue that refund under Rule 5 of CCR, 2004 is applicable only if goods are exported out of India and not in respect of deemed export made to 100% EOU is not tenable - Issue is no longerres integra in view of Gujarat High Court decisions in NBM Industries - 2011-TIOL-677-HC-AHM-CX, Shilpa Copper Wire Industries, Anita Synthetics & Tribunal decision in Refron Valves Ltd. - Order not sustainable - appeal allowed with consequential relief
Citation	2015-TIOL-1837-CESTAT-MUM M/s GOA INVESCAST LTD Vs COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, GOA

Sr. No.	**15**
Relevant Section	Section 4
Relevant Statute	Central Excise Act 1944
Issue	Valuation
Sub Issue	
Favour of	Revenue
Issuing Authority	Supreme Court
Judgment	Transaction value - Additional Consideration - Period 1999-2002 - Assessee's buyer's surrendered advance licence whereupon assessee obtained advance licence from DGFT, which enabled assessee to procure goods duty-free from indigenous manufacturers - Assessee supplied

	manufactured goods to said buyers at Rs. 37.50 per Kg. as against normal price of Rs.50 per Kg. - Assessee also received benefit by way of duty-drawback on supplies made to said buyers - Department argued that price was charged at lesser rate from said buyers only because of consideration by way of 'advance licence' leading to other benefits, thereby, reducing costs; hence, it was includible as 'additional consideration' - HELD : Assessee got advance licence only due to sacrifice made by buyers and therefore, same was 'additional consideration' flowing 'indirectly' from buyer though routed through DGFT/Government scheme - Since said licence enured certain benefits to assessee, said additional consideration was includible in value of goods - CCE v. IFGL's Refractories Ltd. 2005 taxmann.com 143 (SC) case was rightly decided and matter need not be referred to larger bench
Citation	[2015] 60 taxmann.com 472 (SC) Commissioner of Central Excise,Nagpur-I v.Indorama Synthetics (I) Ltd.

Sr. No.	16
Relevant Section	Section 2, read with First Schedule
Relevant Statute	Central Excise Tariff Act, 1985
Issue	Classification
Sub Issue	
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Classification - Cosmetic or Medicament - Tariff Headings 3003.10 and 3304.00 - Assessee manufactured Vaseline Intensive Care Heel Guard ('VHG') cream, which was used on cracked heels - Assessee classified same as medicament (Heading 3003.10, duty 15 per cent), as it contained salicylic acid 1.5 per cent - Department argued that it was 'preparation of care of skin' (Heading 3004.00) and liable to duty at 40 per cent, as medicinal content was merely 1.5 per cent and therefore, subsidiary - Tribunal held that it was medicament because: (a) it was made/used for treatment of 'cracked heels'; (b) it was manufactured under a drug licence and drug authorities treated it as a medicament; (c) primary use was mitigating disease/abnormality and smoothening of skin was secondary - HELD : In case of dispute between cosmetic or medicament, burden to show that product is not medicament lies on revenue - Percentage of medicinal element (salicylic acid) is immaterial to label it as subsidiary and therefore, even if same was only 1.5 per cent, product is medicament - Department failed to discharge its onus that product was not medicament, while, assessee had filed various affidavits of dealers and consumers in support of plea that product was medicament - Hence, demand was dropped
Citation	[2015] 60 taxmann.com 470 (SC) Commissioner of Central Excise, Chennai-IV v. Hindustan Lever Ltd.

Sr. No.	17
Relevant Section	Section 11A
Relevant Statute	Central Excise Act 1944
Issue	Recovery of Duty Short Paid
Sub Issue	
Favour of	Revenue
Issuing Authority	High Court of Allahabad
Judgment	Recovery - Of duty or tax not levied/paid or short-levied/paid or erroneously refunded - Invocation of Extended Period of Limitation - Period March, 1992 to September, 1996 - Department raised demand invoking extended period on ground that assessee had failed to inform department about shampoo manufactured by it and had not taken registration/filed declarations - Assessee argued that goods were ayurvedic and not liable to duty; but, before Tribunal, assessee admitted

	excisability - Tribunal held that goods were excisable but there was no deliberate suppression and hence, extended period could not be invoked - HELD : There was no dispute that goods in question were excisable and liable to duty; hence, removal of goods without duty would attract extended period - Tribunal did not set aside findings of suppression in notice/adjudication order; hence, Tribunal order suffers from manifest error - Invocation of extended period was upheld and matter was remanded to Tribunal for quantification
Citation	[2015] 60 taxmann.com 148 (Allahabad) Commissioner of Central Excise v.D.J. Sansthan

Sr. No.	**18**
Relevant Section	Section 4
Relevant Statute	Central Excise Act 1944
Issue	Valuation
Sub Issue	Cash Discount
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Cash Discount/Finance Cost/Interest - Period on or after 1-7-2000 - As per agreement, buyers were eligible for 'cash discount' - Assessee claimed deduction of 'cash discount' in arriving at 'assessable value' even in cases where same was not actually availed - Department argued that cash discount can be allowed only if it is "actually allowed" in price "actually paid" and not in cases where buyer did not avail cash discount - HELD : On each removal of excisable goods, "transaction value" of such goods must be determined - "Transaction value" has to be read along with expression "for delivery at time and place of removal" - Therefore, value of excisable goods even on basis of "transaction value" has only to be at time of removal, that is, time of clearance of goods from assessee's factory or depot - Expression "actually paid or payable for the goods, when sold" means whatever is agreed to as price for goods forms basis of value, whether such price has been paid, has been paid in part, or has not been paid at all - Basis of "transaction value" is therefore agreed contractual price - Expression "when sold" is not meant to indicate time at which such goods are sold, but is meant to indicate that goods are subject matter of an agreement of sale - Hence, cash discount which is "known" at or prior to clearance of goods, being contained in agreement of sale between assessee and its buyers, must therefore be deducted from sale price in order to arrive at value of excisable goods "at time of removal" - Hence, cash discount was deductible
Citation	[2015] 60 taxmann.com 471 (SC) Purolator India Ltd. v. Commissioner of Central Excise, Delhi-III

3.2 Case Laws related to Service Tax

Sr. No.	1
Relevant Section	Section 65(65)
Relevant Statute	Finance Act 1994
Issue	Providing Facility of infrasturcture, staff, and waste disposal whether amount to management consultancy
Service Category	Management Consultancy
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Management or business consultant's services - Period April 1999 to March 2004 - Assessee provided General Support services (use of infrastructure, utility, staff, fire fighting facilities, etc.), Operational services (waste disposal/sewerage), Personnel services (deputation of staff) and Secretarial services to Centak - Department argued that said services amounted to Management Consultancy - HELD : Assessee had extended facilities to Centak and no services were provided in connection with management of Centak and no advice/consultancy was rendered - Nomenclature of 'management consultancy' service indicates that it has nothing to do with facilities such as water, effluent treatment, etc. - Hence, demand was dropped
Citation	[2015] 60 taxmann.com 117 (Mumbai - CESTAT) Konkan Synthetic Fibres v.Commissioner of Central Excise, Raigad

Sr. No.	2
Relevant Section	Section 11BB of the Central Excise Act, 1944, read with sections 65(25b), 65(30a) and 83
Relevant Statute	Finance Act 1994
Issue	Interest on delayed Refunds
Service Category	Whether Department can withhold refund on the ground that NOC of service provider is not received
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Interest - On delayed refunds - Appellant, a buyer of flat, made security deposit with builder on 10-12-2007 towards contingent service tax liability - Department recovered same from builder on 18-6-2009 - Vide Circular, CBEC clarified that service tax was not leviable and activity became taxable only from 1-7-2010 - Thereupon, appellant-buyer filed refund claim - Department denied refund on ground that assessee failed to furnish NOC from builder but later granted refund on 8-7-2013 - Appellant demanded interest on delayed refund - HELD : Department could not show provision under which appellant-buyer (service recipient) was asked to obtain NOC from builder and/or provision under which revenue withheld refund - Hence, rejection of refund was bad and therefore, appellant was entitled to interest at notified rate from 18-6-2009 to 8-7-2013 without any formal application
Citation	[2015] 60 taxmann.com 247 (Mumbai - CESTAT) Chandrakant G. Dhere v.Commissioner of Central Excise, Pune-III

Sr. No.	3
Relevant Section	Section 66, read with sections 65(16), 66B and 67 and Section 14 of the Customs Act 1962
Relevant Statute	Finance Act 1994
Issue	Fee Collected for distribution and shared by the person from whom are imported. Whether such share included in the import value
Service Category	
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Charge/levy - Service Tax - Where fees collected for services rendered in India was duly disclosed in service tax returns for payment of service tax,

	same cannot form part of value of imported goods merely because a part thereof is remitted to foreign supplier under a separate service contract. Valuation of Imported Goods - Transaction Value - Royalty/License Fees - Period June 2007 to December, 2007 - Assessee was engaged in distribution of Set Max Channel in India and was paying 70-75 per cent of gross revenues as 'distribution fees' to Set Max, Singapore - For certification by Film Board and technical checks, assessee imported Digi-beta tapes/beta tapes/video tapes of films, etc. through courier and paid import duty thereon - Department argued that said distribution fees was 'royalty/license fees' and would form part of value of imported goods - Assessee was argued that distribution services were provided in India and had nothing to do with import of tapes, etc. and service tax was paid on such fees as per service tax law - HELD : Payment of distribution fees was for acquiring non-exclusive rights for satellite delivered and advertiser supported, television service - Tapes were not required for broadcasting; but, only for obtaining certification from Film Certification Board and technical quality checks - Films/programmes, etc. were broadcasted directly from Singapore - In absence of any evidence that fees was 'royalty/license fees', it could not form part of value of imported goods
Citation	[2015] 59 taxmann.com 422 (Mumbai - CESTAT) Multi Screen Media (P.) Ltd. v.Commissioner of Customs, Mumbai

Sr. No.	**4**
Relevant Section	Rule 9
Relevant Statute	Cenvat Credit Rules 2004
Issue	Whether Job worker eligible to take CENVAT Credit
Service Category	
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Cenvat Credit - Documents on which credit may be taken - Assessee, a job-worker, took credit of CVD on basis of bill of entry, which was in name of principal manufacturer Pidilite - Assessee claimed that : (a) import consignment was directly received by it in original packed condition and produced records thereof; (b) fact that goods had suffered CVD, was not disputed; and (c) rule 9(1) does not mandate that bill of entry must be in name of (or endorsed in favour of) party taking credit - HELD : Bill of entry is also a valid document for availment of cenvat credit - Hence, impugned credit was allowable
Citation	[2015] 59 taxmann.com 223 (Mumbai - CESTAT) Raheja Plastics v.Commissioner of Central Excise, Mumbai-V

Sr. No.	**5**
Relevant Section	Section 85(3A)
Relevant Statute	Finance Act 1994
Issue	Condonation of Delay
Service Category	
Favour of	Petition Dismissed
Issuing Authority	High Court of Jharkhand
Judgment	There is tendency of those persons who are liable to make payment of tax+interest+penalty to take a chance before the Court - petitioner is lethargic, but certainly not an ignorant person and is knowing all fine niceties of law - Vigilant petitioner should have filed their appeal within the limitation period or at least within condonable delay period
Citation	2015-TIOL-1987-HC-JHARKHAND-ST M/s RAMCHANDRA SINGH Vs 1) THE UNION OF INDIA THROUGH CENTRAL EXCISE AND SERVICE TAX DEPARTMENT

	CENTRAL REVENUE BUILDING I P ESTATE, ITO, P O AND P S ITO, NEW DELHI-110002

Sr. No.	**6**
Relevant Section	Section 86
Relevant Statute	Finance Act 1994
Issue	Review Order
Service Category	
Favour of	Revenue
Issuing Authority	High Court of Delhi
Judgment	Full Bench of the High Court has held by its order dated 20.07.2015 that Decision rendered by the Committee of Chief Commissioners/Commissioners is an administrative function and would, therefore, not require the members of the Committee to meet, consult and give independent reasons; that Tribunal has no jurisdiction whatsoever to strike down a decision taken by the Committee on the administrative side - In view of the above judgment, the impugned order of the CESTAT dismissing the appeal preferred by the Appellant herein i.e. the Commissioner of Service Tax on the ground that the filing of the appeal was not preceded by an application of mind by the Committee of Chief Commissioners is set aside and the appeal of the CST is restored to the file of CESTAT for being disposed of on merits - It is also clarified that the delay of six days in filing the said appeal will be taken to have been condoned
Citation	2015-TIOL-1990-HC-DEL-ST COMMISSIONER OF SERVICE TAX Vs JAPAN AIRLINES INTERNATIONAL CO LTD

Sr. No.	**7**
Relevant Section	
Relevant Statute	Finance Act 1994
Issue	Refund in case of Approved Services provided within SEZ
Service Category	
Favour of	Assessee
Issuing Authority	CESTAT Banglore
Judgment	Approved operations within SEZ unit - Denial of refund - Absence of nexus - Sustainability - Approval Committee which has the Commissioner of Customs as a Member certified that services received by the assessee are in relation to their authorized operations - Customs officers thereafter cannot take a contradictory decision - Refund claim of service tax paid on approved services consumed for authorized operations within SEZ under Notification 9/2009 - Cannot thus be denied for want of nexus - Further, while there is no necessity to discharge service tax liability qua services wholly consumed within SEZ, assessee is entitled to refund of tax paid inadvertently - Assessee appeals allowed with consequential relief. Approval Committee authorized services such as transportation of goods, courier service, rent-a-cab service and port services wholly consumed in SEZs are default authorized services for tax exemption - Benefit of exemption cannot be denied on ground of absence of nexus.
Citation	2015-TIOL-1824-CESTAT-BANG DELL INDIA PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX BANGALORE

Sr. No.	**8**
Relevant Section	Section 77 and 78
Relevant Statute	Finance Act 1994
Issue	Failure to pay for 2 months only due to oversight
Service Category	Reverse Charge

Favour of	Partly in favour of assessee and partly in favour of Revenue
Issuing Authority	CESTAT Mumbai
Judgment	Demand and interest—Validity of—Assessee were receiving various services under reverse charge mechanism and paying service tax—However, for months of March 2008 and March 2009, required service tax was not paid and same was paid in only on 1st October 2009—Demand of service tax, interest and penalties u/ss 77 & 78 of the Finance Act, 1994 against assessee was confirmed thereby—Held, duty had been paid by assessee and they were entitled to take Cenvat Credit that had been taken up—Simply because situation lead to Revenue neutrality, it did not imply that tax need not be paid on time—When law required tax to be paid, it had to be paid as per time specified—It was clear that tax had been paid much later than date on which it was due—Time that to be considered for interest purposes was time between due date and payment day—It could not be said that Government had not lost interest between two dates, notwithstanding fact that Cenvat Credit could have been availed on same date if duty had been paid on time—Thus, it was held that interest should be payable u/s 75 of the Finance Act. Penalty—Validity of—Held, assessee were paying service tax regularly and only two transactions were missed due to oversight—Intention to evade payment of duty was not established when assessee were eligible for taking Cenvat Credit as soon as duty was paid by them—Thus, penalty imposed on assessee in this regard was set aside
Citation	(2014) 21 CCHST 1573 MumTrib M/S. FORBES MARSHALL PVT. LTD. vs.COMMISSIONER OF CENTRAL EXCISE, PUNE I

Sr. No.	**9**
Relevant Section	
Relevant Statute	Finance Act 1994
Issue	Value to Photographic paper and Consumables to be included or not
Service Category	Photography Service
Favour of	Assessee
Issuing Authority	CESTAT Delhi
Judgment	Value of service—Service tax demand along with interest and penalties were confirmed against assessee for providing Photography Service—Order-in-Appeal set aside order in original on ground that value of photographic service provided by assessee, value of photographic paper and processing chemicals were not added—Revenue submitted that cost to material was to be added to value of photographic services—Assessee contended that value of goods was not includible in value of service and that service was rendered under works contract—Held, after insertion of cl 29-A in Article 366, Works Contract which was indivisible one by legal fiction, was permitted to be bifurcated into two; one for sale of goods and other for services, thereby making goods component of contract exigible to sales tax—By virtue of cl 29-A of Article 366, State Legislature was now empowered to segregate goods part of Works Contract and impose sales tax thereupon—It might be noted in this regard that Entry 54, List II of the Constitution of India empowers State Legislature to enact a law taxing sale of goods—Sales tax, being a subject-matter into State List, State Legislature had competency to legislate over subject—Entry 25 of Schedule VI to the Act which makes part of processing and supplying of photographs, photo prints and photo negatives, which have goods component exigible to sales tax was constitutionally valid—In case of

	Imagic Creative Pvt. Ltd. vs. Commissioner of Commercial Taxes [2008 (9) STR 337 (SC)], it was held that payment of service tax and VAT were mutually exclusive, thus there remained no doubt that value of photographic paper and consumables could not be included in value of photography service to levy service tax—No merit in Revenue's appeal and same was dismissed
Citation	(2015) 22 CCHST 0788 DelTrib C.C.E., INDORE vs.M/S. PHOTO FAST COLOUR LAB

Sr. No.	**10**
Relevant Section	
Relevant Statute	Finance Act 1994
Issue	Refund Claim for the period where the liability was not existent
Service Category	Reverse Charge
Favour of	Assessee
Issuing Authority	CESTAT Delhi
Judgment	Business Auxiliary Service—Refund claim—Validity of—Assessee filed refund claim on ground that it had paid service tax on basis of commission paid to foreign based agents under reverse charge mechanism during June, 2005 to March, 2006, which was not payable during relevant period as s 66A was inserted in the Finance Act, 1994 only w.e.f. 18.04.2006—Refund claim of assessee was rejected in Order-in-Original—Commissioner (Appeals) also held that liability to service tax under reverse charge mechanism took effect only from 18.04.2006 and therefore during relevant period, service tax was not payable by assessee and as consequence, he set aside Order-in-Original—Revenue filed appeal against same—Held, service recipient under reverse charge mechanism in respect of services imported became liable to pay service tax only from date of introduction of s 66A i.e., w.e.f. 18.04.2006—This issue was no longer res integra—As period involved in this case was prior to 18.04.2006, impugned order suffered from no infirmity
Citation	(2015) 22 CCHST 0790 DelTrib C.C.E., KANPUR vs.M/S. YOUNG STYLE OVERSEAS

Sr. No.	**11**
Relevant Section	
Relevant Statute	Finance Act 1994
Issue	Condonation of Delay
Service Category	
Favour of	Assessee
Issuing Authority	CESTAT Delhi
Judgment	Assessee had deposited entire amount of service tax confirmed by primary adjudicating authority and also deposited interest—Commissioner (Appeals) dismissed assessee's appeal on ground that it was filed with delay of 1170 days which was beyond period of delay which could be condoned by Commissioner (Appeals)—Held, Commissioner (Appeals) had not given any finding as to when order was received by assessee—It was found that letter dated 17.8.2010 for recovery, written by Deputy Commissioner, Central Excise Division, Kanpur to assessee referred to adjudication order No. 74/ST/Ack-III/09 dated 6.11.2009 passed by primary adjudicating authority and assessee immediately on its receipt on 25.8.2010, vide letter dated 26.8.2010 wrote to Deputy Commissioner, categorically stating that it had not received said order and requested for supply of copy so that it could file appeal—Revenue had no evidence at all that order of primary adjudicating authority was ever served on assessee—Presumption of service was effectively rebutted by assessee by demonstrating that it took up matter with Revenue for copy of

	order-in-original immediately on becoming aware on 25.8.2010 that such an order had been passed—It could not have filed appeal without copy of order merely on basis of becoming aware of same—It is pertinent to mention that while rejecting appeal for delay in filing, onus is on revenue to show that order had been served on assessee—Even when assessee requested for copy of order, it was made available only on 18.2.2013 and assessee filed appeal with condonable delay of eight days—Thus impugned COD cum Order-in-appeal was set aside and case was remanded to Commissioner (Appeals) to hear appeal on merit after condoning delay of eight days in filing appeal.
Citation	(2015) 22 CCHST 0792 DelTrib M/S. ACME ENTERPRISES vs.CCE, KANPUR

Sr. No.	**12**
Relevant Section	
Relevant Statute	Finance Act 1994
Issue	Classification
Service Category	Business Auxilliary Services
Favour of	Assessee
Issuing Authority	CESTAT Hyderabad
Judgment	Re-rubberization of old and worn out spindles for the printing industry by fresh coat of vulcanized rubber - Activity held classifiable as Business Auxiliary Services in the light of Zenith Rollers ratio and falls within the ambit of exemption Notification No.14/2004-ST dt. 10/09/2004 - Impugned orders denying benefit of Notification by classifying the said activity under Management, Maintenance or Repair (MMR) quashed and appeal allowed with no costs.
Citation	2015-TIOL-1836-CESTAT-HYD M/s ZENITH (BANGALORE) ROLLERS PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE, HYDERABAD-IV

Sr. No.	**13**
Relevant Section	
Relevant Statute	Finance Act 1994
Issue	Reimbursement from Employees
Service Category	Canteen/Catering Service
Favour of	Assessee
Issuing Authority	CESTAT Ahmedabad
Judgment	Once the assessee had produced a CA's certificate from competent authority and claimed that no cost of food recovered from its employees, then the same cannot be brushed aside by Revenue on a presumption without taking any alternative opinion from an expert that such a cost has been recovered from its employees - No documentary evidence has been brought on record by Revenue that some portion of cost of food supplied by assessee is recovered from employees - Entire ST credit is admissible to assessee and order passed by First Appellate Authority is set aside
Citation	2015-TIOL-1834-CESTAT-AHM M/s WINDSOR MACHINES LTD Vs COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX AHMEDABAD-I

Sr. No.	**14**
Relevant Section	Section 73
Relevant Statute	Finance Act 1994
Issue	Commission on sale of Sim Cards of Telecom Companies
Service Category	Commission
Favour of	Assessee
Issuing Authority	CESTAT Delhi

Judgment	Service tax demand was confirmed against assessee along with interest and penalties on ground that assessee had not paid service tax on commission received from BSNL for rendering service to latter under business auxiliary service—That commission was received for marketing and distribution of BSNL telecom service in addition to sale of BSNL product and service—Commissioner held that transaction involved purchase and sales of sim cards and commission was nothing but profit in these transactions and dropped impugned demand—Commissioner set aside order-in-original dated in terms of which service tax demand was confirmed along with interest and penalties—Held, respondent pointed out that issue had been decided in their favour by CESTAT Final Order No.St/A/50337-50344/2014-Cu(Db) Dated 29.1.2014 in which assessee was also one of appellants—This impugned demand was on same ground for different period—In view of fact that demand for different period on very same issue had been set aside in respect of respondent himself vide aforesaid order of CESTAT, following precedent, appeal was dismissed
Citation	(2015) 22 CCHST 0803 DelTrib CCE, ALLAHABAD vs.M/S. CAPITAL T.V. SERVICE CENTRE

Sr. No.	**15**
Relevant Section	Section 73 read with Section 76, 77, 78
Relevant Statute	Finance Act 1994
Issue	Product Bayer Tonic II was an alcoholic preparation which was not covered under Central Excise Tariff Act and accordingly, activity of manufacture of said product for other persons attracted service tax under taxable category of Business Auxiliary Service
Service Category	Business Auxilliary Services
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Assessee was a holder of Central Excise Registration and engaged in manufacture of pharmaceutical products falling under Chapter heading No.30 of the CETA, 1985—Assessee entered into agreement with M/s. Bayers Pharmaceuticals Private Ltd, Mumbai for manufacture of product called Bayer Tonic II on job work basis—Product Bayer Tonic II was an alcoholic preparation which was not covered under Central Excise Tariff Act and accordingly, activity of manufacture of said product for other persons attracted service tax under taxable category of Business Auxiliary Service—Show cause notice was issued informing assessee that service rendered by him was rightly falling under BAS and accordingly, for consideration of Rs.41,97,892 received during relevant period, assessee was liable to pay service tax under BAS—Demand raised in SCN was confirmed along with interest, in addition to imposing penalty u/ss 76, 77 and 78 of the Act—First appellate authority upheld demand along with interest and penalties on appeal—Held, Interpretation given by lower authorities was totally incorrect—Firstly, basic thrust of revenue that activity of manufacturing was not there, in itself was on wrong footing as medicines manufactured by assessee were as per provisions of Drugs and Cosmetic Act and the Rules made thereunder—Thus, it could not be held that there was no manufacture of excisable goods—Secondly, products manufactured by assessee were chargeable to Excise duty which could be levied by state as per list to 7th schedule under article 246 of the constitution of India—Thirdly, issue was squarely settled by decision of Tribunal in the case of

	Rubicon formulations and Midas care Pharmaceuticals—Also, First appellate authority in subsequent proceedings of same assessee had allowed appeals and revenue had not challenged said decisions—Impugned order was unsustainable and set aside
Citation	(2015) 22 CCHST 0800 MumTrib MISTAIR HEALTH & HYGIENE PVT. LTD. vs.COMMISSIONER OF CENTRAL EXCISE, PUNE II

Sr. No.	**16**
Relevant Section	Section 65(55b)
Relevant Statute	Finance Act 1994
Issue	Goods being manufactured using the technology of foreign collaborator
Service Category	Intellectual Property Services
Favour of	Assessee
Issuing Authority	CESTAT Delhi
Judgment	Intellectual Property services - Period 10-9-2004 to 30-11-2007 - Assessee was manufacturing goods using technology of foreign collaborator and was making payment to such foreign collaborator as follows : (a) lump sum payment for know-how; (b) 3 per cent of sales turnover for various technical services and expert advisory/assistance for manufacture/marketing - Assessee paid service tax on lump sum amount - Department demanded service tax on both amounts under Intellectual Property Services - HELD : Payment based on sales turnover was for technical services and not for intellectual property services; hence, same cannot be charged to tax under Intellectual Property Services
Citation	[2015] 60 taxmann.com 319 (New Delhi -CESTAT) Saint-Gobain Gyproc India Ltd. v.Commissioner of Central Excise, Rohtak

Sr. No.	**17**
Relevant Section	Section 65 (9) and Section 67
Relevant Statute	Finance Act 1994
Issue	Authorised service station for Tata was also repairing vehicles of other brands but not paying service tax on those repairs of other brand vehicles
Service Category	Authorised Service Station Service
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Authorised Service Station Services - Position prior to 1-5-2011 - Assessee, an authorised service station of Tata, was carrying out repair maintenance of vehicles manufactured by Tata as well as of other manufacturers - Assessee was not paying service tax on services for vehicles of other manufacturers - Department demanded service tax thereon and sought to include value of parts/replacements in value of services - HELD : In invoices, sale of parts has been shown separately and VAT has been discharged thereon - Since VAT has been paid on material supplied, same are not includible in value of services and not liable to service tax - Furthermore, since assessee was authorized service station of Tata, repairs and maintenance activity on vehicles of other manufacturer was not taxable
Citation	[2015] 60 taxmann.com 320 (Mumbai - CESTAT) Safeway Motors v.Commissioner of Central Excise, Nagpur

Sr. No.	**18**
Relevant Section	Section 35G of Central Excise Act read with Section 83 of
Relevant Statute	Finance Act 1994
Issue	Matter referred to Larger Bench of Tribunal is not appeallable at High Court
Service Category	
Favour of	Assessee
Issuing	High Court of Madras

Authority	
Judgment	Department filed appeal against Tribunal order referring matter to Larger Bench, arguing that there was no conflict of opinion and reference was bad - HELD : A reference made by one Bench of a Tribunal to a Larger Bench, on ground that two Benches of co-ordinate jurisdiction had come to different conclusions on same issue, is not a decision, on which one or other party can be stated to be aggrieved - Question as to whether there was a conflict or not and question as to whether situation warranted a reference or not, can very well be answered by Larger Bench - Further, right of appeal under section 130(1) is restricted only on a substantial question of law and question as to whether reference of certain issues to a Larger Bench could be made or not, cannot even be considered as a substantial question of law, as same is a matter of discipline - Hence, present appeal was not maintainable Appeals - Deposit, pending appeal, of duty/tax demanded or penalty levied - Tribunal made reference to Larger Bench and waived entire pre-deposit - Department argued that pre-deposit was wrongly waived - HELD : Though pre-deposit order is appealable, however, in this case, Tribunal has proceeded to follow its own precedents, viz., whenever a reference is made to a Larger Bench, total waiver is granted - Hence, exercise of discretion by Tribunal need not be interfered with
Citation	[2015] 61 taxmann.com 1 (Madras) Commissioner of Customs v.Chettinad Cement Corporation Ltd.

3.3 Case Laws related to Customs

Sr. No.	1
Relevant Section	Section 124 read with Section 110(2)
Relevant Statute	Customs Act 1962
Issue	Show Cause Notice under Section 124 received by the Petitioner after expiry of six months' time limit as prescribed under Section 110(2) - Petition seeking release of gold seized on the ground of delay in issue of Show Cause Notice.
Service Category	-
Favour of	Petition Dismissed
Issuing Authority	High Court of Karnataka
Judgment	The High Court of Madhya Pradesh in Ram Kumar Aggarwal's case while interpreting Sections 110(2) and 124 of the Act has held issuance of Show Cause Notice by registered post before the expiry of six months from the date of seizure would be sufficient compliance more particularly when the same is received by the addressee though after lapse of six months. It has been further held that neither Section 110(2) nor clause (a) of Section 124 of the Act contemplates service of notice in strict sense should be within a period of six months. Judgment rendered by the High Court of Madhya Pradesh has since been affirmed by the Apex Court - Following the same, it is held that the Petition has no merit. A conspectus reading of Section 153 of the Act would clearly indicate that it does not contain the word "given" as found in Section 110(2) or 124 of the Act. It is well settled proposition of law that true meaning of the words and expressions used by the legislature must be given effect to and courts must have regard to the aim, object and scope of the object to be achieved while interpreting the words used in a statute. When facts on hand are examined, it would clearly indicate that seizure was done on 16.9.2013 and Show Cause Notice for confiscating the goods seized came to be issued on 13.3.2014 i.e., before period of six months prescribed under sub-section (2) of Section 110 of the Act was to expire i.e., on or before 15.3.2014 and said Show Cause Notice dated 13.3.2014 came to be dispatched on the same day. However, it came to be delivered on the petitioner on 17.3.2014 i.e., after the expiry of two days of the period of six months prescribed under sub-section (2) of Section 110 of the Act. In that view of the matter, the date of service of notice cannot be held as one which entitles the petitioner to seek for return of the goods on the ground that six months period prescribed under Section 110(2) of the Act had expired.
Citation	2015-TIOL-1986-HC-KAR-CUS K ABDULLA KUNHI ABDUL RAHAMAN S/o ABDUL RAHAMAN, Vs1) ADDITIONAL COMMISSIONER OF CUSTOMS KEMPEGOWDA INTERNATIONAL AIRPORT, BENGALURU

Sr. No.	2
Relevant Section	Section 111
Relevant Statute	Customs Act 1962
Issue	Misdeclaration of non dutiable diamonds would lead to confiscation and penalty
Service Category	-
Favour of	Revenue
Issuing Authority	CESTAT MUMBAI
Judgment	Smuggling/Illegal Import - Assessee exported 485 carats diamonds and re-imported same under Notification 94/96-Cus. - However, on examination, 299 carats more diamonds were found, which, as per assessee, were relating to a different

	export transaction of 1,099 carats - On charge of misdeclaration, department confiscated goods and allowed re-export on payment of redemption fine - Assessee argued that no duty involved - HELD : There was no correlation between 'export of 1099 carats' and 'alleged re-import of 299 carats' - Non-mention of two packets in bill of entry amounted to misdeclaration under section 111(m) - Diamonds being a very sensitive commodity, its trading may not have duty implication but can have other implications of money transactions - Hence, confiscation and consequent redemption fine was upheld - Penalty under Section 112(iii) was also levied
Citation	[2015] 60 taxmann.com 225 (Mumbai - CESTAT) Rosy Blue (India) (P.) Ltd. v.Commissioner of Customs, CSI Airport, Mumbai

Sr. No.	3
Relevant Section	Section 127B
Relevant Statute	Customs Act 1962
Issue	Smuggling of Gold
Service Category	Settlement Commissioner whether has the jurisdiction to admit the application of settlement
Favour of	Petition Allowed
Issuing Authority	High Court of Delhi
Judgment	Smuggling of gold - an application under Section 127B cannot be made in respect of, inter alia, gold, which is specifically an item to which Section 123 of Customs Act, 1962 applies - Settlement Commission did not have the jurisdiction to entertain such an application as there was a complete bar provided in the third proviso to Section 127B(1) read with Section 123 of the said Act - order passed by the Settlement Commission is without jurisdiction hence set aside - Petition by Revenue allowed
Citation	2015-TIOL-2010-HC-DEL-CUS ADDL COMMISSIONER OF CUSTOMS VsSHRI RAM NIWAS VERMA

Sr. No.	4
Relevant Section	Section 135
Relevant Statute	Customs Act 1962
Issue	Penalty & Prosecution for evasion
Service Category	-
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Penalty - For evasion of duty/tax - Assessees, having import license, imported car availing services of AS for clearance - AS declared them to have engine capacity of 1595cc; however, they were found to be of about 1800cc and also undervalued - Department imposed personal penalty on assessees alleging conspiracy between assessees and AS, which was done to earn commission and relied upon a letter from AS to some V saying that V would be paid a commission - HELD : A letter written by AS to V cannot rope in assessees into charge of conspiracy - Even otherwise, assessees were not to gain anything by misdeclaration, as they had import license to import car even with higher engine capacity - Hence, penalty and consequent prosecution lodged by revenue were set aside
Citation	[2015] 60 taxmann.com 336 (SC) Gerson Da Cunha v.Commissioner of Customs

Sr. No.	5
Relevant Section	Section 125
Relevant Statute	Customs Act 1962
Issue	Invocation of Extended Period
Service Category	-
Favour of	Revenue
Issuing Authority	Supreme Court
Judgment	A imported car on 4-7-1988 availing

	services of AS - AS misdeclared car to be of 1595cc, while it was of 1800cc and also undervalued goods - AHM sold said car to appellant-buyer on 11-7-1988 - Department issued notice dated 21-1-1991 demanding differential duty from appellant-buyer - Appellant-buyer argued that since there was no misdeclaration by it and it was a bona fide buyer, hence, extended period cannot be invoked - HELD : As a purchaser and owner of car, appellant is fastened with liability of differential duty - Misdeclaration, which was an act of AS, would be imputed in present case - As car got cleared on basis of misdeclaration, extended period was invocable
Citation	[2015] 60 taxmann.com 336 (SC) Gerson Da Cunha v.Commissioner of Customs

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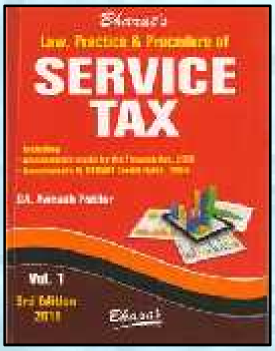

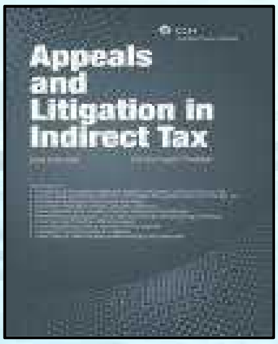

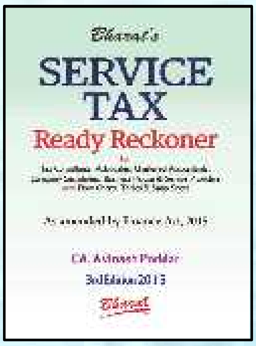

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