Avinash Poddar's

Communique on Indirect Tax

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3.1 Case Laws related to Excise

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3.2 Case Laws related to Service Tax

Sr. No.	Relevant Statute	Case Name	Issue
1	Section 76, 77 And 78 Of Finance Act 1994	Care And Cure (P.) Ltd. V. Commissioner Of Central Excise, Chandigarh	Imposition Of Penalty
2	Section 85 of Finance Act 1994	Ramchandra Singh V. Union Of India*	Condonation Of Delay
3	Section76, 77 And 78 of Finance Act 1994	M/S. Goradia Special Steels Ltd. Vs. Commissioner Of Central Excise, Raigad	Penalty
4	Rule 2(I) of Cenvat Credit Rules 2004	Nuance Transcription Services India Pvt. Ltd. Vs. Commissioner Of Service Tax Bangalore Service Tax	Input Services - Input Services
5	Section 75a, 76, 77 And 78 of Finance Act 1994	Chandra Lubricare Vs. Commissioner Of Central Excise, Madurai	Penalty Imposition
6	Section 73(3), 76, 77 And 78 of Finance Act 1994	S.K.Electro Engineers Vs. Commissioner Of Central Excise, Nagpur	Penalty Imposition
7	Section 76, 77 And 78 of Finance Act 1994	Larsen And Toubro Ltd Vscommissioner Of Central Excise, Bhopal	Free Supervision Service
8	Article 226 Read With Section 73 of Finance Act 1994	Tanushree Logistics (P.) Ltd.V.Union Of India	Writ Filed Before Replying To Scn
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10	Rule 2(I) of Cenvat Credit Rules 2004	Commissioner Of Service Tax, Mumbai-Ii V.J.P. Morgan Services India (P.) Ltd.	Advertising Services Used An In Input Service For Another Input Service
11	Rule 3 of Cenvat Credit Rules 2004	Commissioner Of Service Tax, Mumbai-Ii V. J.P. Morgan Services India (P.) Ltd.	Registration Is Not A Pre-Condition For Taking Credit; Hence, Credit May Be Taken/Availed Even Before Registration Is Granted
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15	Cenvat Credit Rules 2004	Commissioner Of Central Excise, Customs And Service Tax Visakhapatnam-I Vs Facor Alloys Ltd	Iron And Steel Items Used In Fabrication Works
16	Cenvat Credit Rules 2004	Commissioner Of Central Excise And Service Tax, Ahmedabad-Ii Vs M/S Cadila Healthcare Ltd	Refund

3.3 Case Laws related to Customs

Sr. No.	Relevant Section	Case Name	Issue
1	Section 114A read with Section 78 of Finance Act 1994	Commissioner Of Central Excise, Meerut V. Dewan Rubber Industries Ltd	Penalty
2	Section 127B read with Section 123	Additional Commissioner Of Customs v. Ram Niwas Verma	Settlement Commissioner whether can be approached for Gold
3	Section 12, 13, 14, 23 and 47 of Customs Act 1962	Mangalore Ref. And Petrochemicals Ltd. V. Commissioner Of Customs	Customs duty is different from purchase tax and is leviable only on quantity actually imported
4	Section 12, read with sections 15 and 16 of Customs Act 1962	Commissioner Of Customs, Tiruchirapalli V. Cethar Vessels	Imported warehoused goods shall attract duty in force on date of filing bill of entry for home consumption
5	Customs Act 1962	M/S Bharti Telemedia Ltd M/S Dish Tv India Ltd Vs Commissioner Of Customs(Import) Nhava Sheva	Valuation

1.0 Articles

1. Analysis of Case Law - VEDIOCON INDUSTRIES LTD vs. Commissioner of Central Excise, Aurangabad - by CA Avinash Poddar

{TOPIC}: Calculation of Assessable Value

{TITLE}: Whether warranty charges deductible for calculation of AV?

{AUTHORS}: CA Avinash Poddar, Managing Partner, A A P & Co.

VEDIOCON INDUSTRIES LTD vs. Commissioner of Central Excise, Aurangabad

Citation: 2015-TIOL-1801-CESTAT-MUM

In Favour of: Revenue

Bench/Court: Mumbai CESTAT

Facts

- Appellant had entered into agreement with M/s ELCOT (A Govt. of Tamilnadu Enterprise) for supply of 14" *CTVs during the period August 2006 to January 2009*.
- The appellant had opted for payment of CE duty on MRP basis under the provisions of Section 4A of the CEA, 1944.
- In the purchase order of ELCOT, it was indicated that unit price is inclusive of all accessories, taxes, duties and warranty charges, etc. However, the warranty charges of Rs. 75/- per TV will be paid to the supplier only after the end of 1st year and another Rs. 75/- at the end of 2 nd year.
- This unit price including the warranty charges is declared as MRP on all the package of TVs. However, while discharging the Excise duty liability, the appellant had worked out the assessable value as MRP minus warranty charges of Rs. 150/-.
- A demand notice came to be issued on 25/2/2010 demanding differential excise duty of Rs. 3,87,14,771/-
- This demand was upheld by the CCE, Aurangabad along with imposition of equivalent penalty and interest.
- The appeal was heard on 01.04.2015 and the final order was passed recently.

Issue

While arriving at assessable value for Retail Sale Price only abatement specified can be deducted and not the warranty charges.

Decision

Before going through what has been decided by the honorable bench of CESTAT (Mumbai) let us first try to understand the statutory provision of Section 4A of the Central Excise Act 1944, which deals with Valuation of excisable goods with reference to Retail Sale Price.

1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the [Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

*(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, **such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any,** from such retail sale price as the Central Government may allow by notification in the Official Gazette.*

(3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.

(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer -

(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the *prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.*

Explanation 1. *– For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:*

Provided *that in case the provisions of the Act, rules or other law as referred to in sub-section (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.*

Explanation 2. *– For the purposes of this section, -*

(a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;
(b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;
(c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates.

The decision given by the honorable bench is discussed as under:

- ✓ From the reading of section 4A in subsection (2) it is very clear that while arriving at the assessable value for the retail sale price, an amount of abatement is specified by notification can only be deducted.

- ✓ As per the definition of retail sale price when all the elements are includible in the RSP no any deduction can be allowed.

- ✓ The objective of allowing the abatement is that all the elements which do not form part of the assessable value should stand deducted by way of abatement. Therefore in the case where valuation is done under Section 4A, except abatement no further deduction is allowed.

- ✓ In the definition of 'retail sale price' after mentioning the specific charges it is also mentioned "and the like" this clearly shows that not only the charges explicitly mentioned in the definition are includible but also other like charges are also includible. It clearly means that all the charges are includible in the retail sale price at which the good is sold to the consumer.

- ✓ If the contention of appellant is accepted regarding the deduction of warranty charges then likewise there are many more heads of charges which can also be claimed for deduction.

- ✓ To avoid any such sort of interpretation, the legislature had enacted section 4A whereunder the valuation of consumer goods was made simplified, according to which, at whatever price the goods are sold to the consumer that price minus abatement as specified under the notification shall be the assessable value therefore there is no scope for any deduction other than abatement for the purpose of valuation under Section 4A.

- ✓ From the definition of Transaction value (s.4 of CEA, 1944) the warranty charges is also includible in the assessable value, this shows that legislators have clear intention that for the purpose of charging excise duty the warranty charges should be included in the assessable value.

- ✓ *If we compare the valuation under Section 4 and 4A it can be seen that all the charges which are includible* as per Section 4 in the transaction value all such charges plus the element such as dealer margin, retail margin, sales tax freight, etc are also included in the retail sale price.

- ✓ *Thereafter the only deduction which is permissible is the abatement* as notified by the government from time to time therefore there seems to be no reason why a particular element out of many charges i.e. warranty charges should be allowed to be deducted.

- ✓ *We do not agree with the submission of the appellant for the reason that the statutory provision under Section 4A cannot be altered or influenced merely because the appellant has chosen to discharge service tax on portion of the retail sale price.*

- ✓ Therefore merely because the service tax was paid, deduction of the said value cannot be allowed as no such option has been provided either under the Central Excise Act, or under the Finance Act, 1994.

Conclusion

CESTAT Mumbai has dismissed the appeal filed by the appellant on the ground that there is nothing provided in the law to exclude the warranty charges from the retail sale price. As per the bench it is very clear from the plain reading of Section 4 and 4A that warranty charges shall be included while calculating the assessable value.

2. Analysis of Case Law - LARSEN & TOUBRO LTD vs. Commissioner of Central Excise, Bhopal - by CA Avinash Poddar

{TOPIC}: Provision of Supervision service free of cost

{TITLE}: Whether supervision of installation and erection of plant supplied liable for service tax?

{AUTHORS}: CA Avinash Poddar, Managing Partner, A A P & Co.

LARSEN & TOUBRO LTD vs. Commissioner of Central Excise, Bhopal

Citation : 2015-TIOL-1847-CESTAT-DELHI

In Favour of: Assessee

Bench/Court: CESTAT DELHI

Facts of the Case

- Appeal has been filed against Order-in-Original dated 16.10.2007 in terms of which service tax demand of Rs.68,34,000/-for the period 1.7.2003 to 31.3.2005 was confirmed on the ground that the appellant had not paid service tax on erection, commissioning or installation service and consulting engineer service rendered to M/s Vikram Cement.

- The said demand was confirmed along with interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994.

- The appellant has contended that it received a purchase order from M/s Vikram Cement for design, engineering, supply and supervision of erection and commissioning of limestone crushing plant.

- Thus it is essentially a supply order for the stone crushing plant. The brief scope of supply and price in the work order is given:

Description	Qty Set	Unit rate Rs. in lacs	Total price Rs. in lacs
Crushing plant consisting of 1 No. L&T (Hazem) compound impactor model APCM 2022 LS, Crusher with wobbler apron conveyor, sacrificing conveyors spraining system comprising secondary... and it is related belt conveyors.......bag filters, dust suppression.............etc. Battery limits - Dump hopper..............after sacrificing conveyor including commissioning spares capacity 1600 TPH of the system	1	670.00	670.00
Total Rs. in lacs			670.00

- The appellant contended that it supplied the said plant for the total price of Rs.670 lakhs. It did not provide erection, commissioning or installation service and only provided supervision of erection and commissioning.

- It is also stated in the said purchase order that, quote "supervision of erection and commissioning shall be free of cost. You will depute your engineer for 30 man days at site in 3 visits free of cost
- Thus, the supervision of erection and commissioning of the plant was free of cost and the entire value of the purchase order was for supply of the plant as stated above.
- The appellant also stated that service tax demand has been confirmed on the entire Rs.670 lakhs and in such a situation, it should be allowed to take Cenvat credit of the Central Excise duty paid on the goods supplied which will be much more than the amount of service tax demanded.
- No bifurcation has been given for demands under erection, commission or installation service and consulting engineer service while confirming the impugned demand under both the said services.

Issue

Whether the service of supervision of erection and installation of plant supplied provided by the supplier is taxable under service tax. If yes, what will be the value on which service tax would be payable?

Observation, discussion and decision

- ✓ We find that the entire impugned demand has been confirmed on the full value (Rs.670 lakhs) of the purchase order.
- ✓ It is further seen that the appellant was required to supply the plant and provide supervision of erection and commissioning thereof for which it was to depute its engineers for 30 man days at site in 3 visits free of cost.
- ✓ Para-11 of the purchase orders makes it clear that for such free of cost visits of the engineers even to a fro travel charges were not required to be paid by M/s Vikram Cement.
- ✓ No consideration received for such supervision.
- ✓ Even if it is held that there was a service component in the form of supervision of erection and commissioning of the plant supplied, the said service was manifestly rendered free of cost and thus no service tax liability can arise in this case as the value of the goods supplied cannot be included in the assessable value even as per Notification No. 12/2003-ST as no Cenvat credit has been taken by the appellant in respect of such goods.
- ✓ ***In the light of the aforesaid discussion, we find that the impugned service tax demand is not sustainable and therefore the same is set aside and appeal allowed.***

Conclusion

In the above case the assessee was supposed to basically supply a plant and as per the purchase order he was supposed to provide supervision by way of providing engineers. Supervision was for the erection and installation of such plant which is supplied by the assessee. Supervision was provided free of cost.

Thus it was finally observed and decided by the Honorable Bench of Delhi CESTAT that even if that is considered to be a service but since there is no cost attributable to it and also no credit has been taken by the assessee *it will not be taxable and hence the demand was set aside.*

3. Analysis of Case Law - JAIPRAKASH ASSOCIATES LTD vs. Union of India & Others - by CA Avinash Poddar

{TOPIC}: Recovery of Central Excise Dues

{TITLE}: Assets purchased pursuant to a winding up order by High Court and not the business

{AUTHORS}: CA Avinash Poddar, Managing Partner, A A P & Co.

M/s JAIPRAKASH ASSOCIATES LTD vs. Union of India & Others

Citation : 2015-TIOL-2013-HC-ALL-CX

In Favour of: Assessee

Bench/Court: High Court of Allahabad

Facts of the Case

- U.P. State Cement Corporation Limited was incorporated as a company under the Companies Act, 1956. The said company carried on commercial operations till 1998 where it is suffered heavy losses and, upon erosion of its net worth, fell within the ambit of the provisions of Sick Industrial Companies (Special Provisions) Act, 1985.

- The BIFR declared this company as a sick industrial company in 1992 and, subsequently, recommended its winding up. Upon receipt of the recommendation from the BIFR, the High Court passed an order dated 08.12.1999 for winding up the Corporation and appointed the Official Liquidator attached to the High Court to act as the Liquidator of the said Corporation.

- The Official Liquidator issued an advertisement in August, 2005 for sale of the cement plant and other assets of the Corporation. Based on this advertisement, the petitioner gave his bid of Rs.459.00 crores, which was found to be the highest and was accepted. The petitioner, accordingly, paid a sum of Rs. 459.00 crores to the Official Liquidator.

- The Central Excise Department issued the impugned notice dated 26.08.2010 contending that central excise dues amounting to Rs. 15.97 crores was due and payable by the erstwhile corporation and since the petitioner has purchased a running business of the Corporation, the liability of the Corporation towards the central excise dues has to be cleared by the petitioner and, accordingly, directed the petitioner to deposit the arrears within a month.

- *The petitioner, being aggrieved by the issuance of the notice, has filed the present writ petition contending that it had only purchased the assets of the Corporation pursuant to the winding up order of the Corporation and that the petitioner cannot be saddled with the past liability of the Corporation*. The petitioner further contended that there was no stipulation in the advertisement that the liability of the Corporation would fall upon the petitioner.

Issue

Petitioner had only purchased the assets of the Corporation in pursuance of the winding up order passed by the High Court and had not taken over a running business of the Corporation. Whether the liability of past CE payable by the Corporation vests on the petitioner since he has purchased the assets of the corporation?

Observation, discussion and decision

- ✓ The proviso to the section 11 of CEA, 1944 indicates that where a person from whom duty or a sum of any kind is recoverable or due, and transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, the excise dues could be recovered from the successor.
- ✓ In our view the said proviso will not be applicable in the present case. The proviso contemplates that where a person transfers or disposes of his business, which results in change of ownership, in that scenario, the successor would be liable.
- ✓ *In the instant case, the Corporation has not transferred or disposed of its business or trade. The Corporation has been wound up by an order of the Court and its assets have been sold off. A running business has not been sold.* It has come on record that production activity is not being carried out since 1997.
- ✓ The Counter Affidavit of the Central Excise Department is silent as to how they have asserted that a running business of the Corporation has been purchased by the petitioner. In the absence of any proof of this nature coupled with the fact the Official Liquidator issued an advertisement for sale of the assets of the Corporation after a winding up order was passed by the High Court, we are of the opinion that the past dues of the Central Excise Department cannot be recovered from the petitioner under Section 11 of the Act.
- ✓ *We also find that a similar notice was issued by the Central Excise Department demanding duty of finished goods lying in stock, which was received by the petitioner from the Official Liquidator pursuant to their highest bid being accepted.* The Commissioner, Central Excise

Department after considering the matter passed an order dated 28.07.2011 *holding that the petitioner was not the manufacturer of goods and, therefore, was not liable to pay central excise duty quite apart from the fact that the petitioner had purchased the property in auction*, which was free from all encumbrances and, consequently, dropped the proceedings.

Conclusion

In the light of the aforesaid, since the petitioner had only purchased the assets of the Corporation in pursuance of the winding up order passed by the High Court and had not taken over a running business of the Corporation, the liability of past central excise dues payable by the Corporation cannot be fastened nor recovered from the petitioner. Consequently, for the reasons stated aforesaid, the impugned notice dated 26.08.2010 cannot be sustained and is quashed.

And therefore the writ petition allowed.

4. Analysis of Case Law - COMMISSIONER OF CE & SERVICE TAX, PUNE-III Vs INTERMEDIA CABLE COMMUNICATION PVT LTD - by CA Avinash Poddar

{TOPIC}: Recovery of Service Tax

{TITLE}: Service Tax liability worked out by department on assumptions and presumption. Whether Correct?

{AUTHORS}: CA Avinash Poddar, Managing Partner, A A P & Co.

COMMISSIONER OF CE & SERVICE TAX, PUNE-III Vs INTERMEDIA CABLE COMMUNICATION PVT LTD

Citation : 2015-TIOL-1858-CESTAT-MUM

In Favour of: Partly in favour of Assessee

Bench/Court: CESTAT Mumbai

Facts of the Case

- Respondent herein is registered with the service tax authorities as multi system operator and discharges service tax liability.
- An investigation was carried out against the respondent. It was noticed that they had under reported the number subscribers and there was short payment of the tax.
- Four show cause notices were issued demanding differential service tax liability for the period October 2005 to September 2009. The said show cause notices were contested by the respondent on merits.
- The adjudicating authority after considering the submissions made before him and on perusal of the agreement entered by the respondent with star India private Limited, came to a conclusion that the service tax liability discharged by the respondent assessee is correct and there is no short payment of service tax liability.
- Learned DR submit that the respondent under reported the number of subscribers to whom they rendered services. He would draw our attention to the first agreement entered by the respondent (dated 22/02/2005) and submit that the said agreement talks about the consideration payable by the appellant to star India.
- Learned DR submit that the said agreement talks about approximately 86,000 subscribers to be included in specific consideration, but the appellant did not pay the service tax on the entire subscriber base but discharged service tax on actual number of subscribers which was less.
- Learned DR further submit that subsequent agreements between respondent and star India did not have the subscribers to the serviced but indicated only amount payable which is incorrect approach for discharging the service tax liability. It is his submission that service tax liability is payable on number of subscribers to whom connections are given. He would submit that by entering in to an agreement which does not indicate the number subscribers to be serviced, the show cause notice correctly takes the figure

from agreement dated 22/02/2005 which has mentioning about 86000 subscribers.

Issue

In the absence of any additional evidence of there being a larger subscriber base, the differential ST liability calculated by the department. Whether such calculations based upon presumptions and assumptions correct?

Observation, discussion and decision

✓ For the period Oct 2005 to December 2005:

- It is noticed that the agreement dated 22/02/2005 was in force. On perusal of the said agreement it is noticed that the said agreement at Annexure A indicates number of subscribers whom respondent will render service as MSO. The very same agreement was considered by the bench in the respondent's own case - 2014-TIOL-1659-CESTAT-MUM and held that service tax liability needs to be discharged on the agreement which indicated the number of subscribers.
- The above ratio squarely covers the period from October 2005 to December 2005 and accordingly we hold that the respondent is liable to discharge the differential service tax liability taking the subscriber base as per the agreement in force. The respondent is also required to discharge the interest on the said differential service tax.

✓ For the period January 2006 to September 2009

- We find that the subsequent agreements entered by the respondent with Star India do not indicate number of subscribers in the Annexure's but indicates the subscription fees to be paid by the respondent to Star India.
- It can be seen from the specimen Annexure of the agreement dated 07/02/06 that the respondent had contracted and agreed to pay a specific amount for and as a subscription fee. This arrangement is continued by different agreements for the period in question in this appeal. *As against this, the revenue has not produced any contrary evidence to indicate that appellant had larger subscriber base than as is declared in ST3 returns.*
- *In the absence of any additional evidence that there being larger subscriber base, we find that the difference of service tax liability for the period January 2006 to September 2009 has been worked out based upon presumptions and assumptions.*
- We agree with the findings of the adjudicating authority that demands of differential service tax liability cannot be raised on presumptions and assumptions; in the absence of any evidence to show that respondent has provided services to under-reported subscribers, collected the payments and did not discharge service tax thereon.

Conclusion

In the absence of any additional evidence of there being a larger subscriber base, the differential ST liability for the period January 2006 to September 2009 has to be held as being worked out based upon presumptions and assumptions. Adjudicating authority is correct in dropping proceedings.

However for the period October 2005 to December 2005, Revenue appeal allowed in view of Tribunal decision in appellants own case reported as -2014-TIOL-1659-CESTAT-MUM and hence liability is confirmed along with interest but no penalty as major portion of demand set aside.

5. Analysis of Case Law - M/S JSW STEEL LTD, ISPAT INDUSTRIES LTD VS COMMISSIONER OF CENTRAL EXCISE, RAIGAD, NAVI MUMBAI - by CA Avinash Poddar

{TOPIC}: Refund of Service Tax

{TITLE}: Service Tax paid on Input Services used for manufacturing of goods finally exported, whether refundable?

{AUTHORS}: CA Avinash Poddar, Managing Partner, A A P & Co.

M/S JSW STEEL LTD, ISPAT INDUSTRIES LTD VS COMMISSIONER OF CENTRAL EXCISE, RAIGAD, NAVI MUMBAI

Citation : **2015-TIOL-1878-CESTAT-MUM**

In Favour of: Assessee

Bench/Court: CESTAT Mumbai

Facts of the Case

- Appellant had filed refund claim of the service tax paid on inputs services used for manufacturing of goods which are exported.
- The appellant had claimed the refund of service tax paid on PORT services and CHA services.
- The adjudicating authority after following due process of law rejected a refund claim on the ground that appellant had not complied with the conditions of notification and they file to furnish evidences of actual payment of service tax.
- On an appeal the first appellate authority concurred with the views of the adjudicating authority and rejected the appeals.
- Learned counsel appearing on behalf of the appellant would draw attention to the factual matrix of the case and findings recorded by both the lower authorities. He would submit that the both lower authorities are insisting upon evidence of payment of service tax liability by the service provider while notification does not impose any such condition. He would take us through the notification no. 41/2007-ST dated 6 Oct 2007.
- Learned departmental representative on the other hand drew our attention to the findings recorded by the lower authorities and submits that the documentary evidences of discharge of service tax liability are not correct document as envisaged in notification no. 41/2007-ST.
- It is her submission that the evidences produced by the appellants in respect of chalans is not matching with the date of services rendered by the service provider. It is her submission that in the absence of any proper documentary evidences, refund clam has been correctly rejected and she relies upon CBEC circular no. 106/9/2008-ST dated 11/12/2008.

Issue

Service Tax paid on Input Services used for manufacturing of goods finally exported, whether refundable?

Observation, discussion and decision

- ✓ We have considered the submission made by both sides and perused the records.
- ✓ *We find the issue involved in this case is regarding the refund of an amount which have been paid by the appellant as service tax and used the services for export of the goods. It is undisputed that the services are rendered to the appellant by Mumbai Port Trust, and CHA.*
- ✓ It is also undisputed that appellant is eligible to avail credit of service tax paid by them to the service provider.
- ✓ We find that the impugned order is unsustainable for more than one reason.
    - *Firstly we find that finding recorded by the lower authorities of the documents are improper, the document in appeal, on perusal, found to be correct and in accordance with the provisions of Service Tax Rules.*
    - We find that the invoices contain service tax registration Number, Name and address of the invoice maker and appellant's name as the services receiver as regards the documents of Port Trust, we find that the said documents clearly indicate service tax registration number of Mumbai Port Trust and service tax amount discharged under the head “Port Services”.
    - *In our considered view, there being no dispute as to the facts that services were utilized by the appellant for export of goods, rejection refund of such an amount is incorrect.*
    - Secondly, we find both the lower authorities recording that appellant should have produced evidence as to payment of service tax liability by the service provider to the government of India is a non-starter and curious findings. *We find on*

careful reading of notification no. 41/2007-ST dated 06 Oct. 2007, it does not indicate that the refund claim is to be evidenced by producing information of the service provider having discharged the service tax liability.

- After going various clause (f) we find that the only evidence required is payment of service tax on the specified services which in our view, is satisfied in this case by showing that the invoices which was raised by the service provider were paid by the appellant
- It is a common sense that no one will be allowed to enter the Mumbai port trust area and export without paying the changes/fees to port trust. *In our view, the conditions of notification of discharging the service tax liability by the appellant to the service provider are satisfied and there is no reason for rejecting the appeal.*

Conclusion

Requiring the appellant to produce evidence as to payment of service tax by the service provider to the GOI is a non-starter and a curious finding. It is a common sense that no one will be allowed to enter the Mumbai port trust area and export without paying the changes/fees to port trust. Refund claim in r/o ST paid on Port Services & CHA services is to be allowed as they are input services for export of manufactured goods.

Appeals allowed with consequential relief.

2.0 News & Updates

1. 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.

(Ref - http://www.livemint.com/Money/ZBV1v5fDFpLM6RlXil8giO/Will-GST-make-things-costlier-or-cheaper.html)

2. Column: Breaking the GST impasse

The GST debacle in the Rajya Sabha is unfortunate. India badly needs GST to revive its economy and to simplify and rationalise the complex structure of taxes at the Centre and state levels. Never before, in fiscal history, has there been such a clamour for a tax reform of this nature. All segments of the business community, consumers and other stakeholders are eagerly awaiting this reform. While they may not know how GST will impact their lives, their enthusiasm for it is indicative of the frustration and dissatisfaction with the current regime.

Inspite of eight years of debate, our political masters have not been able to go past the starting line. Frustrated by the long delay, some have given up the hope of an ideal reform and are prepared for the second-best. "Let not the best be the enemy of the good" is a common refrain for them. Yet, there are others who feel that the GST as envisaged in the Constitution (Amendment) Bill will amount to continuation of the status quo. It could be a short-term gain, but definitely a long-term pain. Given the situation, finance minister Arun Jaitley faces a dilemma about how to go forward with this initiative.

In developing the way forward, let's consider the following issues:

The Bill placed before Parliament is only the first step in the long road ahead for the GST implementation. Its purpose is simply to empower the governments to levy the GST, which they cannot do under the existing Constitution provisions. The Bill does not levy the tax, which would require a separate law to be enacted by the Centre and each of the state legislatures. There is unanimous support for the levy of GST, but the Bill is embroiled in controversy because it goes beyond just empowering the governments to levy the tax. It exempts a range of goods and services (e.g., alcohol, petroleum, electricity, and real property) from the application of GST. Such exemptions are absurd and serve no social or economic purpose.

These exemptions are massive and will adversely impact all sectors of the economy. They will perpetuate tax-cascading which hurts investments and discourages the Make-in-India initiative. While the government has not provided any impact analysis of the exemptions, our own estimates suggest that they can completely negate the GST benefit of 2% boost to GDP. They reduce the GST from being the Crown Jewel of India's growth story to being a lump of coal.

Industry is opposed to such exclusions and is demanding that the Bill should impose no such constraints on the design of the tax. They detract from the 'goodness' and 'simplicity' of GST and change its ranking from one of the best to one of the worst in the world. India's world ranking for ease of doing business is a dismal 142 out of 189 economies. This GST would fare no better.

Even if such exemptions are to be provided for reasons of political exigencies, they should be provided in the GST law, and not enshrined in the Constitution. Most of such design features are already delegated to the GST Council, a body comprising the finance ministers of the Union and the states. In hindsight, had the government chosen to delegate all design features to the Council, the passage of the Bill would have been completely non-controversial ab initio.

Fearing that the truncated GST would necessitate inordinately high tax rates, which in turn would detract from voluntary compliance, the Opposition parties have rightfully demanded that the GST rate be capped at 18%. This again is a design feature of GST which should not be enshrined in the Constitution. The need for revenues and the level of tax rates for different products and services will evolve over time and specifying these in the Constitution is conceptually inappropriate.

Another major area of controversy is the additional 1% tax on interstate supply of goods. Application of this tax on origin basis is completely contrary to the destination principle of GST. It goes against the principle objective of making India a common market. It was introduced in response to the demands of the producing states (Gujarat, in particular) to compensate them for the loss in revenues from the central sales tax (CST). This tax, which has been condemned universally by all business groups, is superfluous given that the Centre has already agreed to fully compensate the States for any revenue losses. Moreover, the Constitution already contains provisions empowering the Centre to levy such a tax and no amendment is needed in the Constitution to permit the levy of this tax.

Thus, to make the Constitution Bill non-controversial, all such add-on design features should be dropped from the Bill and appropriately left to the discretion of the GST Council. The Constitution should simply enable the governments to levy a GST, whether good, better or the best. As we learnt in the grade school, "Good, better, best, never let it rest, till your good is better, and your better is best."

If the GST Council does opt for an imperfect GST, future generations and governments will have the option of reversing the choice over time. Given the dismal experience of amending the Constitution over the past eight years, we should not shackle the Indian economy with imperfections of GST for an indefinite period.

Shalini Mathur, director, tax & regulatory services, EY, contributed to the article

The author is tax policy advisor, EY. Views are personal.

(Ref-http://www.financialexpress.com/article/fe-columnist/column-breaking-the-gst-impasse/129113/)

3. Why shouldn't Centre back rotten GST & leave it to states?

Nitish Kumar wants a special package for Bihar from the Centre. So does N Chandrababu Naidu, post the separation from Telangana. When hailstorms, floods or droughts ravage states, the latter invariably send inflated requests to the Centre for money.

But goods and services tax (GST)? No, my goodness, no. The states think it is the Centre's baby, its problem to sort out - when they are the ones holding out. They only want higher revenues for no extra effort on their part. Women's safety? The media thinks Narendra Modi has to do something about it when law and order is a state subject.

What's wrong with this scenario?

Plenty. This is old thinking, lazy thinking, the result of inertia. The objective situation has changed. Financial and political power has steadily shifted to the states and, after the 14th Finance Commission's report, 62 percent of the country's resources (including tax revenues) are with the states. And yet, everyone thinks the Centre must provide the moolah and do everything for states. Isn't it time the states did some of the heavy lifting? Isn't it time they did something for the country? Isn't it time the media shifted focus on the duties of states, instead of sitting in Delhi pontificating about the Centre's failures (of which, there are many, by the way).

Nothing illustrates this singular lack of national thinking at the state level more than the way they have approached the GST issue. The states not only get to eat their cake but they get to have it too. They think they are doing Delhi a favour by agreeing to a rotten GST.

Consider what's going on here. By keeping petroleum and alcohol out of GST, the states get to keep their highest revenue sources with them. Then, they get the Centre to promise it will compensate them fully for any revenue losses after GST is implemented. The manufacturing states, which fear a revenue shift towards consuming states, have managed to get an additional 1 percent tax on inter-state goods movement. So they get another source of revenue and the protection of no revenue loss from Centre.

Consider how much the states gain from all this. In 2011-15, the states collected nearly Rs 5,70,000 crore from petroleum-related taxes and revenues, including royalties. A lot of this will remain with them.

Thanks to this, the GST rate will have to be higher than required – maybe 20 percent or more. And the bulk of this burden will fall on services – which are currently taxed more by the Centre. In the initial years, services inflation will shoot up due to the push of higher taxes, and slow down growth. This will impact total revenue collections – though one can't say if the higher taxes will make up for the slowdown in services growth.

But either way, the states stand protected. The Centre will not only top up any shortfall, but states will have their own nest-egg tax sources to bank upon. And assuming in a bad year tax revenues fall in general for everybody - as they did in 2012-14 - the Centre's finances will go for a complete toss while states feast on the Centre's promised GST compensation guarantee.

Why should the Centre be backing such a rotten deal for the taxpayers? Isn't it time the states did their bit when they have only upsides on GST?

But the issue isn't only about GST. The media continues to feed the myth that it is Delhi where solutions to problems have to be found; that it is Delhi whose actions need watching. This is, of course, a self-serving belief for the English media at least, which can pontificate from the comfort of Delhi's five-star hotels, scotch glass in hand.

It is easy to critique the Centre for its actions – whether it is action against questionable NGOs or attempts to reform subsidies – when the real law and order issues and political goondagiri happens in states. Just go to Mamata Banerjee's West Bengal and check how poorly it is ruled. Thugs and goondas call the shots in most villages, if not the cities. Try writing anything critical of J Jayalalithaa in Tamil Nadu; chances are you will face violence from the AIADMK's storm-troopers. We haven't heard one critical comment about Naveen Patnaik's 15-year tenure as CM of Odisha so far, but we have heard plenty about Narendra Modi's 15-month tenure as prime minister. We talk endlessly about fake encounters in Gujarat (which actually saw very few of them), but Chandrababu Naidu's policemen killed alleged red sandalwood smugglers in a questionable encounter and we hear very little about how this happened even today.

As for Uttar Pradesh and Bihar, the less said about their governance standards the better. Lalu Prasad ran a jungle raj, and is additionally a convict in a corruption scandal, but we think he is some kind of secular knight in shining armour. We have, of course, heard of the Vyapam scam and suspicious deaths, but isn't this only because this happens to be a BJP government, a useful stick to beat Modi with even though Delhi had nothing to do with it?

Coming back to reforms, why is it the Centre's job to ensure farmers are taken care of when agriculture is a state subject? Why is no chief minister being hauled over the coals for how farmers are treated in their states?

The reality is India's problems and solutions - barring general responsibilities like defence, foreign policy, and fiscal and monetary management - lie with the states. Law and order, policing, education, agriculture, urban growth, labour laws, health services - almost everything that affects our everyday lives - are areas within the powers of the states. The Centre, of course, has the capacity to thwart states, but this is a negative kind of power that does no one any good. At best one can hold the Centre responsible if it stands in the way of state-level reforms.

It is time for Modi to start pointing this out, and for the media to stop looking at Delhi for every kind of solution. It is states that must now carry the can for bad governance – and pay the price politically if they fail.

The writer is editor-in-chief, digital and publishing, Network18 Group.
(Ref - http://www.moneycontrol.com/news/economy/why-shouldnt-centre-back-rotten-gstleave-it-to-states_2870001.html)

4. Government Not Getting Positive Signals on GST From Congress: Jaitley

NEW DELHI: Finance Minister Arun Jaitley today said that government was in discussions with Congress for its support on passage of the constitution amendment bill on Goods and Services Tax (GST) but was "not getting any positive signals".

He said it was distressing that the Congress party was using its numbers in Rajya Sabha to stall the House and the law and should ask itself a question whether it had deserved to rule the country.

"They (Congress) should not try to stop the GST bill. Our efforts to get it approved by Parliament will continue", Jaitley said, adding the government was ready with the three support legislations to ensure the roll out of the new indirect tax regime from April 1, 2016.

"We are talking to them (Congress) but we are not getting any positive signals from whoever we are talking...I will request Congress to adopt a positive attitude," he said CNBC Awaaz channel.

He said as a political party the Congress could not pursue the philosophy of negativism if it wants to ever rule the country.

The government is contemplating a special session of Parliament for passage of the GST Bill, which has been touted as the biggest reform of indirect taxes since Independence.

Jaitley said that although the majority of members in the Rajya Sabha supported the GST bill, the Congress was trying to stop it by not allowing the house to function.

Since it is a constitution amendment bill, it has to be voted and could not be approved by just voice vote, Jaitley said.

"Two-third members (in Rajya Sabha) are in favour of GST, but Congress is not allowing the House to function. Congress' trump card is not to let the House function. Congress should not use the trump card to stop the country's progress," he added.
(Ref - http://www.newindianexpress.com/nation/Government-Not-Getting-Positive-Signals-on-GST-From-Congress-Jaitley/2015/09/01/article3005187.ece)

5. Disheartened by lack of political consensus on GST: SIAM

Calling for removing high rates of taxation, the Society of Indian Automobile Manufacturers (Siam) on Wednesday said it had been "disheartened" by the lack of political consensus on implementation of Goods and Services Tax.

Siam said the sector had been slowly turning around after witnessing a prolonged slowdown but "there are speed breakers" in the form of government policies as the country prepares for future emission norms and safety standards.

"The auto industry is highly taxed with multiple excise duty rates from 12.5 per cent to 30 per cent," President Vikram Kirloskar said at the inauguration of the sector body's general meeting.

He said after additional state taxes, the overall cascading effect went up to 84 per cent on vehicles.

"SIAM has been seeking for reduced taxation and was looking forward to GST but we are disheartened at the lack of political consensus on it...," Kirloskar added.

He also called for stable policies, specially regarding emission norms and said skipping Bharat Stage (BS) V and jumping straight to BS VI from BS IV would add extra burden to the auto industry and in turn to customers.

Kirloskar said harmonisation with global safety and emission norms in India must be done keeping the local conditions in mind.

He also said once timelines for policies have been fixed, it should not be subjected to 'knee jerk' reactions and change as it affects the entire supply chain as the auto industry worked on an integrated chain involving suppliers.

Hitting out at 'environmental activism', Kirloskar said the auto industry has been 'unfairly targeted without sufficient data'.

Raising concerns over increasing free trade agreements signed with competing countries, Kirloskar said "we need to realign our policies".
(Ref - http://www.business-standard.com/article/pti-stories/disheartened-by-lack-of-political-consensus-on-gst-siam-115090200285_1.html)

6. Why GST may not be worth the heartburn; govt should hasten slowly on it

It is time for a mea culpa from me. Thus far, I have been a supporter – though muted – of the goods and services tax (GST), touted as the single biggest tax reform of this decade. I have now come to believe that we may have been sold a pup by corporate interests and economists who dream of a higher tax-GDP ratio.

GST may be reform, but it comes with serious heartburn. Every major taxation measure does not automatically qualify as reform.

In fact, GST may well be a dud if implemented in its current flawed form where major revenue sources like petroleum are kept out to placate the states. It will create more political and economic trouble between Centre and state than positive vibes. There is good reason to slow down and think the measure through, even if it takes another year or two to get it into the right shape. There is absolutely no case for calling a special session of parliament to pass the GST constitutional amendment right now – which is what the NDA government is said to be considering after the Congress sabotaged the previous one. The Congress filibuster has inadvertently given the government just the right excuse to back off from a potential economic folly.

It is important to first admit the theoretical benefits of GST. Like VAT – value added tax, which is applied to goods by both Centre and states - it is efficient as is self-collecting and self-enforcing. Companies buying supplies from outside parties will insist on tax payment on goods supplied as without this they can't get setoffs on their own final product sales.

But companies also buy services. The idea of GST is to put services and goods on the same footing, thus making all taxes paid on supplies eligible for setoffs against final sales.

However, the logic is not sound for the simple reason that India is a services economy, with 60 percent of GDP coming from services. And much of this services economy is outside the formal sector and includes ordinary labour providers and traders. This sector is huge on self-employment and jobs. Is it sensible to rush into taxing this sector when it is the biggest single employer in the economy? Do you want to bring the small vegetable trader into a complicated tax system without adequate forethought about consequences?

You can't force 60 percent of your economy to jump through tax hoops just because some economist thinks this is about efficiency and raising the tax-GDP ratio.

The tax-GDP ratio is another piece of rubbish peddled by economists as some kind of ethereal public policy objective. They want India to raise its tax-GDP ratio, and think GST will help them do that.

I have serious problems with trying to target a tax-GDP ratio through policy. The tax-GDP ratio is the result of higher economic activity, and not a goal to be achieved in itself. Any government that makes business and life easier for its citizens will see a rise in revenues – that should be the role of the state, not the raising of tax revenues per se. The actual level of the tax-GDP ratio is not material as long as the state generates enough money to get its core job done – which is defending the country, running sound fiscal and monetary policies, maintaining an effective judiciary and a responsive legal system, which includes good policing, enabling the flow of investment into social sectors like public health and education, and promoting sensible business practices with impartial and strong regulatory systems, where needed.

Implementing GST to get the tax-GDP ratio is wrong in principle, for a rupee left in people's hands is better than a rupee collected in the coffers of the state. People spend money better than governments, and if at all there should be a tax-GDP ratio, it should trend downwards over time as the efficiency of government spends improves.

This brings me to my core argument against hasty implementation of GST in the name of reforms: it will reduce jobs growth, and the most productive ones at that. Additionally, it may actually push some segments to opt out of the formal economy and retain cash at the core of business transactions.
Here's why. Let me illustrate this with an example. Let's say you are a journalist writing articles on a free-lance basis for newspapers and digital media. Let's assume you are paid Rs 5,000 per article. If you get covered under GST, and that too at the 20 percent rate that is now being touted, you will have to charge Rs 6,000 for the same article you were earlier prepared to sell for Rs 5,000. Will the media house (the buyer of your services) pay more, or will it reduce purchases of free-lance articles? Will economic activity in the business of freelancing rise or fall when costs and prices go up? The answer would depend on the demand for such services, but broadly speaking, a downward sloping demand curve should hold good. The higher the price, the lower the demand for a service.

But that's not the only point. Even assuming both buyer and seller are willing, the freelancer will now have to jump through bureaucratic hoops. He will have to register for service tax payment, for almost no benefit, when he will anyway have to pay income tax too at the applicable rate on his income. He will end up paying two taxes even though he is just one guy trying to earn a living.

A free-lancer's service is an intellectual product, where few tax deductions on input costs are possible. A free-lancer uses electricity (for his laptop, light, fan, etc), mobile services (for conducting his interviews) and a vehicle for his personal movements. Some of these activities attract service tax (mobile services), but not others (petroleum is being kept out of the GST net for now). But will you be able to ask you mobile phone company for a GST payment certificate on your Rs 1,500-mobile bill? Will Uber and Ola give you a certificate of service taxes paid by you for your ride from Churchgate to Andheri on 27 August?

If you do, at one stroke you have just got enmeshed in the government's tax and accounting chakravyuh. The excise guys can then chase you for every law you may have broken while collecting or remitting tax, for non-maintenance of day-books, etc. You can be harassed endlessly.

Of course, I am aware that free-lancers get an exemption from service tax upto a certain level of income, but isn't the purpose of GST to avoid exceptions? If free-lancers are exempt, why not the humble raddi-wallah? Or your neighbourhood kirana store? Small traders and kirana shops will be as badly affected by GST as anyone else.

So what will actually happen when GST implementation takes root at these lower levels of the services economy? Many people will try and keep their turnover thresholds below the level at which they will have to register for service tax – in other words, they will rejoin the cash economy, generate more black money. If you are a merchant with a large turnover, you will split it among several companies so that you still stay below the GST threshold, whatever it is. You would make crooks out of ordinary people who are merely trying to generate incomes through sheer enterprise and personal effort.

I can guarantee that traders – one of the BJP's main support bases – will soon be on the streets once GST is implemented.

As I have stated earlier, the Centre should not be pushing the GST bill as though it is God's work. It is not. The GST needs better design, and the Centre should not legislate it without all states agreeing to put all important products – especially petroleum products – into the GST pot. This will at least get the GST rate down to sensible levels of 14-16 percent.

If the states are not comfortable with this, it is actually worth abandoning the idea altogether. In a federal setup, not leaving any flexibility for states on revenues is not a great idea. GST may lead to more center-state conflicts than the current system.

And let's not forget. The centre gets a huge windfall from service tax (Rs 2,09,000 crore budgeted in 2015-16). Service tax revenue has grown 5.5 times since 2006-07. Excise has grown two-fold and customs revenue 2.4 times.

Service tax as it stands now works quite well for the centre, and states anyway get a share of this bounty after the revenue-sharing formula has been revised under the 14th finance commission. Why are we trying to fix what isn't broke?

GST is not a reform worth investing political capital on in India's political system.
(Ref - http://www.firstpost.com/business/why-gst-may-not-be-worth-the-heartburn-govt-should-hasten-slowly-on-it-2417932.html)

7. GST Transitional Challenges: Ongoing service contracts - By: ashish chaudhary

India is on behest of implementing Goods and Service Tax (GST) which is said to be biggest tax reform since Independence.

One important aspect under GST would be to deal with transitional provisions especially in relation to ongoing contracts which have been entered into pre GST but not completed at the time of GST introduction. Present discussion is confined to transitional challenges on the contracts entered into by service providers only.

The conditions in contract and their legal enforcement is a subject matter of civil law. However, under the concepts of 'consensus ad idem' or 'offer and acceptance' it is better that the parties to the contract consider and factor the future GST in the contracts. If consciously and knowingly one enters into a contract in pre-GST period, then when GST is introduced, there would be no question of additional tax being paid in an inclusive contract. In case, GST is not considered, then the additional cost of tax could be a subject matter of demand from the receiver of goods or services. Here it may be kept in mind that the buyer may be eligible for the credit unless he is a final consumer.

1. All inclusive contracts with government: Government generally enter into all inclusive contracts where the price quoted is inclusive of all taxes. The service provider may or may not be required to disclose the value of tax charged separately on the invoices. It could be possible that the part of the contract is unfinished at the time of introduction of GST. The rate of tax under GST is expected to be substantially higher (may be upto 6-10%) than the existing rate of tax. In many of the contract, the profit margin of service provider could be very lower. If the size of contract is big where majority of work pending to be completed at the time of GST, it could be unviable for service provider to execute the work in the initially quoted rates and in some cases could endanger the very survival of the entity.

Apart from this, there could be exemption under existing service tax law on services provided to government say construction of road, canal, dam or other irrigation works etc. These contracts are of significant value and include the value of both material as well as services. It is very unlikely that theexemption will be continued in the GST regime on these type of contracts and if charged to standard rate of tax say 22%, you can think of what would happen to service provider. None of such infrastructural projects have that much margin. Following could be few suggestions which could safeguard interest of service provider:

It must be clearly mentioned in the contract that the tax imposed under GST would be charged and recovered separately.

Proper records must be maintained evidencing the extent of work completed before introduction of GST.

The point of taxation under GST regime is also expected to be based on completion of 2 out of 3 events (completion of service, raising of invoice and receipt of advance), invoice must be issued before GST becoming effective to the extent of work completed by then.

Seamless credit is expected to be allowed under GST across goods and services. Proper documentary evidence must be maintained indicating all taxes (excise, VAT, SAD etc.) for the material lying in the stock pre GST and to be used after GST. This could enable the service provider to take the credit of taxes paid under current regime.

Stock declaration statement must be filed with revenue authorities indicating the goods lying in the stock and tax paid thereon.

Proper planning must be done for procurement of material immediately preceding introduction of GST. This is important as there could be certain restrictions on availment of credit depending upon the holding period of existing stock.

In case of interstate contract where material is required to be moved from one state to another, it must get transferred to the state where it is expected to be incorporated in the service to avoid levy of additional 1% tax.

Proper reconciliation must be prepared for revenue arising from these contracts booked in profit & Loss A/c viz a vizshown inST-3 returns.

2. Contract for services presently exempted/abated/covered by negative list: Service provider may presently be engaged in providing services which are covered by exemption notification or by negative list. Most of the exemptions presently granted are expected to be phased out in the GST regime. This could make the service provider to expose with the indirect taxation system for the first time in the GST regime. These service providers are most likely to hit as the tax rate presently from zero is expected to be in the range of 20-24%, directly affecting the cost especially in cases of B2C cases where end consumer may not be eligible to take the set off of tax charged by service provider. In case of ongoing contracts expected to overlap in GST regime, following could be guiding factors for such service providers:

The contract must explicitly spell out that tax would be charged extra, as applicable including GST.

Invoice should be raised and payment received from the customer for services to be provided in post GST regime, so that no tax is applicable to that extent as 2 out of 3 events are fulfilled beforehand.

Inventory of material/capital goods, their location, taxes paid thereon must be documented and declared to claim the credit of taxes paid on purchase as the tax would be charged on the services provided post GST which can be offset against tax paid on such goods.

3. Service export: Service provider may be providing services which are covered by export of service in terms of present rule 6Aof Service Tax Rules, 1994. The place of supply rules under GST regime though expected to be on the existing lines of Place of provision of Service Rules yet it could be possible that certain changes are made which may make the transaction ineligible for export. This could directly affect the service exporters as the service receiver located abroad may not be concerned with the changes of tax structure in India and may straightforward deny for reimbursing additional tax cost especially where tax clause is not mentioned in the contract. The exporter of service could take following actions to safeguard against possible consequences of imposition of tax:

All existing and running contracts must be relooked to examine the tax clause. If not mentioned, modify existing agreement or enter into supplement agreement to provide for GST in case transaction ceases to be export of service.

Refund claim must be filed for all credit accumulated till the time GST is introduced especially in cases where it could be possible that the services presently covered under export of services could be taxed as per revised place of supply rules.

Clear demarcation should be established as regards to services rendered but not billed as on the date of GST introduction. Suggested to raise invoices for all completed services before GST becoming effective so that taxability of the same is not in doubt especially where there is change in place of supply rules.

4. Works Contract: The taxation of works contract under current taxation regime is most complicated as it may involve the element of excise, VAT/CST and service tax on different components of single transaction. The tax is levied under current regime on different taxable event i.e. manufacture, sale and provision of service. However, under GST regime, all these taxable events are likely to be merged and there will be only single taxable event i.e. supply of goods/supply of service. The works contract involves both material and labour portions and consequently the question could arise whether the same should be treated as supply of goods or supply of service? This could make difference due to the fact there could be separate SGST rate for goods and service, different place of supply rule, imposition of additional tax @1% during initial 2 years period etc. Internationally accepted practice in few countries is to treat all composite supply to be considered as supply of service notwithstanding it involves material portion also.This obviate need to segregate the consideration towards goods and services. It is not certain as of now what would be supply principle of works contract, yet following aspects could assist a service provider engaged in ongoing works contract during transition to GST.

Specify all components of tax i.e. VAT, service tax clear in the agreement/work order so that additional cost arising under GST do not eat into the margin of service provider.

It could be possible that existing contracts are exempted which may be brought under tax net in GST regime. In order to avail the exemption benefit extended during pre GST regime, proper documentary records must be mentioned clearly mentioning the stage of completion of contract. Certificate from chartered engineer as to stage of completion could also be obtained especially in case of large contracts.

Availment of credit on inputs is restricted under existing provisions which is not likely to be in GST regime. All materials supplied in GST period would be available as credit. Hence, inventory of all stocks lying as on the date of GST along with supporting tax paid documents must be maintained so that credit of same may be claimed once GST is introduced (subject to provision under GST law).

All purchases should be made from registered dealers clearly showing duty of excise and VAT so that the credit of same could be claimed under GST regime to the extent material to be incorporated in works contract post GST.

The paper writers have made an attempt to analyse certain aspects which could be relevant for a service providers engaged in providing services remaining uncompleted at the time of introduction of GST. The above discussion is made based on the experience gained at the time of introduction of VAT. Feedback- madhukar@hiregange.com or ashish@hiregange.com.

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(Ref - https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=6418/)

8. Government pushing GST to meet April, 2016 deadline - By: Bimal jain

Even though Parliament's Monsoon Session could not turn into success, the Indian Government did not step-back and has been significantly working towards the success of Goods and Services Tax ("GST") to be able to meet the April, 2016 deadline. The Government has pressed the pedal on the much needed administrative ground work for rolling out the ambitious Indirect tax reform on time.

IT Infrastructure

As per the Revenue Minister, the IT Infrastructure for GST implementation is being kept ready, so that as soon as the legislation gets approved, the revenue department will be in a position to take the necessary follow-up actions in terms of ordinary legislations and executive actions required for its support.

It also plans to use Large Taxpayers Units (LTU) for registration of services that are pan-India in nature, such as banking, insurance and telecommunications.

Draft Legislation

The Central Board of Excise and Customs ("the CBEC") has set up an exclusive directorate and is also training around 500 officers, who will further train others. These officers are involved in preparing three draft legislations – Central GST, State GST and Integrated GST.

As stated by the Revenue Secretary, three different committees are preparing the said three legislations and these committees include senior CBEC officers, officers of department of revenue and of the finance and taxation department of State Governments. Out of the three committees, one has already finalised the draft, and the other two are expected to finish by September 15.

The Two Verticals

Two dedicated verticals are being created to deal with policy and implementation of the new tax regime by the CBEC. As stated by VS Krishnan, a CBEC member, "Work is going on full steam...Sub-groups under our officials and that from states are working on the law and procedures... directorate forservice tax will make way for a directorate for GST with two verticals".

The said verticals are being set up for performance management and taxpayer services respectively to be able to respond timely to the GST requirements, keeping in mind the Government's resolve of maintaining ease of doing business. The new directorate of taxpayer services will have the power to mandate third-party audits and studies to ascertain the satisfaction level of key stakeholders with tax practices so that corrective steps can be taken.

Special Session

Shri. Modi's reform agenda suffered a major blow on Thursday, August 13, 2015, when the lawmakers ended the Monsoon Parliament session without approving the much awaited Constitution (122nd Amendment) Bill, 2014 on GST ("GST Bill") with the Rajya Sabha adjourning sine die.

In the hope of making GST a reality by the set deadline, the Modi Government is pondering over calling a Special Session of the Parliament in the second week of September to pass the GST Bill and is also in talks with all political parties to get the requisite 2/3 majority in Rajya Sabha where the NDA is in a minority. As per senior Ministers, the Session is expected to be a two and a half day or three day affair.

Congress's take on convening the Special Session
Even though most of the parties are on board for the GST Bill, Congress wants the tax rate at 18% to be incorporated into the law. The same has been found difficult by the Government to accept as this decision should be left to the GST Council. Also the reduction in Centre's weightage in the council is not agreeable.

The Government is trying to rally support and put Congress under pressure by arguing that, it would be in "national interest" to back the reform to help India avoid a blowback from the Chinese crisis.

Source: Compilation from Economic Times, The Hindu and other News Columns.

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.
(Ref - https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=6423)

9. GST: Impact On The Logistics Industry
The logistics industry in India was estimated to be worth USD 130 billion in 2013 and has been growing rapidly.[1] While the logistics sector could be among the primary bottlenecks in driving economic growth, it will also act as a catalyst to realising India's 'manufacturing dream' over the next decade.

Logistics companies in India have evolved over the years from being mere first-party logistics providers (1PL) to second-party logistics providers (2PL) to integrated fourth-party logistics providers (4PL) by providing a complete package of logistics services, including transportation, warehousing, pool distribution, management consulting, logistics optimisation, etc. and complementing them with advanced supply chain facilities. Alongside, the government has made considerable inroads into ensuring a favourable business climate. In one such initiative, the government has proposed to implement the Goods and Services Tax (GST), which promises to integrate India's multi-layered indirect tax system into a single unified one, unshackling India from its bureaucratic web and improving the ease of doing business. The changes in the proposed indirect tax system could reduce transportation cycle times, enhance supply chain decisions, lead to consolidation of warehouses, etc. which could help the logistics industry reach its potential in terms of service and growth.

In this article, we look at the various aspects of the logistics industry that may be affected by GST and how industry dynamics are likely to change once GST is implemented.

Warehouse Engineering
Warehouses and logistics are an integral part of an organisation's strategic business plan and operations. A multiple warehouse strategy works well for inter-state sales as organisations in India usually operate warehouses in multiple states (one in each state). The organisation then declares the transfer of goods as a stock transfer to negate the Central Sales Tax (CST) incidence on inter-state sales as a sale to one's own warehouse, under the aegis of declaration form F, is not a taxable event under the Central Sales Tax Act, 1956. Such stock transfers are completed through intra-state sales from the state warehouse to the customer. However, once GST is implemented, India will become a common market without any differentiation between inter-state and intra-state sales, thus ensuring a cumulative tax incidence with both the transactions being taxed equally (barring the temporary additional 1% tax on inter-state sales). Thus, the multiple warehouse strategy will be ineffective in reducing the inter-state tax incidence.

Thus, this tax reform could initiate a shift from multiple small warehouses to a large central warehouse in order to mitigate the additional administration cost of operating multiple warehouses. Over time, logistics companies may have to adapt to this evolved warehousing pattern followed by manufacturers/traders and re-engineer their services to be concentrated around major metropolises/areas such as Mumbai, National Capital Region (NCR), Kolkata and Chennai, where the central warehouses of the majority of companies may be situated. This will also shift the pattern of supply assignments, supplier channels and lead to a change in transport routes for logistics companies, accordingly.

Definition of 'Supply' for those in the Business of Supply
Most logistics companies operate in several models, which include a direct 'End to End Supply Model', 'Warehouse + Supply Model' and 'Manufacturing + Storage + Supply Model'. All of these models include the supply of goods (being the primary objective of the industry). With the rollout of GST, the taxable event under the GST regime will be the mere 'supply' of goods and services, as compared to the current taxable event being either manufacture, sale of goods or provision of service. A cursory

reading of the GST Bill indicates that every supply of goods from Point C to Point D could be taxed under GST as it can be construed as supply. Thus, for instance, the service of warehousing acting as a checkpoint between Point C and Point D for temporary storage may be a taxable event under GST.

Although the GST Bill has not finalised the detailed definition of supply, the proposed GST Act is expected to expressly identify the services of the logistics industry and exclude them from the term 'supply of goods'. Also, a classification to clearly differentiate between the 'activity of providing services' and 'activity of supplying of goods' would be welcome.

Hassle-free Supply of Goods and Reduced Transit Times

State-border checkpoints, which are tasked with material scrutiny and location-based tax compliance, negatively impact the overall production and logistics time and account for roughly 60% of a truck's transit time. These unproductive transit hours coupled with regulatory impediments reduce the efficiency of Indian manufacturers compared to their international counterparts. Having a unified market under the new GST regime would assist the smooth flow of goods within the country. Although border checkpoints may not be done away with immediately (as suggested in the First Discussion Paper on GST in 2009), reduced compliance scrutiny at these checkpoints will reduce transport hassles. This change will enable logistics companies to deliver goods more efficiently and optimise delivery times as compared to the present. The reduction in delivery time would also lead to a reduction in distribution costs by 10-15%, thereby lowering the final price of the goods.

Courier Service vs Goods Transport Agency (GTA)

The perennial question among various logistics service providers would be whether to classify themselves and their services under the bucket of Courier Services or Goods Transport Agencies. Although both of them fall within the service tax regime, the complex CENVAT Credit rules and procedures applicable on GTA services may influence services providers to avoid classifying themselves as GTA services. In addition, the requirements of issuing a consignment note and the applicability of the reverse charge mechanism for payment of service tax are differentiating factors pertaining to GTA services. The transport industry also enjoys certain thresholds/exemptions, which could be done away with in the GST regime. Accordingly, a clear understanding and bifurcation of the applicable classification of services is required under the present regime in order to address the relevant service-specific issues. It is expected that these classification issues may not continue under GST and a seamless flow on credit would be permitted in the entire supply chain.

Exemption on Petroleum

Although GST brings a sense of respite for the logistics industry, there is one major drawback – keeping petroleum outside the purview of GST. If corrected in time, this could give the logistics industry another reason to appreciate the GST regime. After much deliberation, petroleum has been brought under the purview of GST but it will be exempt until a date announced by the GST Council. In the defence of the logistics industry, as petroleum is one of the major inputs for this industry, it would be a welcome move if petroleum were to be 'non-exempt' right from the start. This would enable logistics companies to avail credit for the petroleum used in the course of providing logistics services.

Information Technology and CENVAT Credit

In today's fast-paced world, information technology has to keep abreast of new developments and change according to the changing needs. GST will entail a new set of compliance requirements for which companies will have to adopt new ERP accounting systems and inventory management systems to remain compliant during all stages. On the other hand, the industry will then be able to avail tax credits for all its purchases of goods and capital goods alike, be they motor vehicles or packing machinery. Also, tax credits on services will continue to be available under the GST regime.

Conclusion

GST has the potential to accelerate growth in the logistics industry. However, its complete impact can only be understood after the announcement of the draft GST Law and Rules. As rightly put forth by industry pundits, many contentious issues remain, such as the clear definition of supply, supply chain management through warehouse engineering, credit allowance during the transition phase, classification of goods and services under GST, etc. Answers to these issues must be sought at the earliest. With GST's imminent implementation, the logistics industry should start exploring different supply chain models with their clients and at the same time develop a completely synchronised ERP accounting system to support inventory supply management as required under the GST regime. Nevertheless, GST

is still the change the logistics industry is eagerly awaiting as overall, the positive impact of GST far outweighs the disadvantages for this industry.
(Ref - http://thefirm.moneycontrol.com/story_page.php?autono=2906801)

10. BJP MP campaigns for GST Bill

Chief Whip of the Bharatiya Janata Party (BJP) in the Lok Sabha Arjun Ram Meghwal, MP from Bikaner in Rajasthan, said here on Thursday that the party wanted to get public opinion on whether the people were in favour of the Goods and Services Tax (GST) Amendment bill. Talking to reporters during his visit to the State to campaign for the bill, Mr.Meghwal said the GST bill would bolster the tax system, strengthen the States financially and would make business easier.

The Chief Whip criticised the Left and Congress MPs who disrupted the monsoon session of Parliament and pointed out that many important bills could not be passed due to bedlam. "State issues cannot be discussed in Parliament for long. The BJP had disrupted Parliament session earlier during the 2G scam issue. It was too serious compared to the present issue concerning the Rajasthan Chief Minister," Mr. Meghwal said.
(Ref - http://www.thehindu.com/news/cities/kozhikode/bjp-mp-campaigns-for-gst-bill/article7614260.ece)

11. Jayant Sinha appeals to opposition to pave way for GST

Jayant Sinha said we all recognise that there's a rock-solid consensus. Let's work together towards this national priority. Photo: Ramesh Pathania/Mint
The opposition needs to work with the government to approve the constitutional amendment in Parliament to implement the goods and services tax (GST), junior finance minister Jayant Sinha said on Thursday.

"I am deeply disappointed that we could not pass the GST bill in the recently concluded session of the Parliament," Sinha said at the auto component manufacturers' 55th annual convention. "We all recognise that there's a rock-solid consensus. Let's work together towards this national priority."

GST is a proposed indirect tax reform that will unify the Indian market.

Sinha hailed the auto-parts manufacturers' efforts to put India on a global map through exports and emphasised on their contribution in job creation.

In 2014-15, India exported auto components worth $11.3 billion and aims to increase it to $84 billion by 2026 as part of the country's automotive mission plan. The industry reported a combined revenue of $35 billion in 2014-15 and envisages it to go up to $223 billion by 2026.
(Ref - http://www.livemint.com/Politics/faAT8WTbVryw2NFSvb5bjK/Jayant-Sinha-appeals-to-opposition-to-pave-way-for-GST.html)

12. GST logjam disappointing, political establishment must consider national interest: Maruti

NEW DELHI: Joining the chorus of industry leaders disappointed by stalemate on GST, Maruti Suzuki India Chairman RC Bhargava today said political establishment must "re-look at measures" that are clearly in national interest.

"I am sure people at large, who are concerned about the economy, will be very disappointed that due to purely political reasons, with no clear economic considerations being apparent, the GST(Goods and Service Tax) has not been approved," he said addressing shareholders at the company's annual general meeting here.

He further said: "I think that is very disappointing and as industry we believe that the entire political establishment must re-look at measures, which are clearly in national interest."
Commenting on the land bill, he said it "is stuck but it does not impact us because we have all the land we need in Gujarat plant for our expansion over the next few years".

On Wednesday, Society of Indian Automobile Manufacturers (SIAM) outgoing president Vikram Kirloskar had expressed similar views.
SIAM has been seeking for reduced taxation and was looking forward to GST but we are disheartened at the lack of political consensus on it...," Kirloskar had said.

Similarly, Mahindra and Mahindra Executive Director and Group President Pawan Goenka had also said that there hasn't even been a debate in Parliament in the Monsoon Session and major reforms like GST and land acquisition bill are still pending.

"In terms of major reforms such as GST, not much is happening and one cannot be happy about it... It is not only about opposition and government, the whole system has to work together," Goenka had said.

The GST Constitution Amendment Bill could not be passed in the last session of Parliament due to lack of political consensus. The GST is expected to usher in a new indirect taxes regime in the country, boosting business activity.
(Ref - http://economictimes.indiatimes.com/news/economy/policy/gst-logjam-disappointing-political-establishment-must-consider-national-interest-maruti/articleshow/48804128.cms)

13. Caught In The GST Logjam

Though the Government contention that it may convene the second part of the Monsoon Session of the parliament to pass key legislations after reaching a consensus with all political parties has revived industry's hope that the GST Bill will get passed, the industry leaders have shown their acute distress over the new government's failure to keep its promise even after a year in power. The corporate captains had in a plea last week asked the law makers that the legislations like GST must not be stalled by the "perpetual disruptions" in Parliament.

The GST logjam has become yet another issue after the failed land reforms that has badly affected the image of the Narendra Modi government, which had promised progressive changes in the country in its "ease of doing business" campaign.

An online petition signed by more than 15,000 people, including industry leaders such as Adi Godrej, Sunil Munjal, Rahul Bjajaj, Kris Gopalakrishnan, Kiran Mazumdar-Shaw, Anu Aga, Ajay Sriram among others emphasised that GST has taken a long time in coming and has taken years of consensus building.

"Important laws like the constitutional amendments in goods and services tax, which improves India's growth rate is held up," they said.

In the Monsoon Session, which got over on August 13, the government had introduced the Bill in Rajya Sabha, but it failed in face of a protesting Opposition.

"GST could significantly contribute to the growth of the country and its states," say the corporate leaders. Godrej Group chairman Adi Godrej says the GST is one of the most critical reforms for India as it will create a smooth and efficient market, lower costs and raise tax revenues. "It will certainly help generate millions of new jobs so it's unfortunate that it gets delayed due to one or other reason," he added.

Others in the industry echo the same views.

"Indian Industry has been pleading for early implementation of GST for the past 5 years. Since replacement of existing indirect taxes levied by central and state governments by GST is good for the country and therefore political differences should be kept aloof by law makers in passing of the Constitutional Amendment Bill related to GST," says Sumit Mazumder, president, Confederation Indian Industry (CII), one of the key representative body of Indian industries. Although the GST reform has been on the cards for more than a decade, lack of consensus among state governments, including the Gujarat government, which was then headed by Narendra Modi as the chief minister.

GST is expected to usher in a uniform tax regime across the country. But since it broadens the base through the territories of states and the Centre, a constitutional amendment is necessary. While it will simplify tax administration, it will also eliminate economic distortions in production, trade and consumption as it streamlinea several indirect taxes under one title.

According to Finance Minister Arun Jaitley, implementation of GST will help adding at least 2 per cent to the national gross domestic production or GDP considering the efficiencies of the new system that gives credit for taxes paid on inputs at every stage of the supply chain and taxing only the final consumer. It also avoids duplication of taxes and thereby cuts production costs. But the other argument is that it may have impacts on the states' revenue and their political autonomy. So the critics say that the positive impacts of GST are yet to be proved on a practical level.

The industry bodies claim that GST will subsume various levies like excise duty, service tax, VAT, CST, entry tax and octroi. "GST will remove state-wise barrier, entry forms as well as check-posts. Manufacturers can think of "one India" as a customer if properly positioned," according to CII.

"A large number of central and state taxes will disappear and it would mitigate the cascading effect of taxation in the value chain. Exports are likely to go up as Indian products will become competitive both at domestic and international markets," said the CII head in an email interview.

Asked about alternative solutions to the introduction of GST Bill, the CII said; "The main

purpose of the constitutional amendment related to GST is to empower central government to tax goods beyond the manufacturing stage i.e upto retail stage and allow the state governments to tax services. This increase in taxation base cannot be achieved without amendment of the constitution."
(Ref - http://www.businessworld.in/economy-policy/caught-gst-logjam)

14. GST: Tax must accrue to the state where services are consumed

VAT or GST is the most preferred taxation system as it is a tax on final consumption of goods and services in the jurisdiction where it occurs according to the destination principle. Generally collected as a multi-stage tax, GST system facilitates the 'flow-through' of the tax burden to the final consumer while maintaining neutrality within the GST system. Laying down principles for the identification of the consumer who has to ultimately bear the tax burden of GST is a prerequisite. These principles are necessary to ensure that the chances of double taxation and unintended non-taxation are minimised.

In a federal economy, taxing goods does not pose much problem. The movement of goods in the chain of business sale or transfer can be used to locate the place where the goods are used by businesses or ultimately consumed.

Implementing the destination principle with respect to inter-state supplies of goods is facilitated by the existence of border controls. However, implementing the destination principle with respect to trade in services—which by their very nature cannot be subject to border controls—has difficulties. It is not always easy to locate the place of consumption of services, on which also depends the tax jurisdiction.

As of now, in India, services are taxed only by the Centre and revenue accrues only to the Centre. The place of consumption of service, whether in one state or the other, is of no material consequence. In this situation, barring some exceptions, service tax has been conveniently collected from the service provider. However, the situation would drastically change when states also acquire the right to charge tax on services as consumed in the respective state. In the dual structure GST, which is the basic feature of GST to be introduced in India, tax on services would comprise the central component and the state component and the tax collected in a manner that the sanctity of the destination principle—which is the soul of VAT or GST—is not violated. For collecting the central component of tax on services, in most situations it is good enough if tax is collected from the service provider. Only in certain cases, for reasons of administrative convenience, like road transport service, tax collection needs to shifted to the service receiver. The place where service is consumed has no bearing on the revenue attributable to the central government. However, the state component derives its legitimacy from the place of consumption of service. Revenue from tax on a service should accrue only to that state in which service is consumed. Here lies the importance of deciding upon principles to be applied for determining the place of consumption (supply) of services.

In the first place, where a service can be said to be supplied or consumed can defy perception and cause practical difficulties in administering tax. For example, company X contacts a firm in Bangalore to prepare a software. It downloads the newly developed software to a laptop in Gurgaon and uses it at a business conference in Delhi. Where has the service been used? In Gurgaon or in Delhi? Clearly, irrespective of the place where the service is considered to be used, it would be impossible to administer tax in such situations. In most cases, it would be difficult for software supplier to track use of services in this way and difficult for a tax administration also to know where the services were used. In order to overcome such difficulties, VAT or GST employ proxies to determine where use or consumption of service occurs and thus which jurisdiction has the right to tax. Adoption of proxy or deemed place of consumption is necessary because while the tax on service is planned to be collected as soon as the service is provided, the time or place of actual use of service is not always certain. The need of proxy for use of different kinds of services has led countries using VAT or GST to notify rules to determine the place of supply where a given service is deemed to be consumed. Such rules are necessary to deal with cross-border (even inter-state) supply of services.

In the Indian context, no such rules were framed till 2012, when the Centre notified the Place of Provision of Service Rules, 2012. It identifies the place of supply of services, employing criteria like the nature of service, location of the recipient of service, place of performance of service, location of service provider, etc. In most cases, though, the location of the recipient of service is considered as the place where the service is deemed to be supplied or consumed.

But it is important to realise that when the tax on services is collected only by one authority, the central government, the Place of Provision of Service Rules have had little practical significance. On the other hand, they have created confusion like in the case of service provided by intermediaries.

Nevertheless, when GST would empower states to levy and collect their component of GST on services, the Place of Supply Rules would play the most crucial role in protecting states' revenues from services. In the above example, whether the state component of GST would accrue to Karnataka or Delhi or Haryana would depend on how the Place of Supply of Service Rules determine the place where the service would deemed to be consumed. States would be the main stakeholders in the Place of Supply of Service Rules.

The introduction of GST is long overdue in India. The basic design of GST itself remains hidden beneath a shroud of political confusion. Who knows, consensus on the nitty-gritty of GST, like the Place of Supply Rules, might turn out to be no less unpredictable. Poor taxpayers!

The author is a retired chief commissioner and former joint secretary in the finance ministry.
(Ref - http://www.financialexpress.com/article/fe-columnist/gst-tax-must-accrue-to-the-state-where-services-are-consumed/130222/)

15. 1% Additional Levy: Where is it heading us? - By: Pradeep Jain

Introduction:-
Goods and Service Tax (GST) has been a topic of debate in the recent past. With the NDA government looking firm to bring in the GST, the members of Rajya Sabha still have a number of objections to raise, and for their very reasons. Finance Minister Arun Jaitley has been strongly contending that the implementation of GST would remove cascading effect of taxes thereby making way for a business-friendly economy. However, on close observation ofClause 18 of the Constitution (122nd Amendment) Bill, it appears that things are quite different than what is being projected. This clause seeks to impose the most talked 1% additional levy by the Centre on supply of goods in course of inter-state trade or commerce. In this article, an effort is being made to analyze this levy and criticism faced by it.

What is 1% additional levy?
The provisions relating to 1% additional levy have been proposed in clause 18 of the Constitution (122ndAmendment) Bill (popularly known as GST bill). This clause is being divided into four sub-clauses. These clauses are explained as follows:-

The sub-clause (1) to the clause 18 says:-
"An additional tax on supply of goods, not exceeding one per cent in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2)."

From analysis of above sub-clause 1, features of this levy can be listed as follows:-
It is an additional tax and will be levied over and above the normal GST rate as may be prescribed.

It shall be levied in course of inter-state trade of commerce.

Its rate will not exceed 1%.

It will be levied and collected by Centre for a period of two years.

The period of two year can be revised by GST Council.

The proceeds from this levy will be assigned to the State in which the supply of goods originates.
Further, provisions contained in sub-clause 2 to 4 to the clause 18 are explained as follows:-

Sub- clause no.	Provision contained
2	(a) Collection from this levy shall not form part of consolidated fund of India and will be deemed to be assigned to the State from where the supply originates. (b) Only the proceeds attributable to Union territories shall be credited to Consolidated Fund.
3.	Centre may prescribe list of goods on which this levy will not be applicable.
4.	The law related to principles for determining the place of origin (from where the supply of goods takes place) shall be formulated by Parliament.

Need of such levy:-
Since GST is a destination based tax, it is said that initially the manufacturing states or the states where the production of goods is done; will suffer loss. The

purpose of this 1% additional tax is to compensate the manufacturing states, i.e., the states from where the supply of goods takes place. However, it is expected that GST will lead to increase in revenues of all the States, thus, the manufacturing states will also gain in long run. Due to this reason, this levy has been proposed for a period of two years only. However, end decision has been kept safe in the hands of GST council. This levy can be said to be a serious effort made by the Centre to convince the States to agree upon the introduction of GST. It is also in line with the recommendations made by the Empowered Committee in their various meetings for the protection of the revenues of the manufacturing States. It is worth noting here that Clause 18 in itself does not make any distinction of a "manufacturing state" and this tax shall be levied by all States who send their produce outside the State.

1% Levy: CST in new name?

It has been stated by our Finance Minister that the input tax credit of this levy will not be allowed. Thus, this is against the very basic objective of GST. Even the main feature of GST as popularized by the ruling party is that there will be no cascading effect. When the Credit of this levy will not be allowed where will it go? Definitely, it will be included in the cost of the goods that will further be subject to tax. Thus, cascading effect will be there. Also, it is mentioned that this 1% Additional tax shall be levied for a period of two years or such other period as the Goods and Services Tax Council may recommend. By these features, this levy seems to be replica of Central Sales Tax (CST) levied currently. Also, this levy has most of the inherent features of CST. At the time of introduction of VAT, CST was levied and it was said that it will be reduced year by year and ultimately it will be abolished. This promise was kept in the initial years and rate of CST was reduced from 4% to 3% and from 3% to 2% respectively. However, there was no reduction thereafter and still after around 9 years of implementation of VAT, CST could not be abolished as initially promised by the Government. Thus, the past indicates how far has the government withdrawn any tax after imposing it once? One can never be so sure as to if the duty shall last for two years or twenty!

Against the spirit of GST which says "no cascading effect here":-

GST is a destination based tax and this 1% additional duty is an origin based tax. How can both- the destination based as well as the origin based tax be levied on a single transaction? Also, ironically, it would favour international trade over inter-state trade. As stated earlier, clause 18 in itself does not make any distinction of a "manufacturing state" and this tax shall be levied by all States who send their produce outside the State. This provision in itself is the originator of cascading effect. Let us consider an example- Suppose a dealer in Maharashtra purchases cloth from Delhi and sends it to Punjab for tailoring. The finished goods are sent back to Delhi. Such finished goods are then consigned to Maharashtra for sale. In this way, by the time they reach Maharashtra, they would be laden with an additional tax burden of 3-4%, being 1% for each state. It would be more feasible for the dealer in Maharashtra to import such goods rather than getting them from Delhi.

On one hand, the government has been laying emphasis on "Make in India" campaign, wherein, special efforts are being made to ensure the free flow of goods and services in the economy. On the other, additional duty of such kind is being levied. It is beyond our understanding- how such additional duty shall contribute to the free flow of goods and services?

Rate of GST is already high, why 1% extra with no credit facility?

Scope of GST would be much wider than any other indirect tax structure. Thus, a no. of goods and services which are not taxable under present structure would also come under the ambit of tax. Also, the rate of GST is already proposed to be around 18-22% which is quite high. A service provider, who currently pays tax @14%, would be liable to pay the tax at a higher rate. The same goes with trader of goods as well. Adding to this, the rate of GST is going to be a single consolidated rate for both goods as well as services. In this manner, a trader of goods has to pay tax for service component also and service provider has to pay tax for goods also. Under such circumstances, when the tax imposition is already going to be higher than the existing situation due to increased rate and wider scope, where does the question arise regarding loss of revenue?

Compensation of losses already agreed, why provision for this levy:-

There is provision in clause 19 of the GST bill wherein the Central Government will compensate the loss occurring to the states due to implementation of GST for five years. When there is already a provision of compensation of loss occurring to the states, then where is the need for additional 1% duty which is totally against the basic principles of GST. Also, the provision of compensation of loss and this 1% additional levy is basically drafted for loss making states during transitional period of GST. When we talk of clause 19, it would result in no profit no loss situation since whatever the loss state is making will be compensated by Centre. However, when it comes to 1% additional levy, though the states making losses will have some income from this tax but the states already making profit or under no profit no loss situation will definitely gain extra. This seems to be against the basic principles of introducing this levy as the states gaining will gain more and that too with the cost of other states which shall have to bear the cost of this 1% additional levy.

While parting:-
Going by the progressions, it wouldn't be wrong to state that Modi Sarkar has actually lost the basic sight of GST. What was depicted to be the most simple taxation system is now being turned into a cobweb of complications. They need to practise what they preach. Not just the people, even the bureaucratic system of our nation is not ready to accept such complicated taxation system.

To conclude, it can be said that the GST era is just round the corner. The financial Godfathers of our nation must think about the disastrous impacts which the additional tax can create on our economy. Levying an additional tax can never be a business catalyst. These are certainly not the "Ache Din" that India was waiting for. The need of the hour is to dismantle this additional duty and make way for an economy which is best suited for trade, commerce and entrepreneurs. And only then, shall we be able to convert the dream of "Start-up India, Stand-up India" into a reality!!!
(Ref - http://www.thehindu.com/news/cities/kozhikode/bjp-mp-campaigns-for-gst-bill/article7614260.ece)

16. Congress should allow GST passage for accelerating growth: Govt

New Delhi: Racing against time to ensure passage of the goods and services tax (GST) bill in Parliament, the government on Saturday said it wants an extended monoson session so that the Constitutional amendment bill can be approved and appealed to Congress to support the key reform to accelerate the country's growth.

"Government's proposal for having extended Monsoon Session is still on. We want to convene the extended session. GST Bill is important for the country's economy. We have accepted most of the suggestions. I appeal to Congress to help pass the bill and not make it a political issue," parliamentary affairs minister M. Venkaiah Naidu told reporters at a press conference in New Delhi.

Amid frequent speculation about the government toying with the idea of calling a joint session, the union minister made it clear that since the GST is a Constitutional Amendment Bill, it requires endorsement of both Lok Sabha and Rajya Sabha and cannot be done in a joint session.

"We cannot call a Joint Session for it. I appeal to the main opposition party to see reason. The GST bill has been discussed in detail for last many years and examined by finance ministers of four opposition parties so far.

"The issues raised by the states—both manufacturing and non-manufacturing, have also been addressed to their satisfaction. Now Congress must accept the bill to accelerate the economy of the country," Naidu said.

The parliamentary affairs minister, who has met a number of opposition party leaders in last fortnight including Leader of Congress in Lok Sabha Mallikarjun Kharge, had earlier said that the government was looking forward to passage of the GST Bill "at the earliest" and has an "open mind" on amendments to this key reform measure.

Government plans to roll out the measure from April next year. Though the dates for calling the extended monsoon session are yet to be decided, there was indication that the government wanted to do it this month. Keen to ensure passage of the GST bill, government had kept open the option of reconvening the session with the Cabinet Committee on Parliamentary Affairs deciding not to recommend immediate prorogation of the Houses after they were adjourned sine die on 13 July.

GST, which has been called the biggest tax reform post-Independence by the government, proposes to create a uniform tax rate across the country by subsuming excise, service tax and other local levies. The Constitution Amendment Bill on GST is still awaiting the nod of Rajya Sabha, which could hardly transact any business in the recently concluded monsoon session due to uproar over Lalitgate and Vyapam scam.
(Ref - http://www.livemint.com/Politics/VVglPLG7h3URXBApBUdxZN/Congress-should-allow-GST-passage-for-accelerating-growth-G.html)

17. Tax Exemptions in GST - Principles and Practise

http://resource.cdn.icai.org/15963article_GST.pdf

18. Govt asks oppn to cooperate on GST,non-commital on spl session

NEW DELHI: With Congress and the Left continuing to oppose the GST Bill, the government today appealed to the opposition to cooperate to pass the proposed legislation in Parliament but remained non-commital on the issue of convening a special session for it.

"I appeal to the opposition to cooperate so that we can pass the GST Bill in Parliament," home minister Rajnath Singh said here.

Asked whether the government will convene a special session to adopt the legislation, Singh, who heads the Cabinet Committed on Political Affairs, said nothing can be ruled out.

The home minister said when the GST Bill is passed in Parliament, the country's economy will get a boost.

The GST Bill has been passed by Lok Sabha but Rajya Sabha is yet to pass as Congress, Left parties and AIADMK have been opposing it. These parties want changes in the bill.

(Ref - http://timesofindia.indiatimes.com/india/Govt-asks-oppn-to-cooperate-on-GSTnon-commital-on-spl-session/articleshow/48843779.cms)

19. 'Modi govt.'s model for GST may not result in significant growth push'

Goldman Sachs estimates that the GST, as currently proposed, would add only about zero to half a percentage point to the annual GDP growth of India.

Wall Street firm Goldman Sachs, in a note 'India: Q&A on GST — Growth Impact Could Be Muted', has put out estimates that show that the Modi Government's model for the Goods & Services Tax (GST) will not raise growth, will push up consumer prices inflation and may not result in increased tax revenue collections.

The decision to exclude from the GST items such as tobacco, alcohol and electricity and the one-per cent additional tax over and above it are among the flaws in the model that, Goldman Sachs says, will lead to these sub-optimal results from the biggest economic reform in India in recent years.

In November 2013, Goldman Sachs' note 'Modifying Our View' had upgraded its forecast of the Indian stock market and economy based on investor perception of strong BJP performance in the Lok Sabha elections, a projection that is widely credited as one of the key triggers for the Sensex rally from under 21,000 then to a high of 29,681.77 on January 29, 2015. It closed below the 25,000-mark on Monday, a 15-month low. Goldman Sachs estimates that the GST, as currently proposed, would add only about zero to half a percentage point to the annual GDP growth of India. It has also estimated that if fixed at 20 per cent, the GST rate would increase headline consumer price inflation by about a percentage point in the year that the tax is implemented. Though, overall, the impact on inflation, it said, will depend on the rate that is implemented.

The estimate of the impact on GDP is 'significantly lower' than that of the National Council of Applied Economic Research (NCAER) in part, it says, due to the proposed GST excluding key taxes such as on petroleum, alcohol, electricity and real estate as well as a proposed additional up to 1 per cent tax on inter-state movement of goods. The NCAER in 2009 estimated that moving to the GST can increase India's growth by 0.9 percentage point to 1.7 percentage point.

We think the NCAER estimates may no longer be the right metric, it said in the note released last month. The reasons it gave also include: First, NCAER uses the 2003-04 input-output table for its calculations, which is outdated. Second, the implementation of the VAT since then has already captured the state-level productivity gains in goods that were part of the study's estimate. Third, the study assumed the GST had more comprehensive coverage, including petroleum products, which are not being considered by the Modi Government for its proposed GST. Fourth, the study assumed a much lower revenue neutral rate than currently being considered. Finally, the NCAER study does not capture the distortions which could arise from the 1-percent additional tax for inter-state movement of goods proposed by the Centre.

Its analysis of the impact of implementing the Value added Tax (VAT) in the mid-2000s suggests that the states which introduced the tax witnessed, on average, just about 0.6 percentage point higher GDP growth in the three years after implementation relative to those that did not implement VAT.

Goldman Sachs also estimated, based on cross-country evidence and the evidence from state VAT implementation, that retail inflation could rise 0.9 percentage points if the GST rate were to be 20 per cent.

Its analysis suggests that that about a third of the basket of products in the consumer price inflation index would come under the GST. The rate of price-rise for services would go up by more than a percentage point if the Centre and States settle for a GST rate of 20 per cent as against the existing service tax rate of 14 per cent. Inflation in goods could be lower by about 0.3 percentage point against the current average tax on consumer goods works out to about 22 per cent.

It also found that Asian countries which implemented GST between 1977 and 2015 all had retail inflation 1.1 percent point higher on average in the year of implementation.

Goldman Sachs does not expect large gains in tax revenues in the short term from GST for reasons that include the exclusion of items such as alcohol, which restricts the revenue gains. Also, it says, the GST rate to be announced by the GST Council is to be a revenue-neutral rate. And, another reason is the Centre’s offer to compensate the state governments for five years for any revenue shortfalls.

The GST is a nation-wide integration of goods and services tax in India. It combines about 16 types of taxes such as central excise and service tax, states’ VAT, entertainment and luxury tax, and various surcharges into a single tax.
(Ref - http://www.thehindu.com/business/Economy/modi-govts-model-for-gst-may-not-result-in-significant-growth-push/article7625827.ece)

20. Firms with annual turnover of Rs 25 lakh might not attract GST

Companies with an annual turnover up to Rs 25 lakh might be exempted from the proposed national goods and services tax (GST). The Centre and states are likely to settle for this threshold as they finalise the GST laws.

According to finance ministry officials, the draft of these laws is expected to be ready by the end of this month. The Centre and states are working on a mechanism to avoid dual scrutiny of companies by them. "The thinking now is that all legal entities with an annual turnover of up to Rs 25 lakh will be completely exempt. This will be applicable to one TIN (Taxpayer Identification Number)," said a ministry official.

The government is looking to reconvene Parliament's monsoon session to get the Constitutional amendment Bill on GST passed in the Rajya Sabha. Three Bills - on the Centre's GST (CGST), states' GST and Integrated GST -would come up after the Constitutional Bill is cleared. Work on the drafts is on.

States wanted a threshold of Rs 10 lakh to protect their revenue, while the Centre has assured them full compensation for five years. Besides, firms with an annual turnover between Rs 25 lakh and Rs 75 lakh will have an option to pay a flat rate of one per cent or GST rate. If they decide to opt for one per cent rate, firms will not get input credits because of which many, particularly dealers, may choose the GST rate.

The exemption limit from value added tax and service tax across states - except the North-East - is close to Rs 10 lakh turnover. "There will be an impact on revenue but it will depend on how many under the Rs 25 lakh to Rs 75 lakh annual turnover bracket opt for the one per cent rate. If 60-70 per cent opt for it, there will be loss of revenue for states but they will also get compensated by the Centre," said Bipin Sapra, tax partner, EY. From the manufacturing point of view, it was important to keep the exemption limit higher, he added.

While these are likely to be part of the GST laws, a final decision on this is to be taken by the yet-unformed GST Council. This is to be constituted within two months of enacting the Constitution amendment. It would comprise the Union and state finance ministers and will be empowered to take key decisions on GST.

The idea is that entities with a turnover of up to Rs 75 lakh will not attract any checks or audits from either the state or the Centre. The Centre will give states a free run on compliance checks for companies with annual turnover above Rs 75 lakh and up to Rs 1.5 crore. "Here, the Centre will only do online scrutiny. And, if states detect non-compliance with respect to CGST, only the Centre will issue a notice. States cannot issue a notice on our behalf," said an official. However, in case of companies with annual turnover of more than Rs 1.5 crore, there will be concurrent audits by both the state government and the Centre.

"The government is still discussing a mechanism of a risk-based selection so that the checks by Centre and states do not overlap," said the official.

The government on Sunday made a renewed appeal to Opposition parties to help pass the Constitutional amendment through an extended monsoon session. It is vital that this be cleared at the earliest for the government to stick to the GST implementation timeline of April 1, 2016. The three draft legislations will lay down the fine print of the uniform indirect tax regime.
(Ref - http://www.business-standard.com/article/economy-policy/firms-with-annual-turnover-of-rs-25-lakh-might-not-attract-gst-115090800022_1.html)

21. Special house session: Congress sticks to resignation demand

Congress has thrown a spanner in the government's plans to convene a special session of Parliament to push through a Constitution amendment bill for ushering in GST. Stating that "nothing has changed between the Monsoon session and now", Ghulam Nabi Azad, leader of the Opposition in the Rajya Sabha, said after the Congress Working Committee meeting on Tuesday that a special session would serve no purpose unless action is taken against External Affairs Minister Sushma Swaraj and Chief Ministers of Rajasthan and Madhya Pradesh.

"They did not take any action. We have informed the Parliamentary Affairs Minister that nothing has changed between the Parliament session and now…The Prime Minister has failed to take action. We told them what is the fun of having a special session. The previous session could not transact any business because we had demanded something. That demand stands. You call a special session tomorrow and people will ask what happened to our demand," he said.

"They (the government) will have to first tell us before the session what action they are taking," he said.

A fortnight ago, Parliamentary Affairs Minister Venkaiah Naidu met Leader of the Congress in Lok Sabha Mallikarjun Kharge and spoke to Azad over the phone to gauge the Congress mood on the government's plan to convene a special session.

Azad also made it clear that Congress would support the GST bill only if the changes sought by it are accepted. "We are for the passage of GST (bill) if our amendments, which are in national interest, are accepted," he said. A political resolution passed by the Congress Working Committee Tuesday reiterated the party's commitment towards implementing GST, "provided the central government addresses the existing shortcomings in the bill."

Besides demanding that the 18 per cent ceiling rate be specified in the bill, the Congress has demanded scrapping of the proposal to levy an additional one per cent tax, inclusion of tobacco and tobacco products, alcohol for human consumption and electricity supply and consumption in the ambit of the bill. The party has also demanded that the share of the states in voting in the GST council must be enhanced to 75 per cent and the setting up of a GST Disputes Settlement Authority.
(Ref - http://indianexpress.com/article/india/india-others/special-house-session-congress-sticks-to-resignation-demand/)

22. GST rollout: CBEC looks to curb tax evasion

With the roll-out of goods and services tax (GST) in the works, the Central Board of Excise and Customs (CBEC) is pitching for an information exchange system between different tax agencies to curb evasion.

GST is expected to create a trail of different transactions as at every level traders will have to register their invoices to claim input tax credits. In addition, the entire process will be online with the help of the information technology infrastructure. The integration of state and central indirect taxes will provide a comprehensive picture of a taxpayer.

This will make it easier to check evasion of any tax—both direct and indirect—by a trader if the different agencies share information among themselves.

For instance, it can detect cases where a company pays a certain amount of tax deducted at source (TDS) but does not pay the excise duty at all or pays a lower amount of excise duty that is not commensurate with its profit.

"The enforcement of central excise enforcement has improved over the last couple of years. The data received from CBDT (Central Board of Direct Taxes) in the last two years has helped in better enforcement especially in the area of TDS (tax deducted at source) and foreign remittances," said an official at CBEC.

"There is a case for a formalized sharing information agreement between all the tax agencies especially under GST where all information is computerized," the official added.

The GST network (GSTN), the information technology backbone for GST, is readying a PAN (permanent account number) based-registration, filing of tax returns and a payment processing system system that will help in collating all relevant data in one place.

GSTN will act as a portal where all data will be collected on behalf of the centre and the states and then passed on to the tax authorities.

To be sure, tax agencies do share information informally. CBDT in 2011 undertook a 360-degree profiling of taxpayers by matching their direct and indirect tax payments to check for tax evasion. The different investigative wings of the departments also share data on specific cases of tax evasion.

GST is a tax reform that seeks to economically unify the country by removing barriers across states. The government hopes to implement GST by 1 April 2016 but is finding it difficult to meet its rollout date given legislative hurdles and a delay in passing an enabling constitution amendment bill in Parliament.

"A major change under GST will be that the entire indirect tax system will be on an IT (information technology) platform. A trader will be not able to claim input tax credit till the supplier does not upload invoices and file the monthly tax return, thereby checking the problem of fake invoices," said R. Muralidharan, senior director at Deloitte in India. "There will also be a greater coordination between the centre and the states. Also, since the registration under GST is PAN-based, there is a direct linkage between direct and indirect tax."
(Ref - http://www.livemint.com/Home-Page/3iint4QhqXcLrKKxU7lpsO/GST-rollout-CBEC-looks-to-curb-tax-evasion.html)

23. Only matter of time before GST is passed: Finance Minister Arun Jaitley

Finance Minister Arun Jaitley says it is only a matter of time before the crucial Goods and Services Tax (GST) is passed in the parliament, as almost everyone was in support of it now. Jaitley said that he would like to see GST passed by April 1, 2016. He was speaking at the Economist India Summit 2015.

Talking about GST and the parliamentlogjam over the policy, he said that if legitimate number of people say that it (processes) should be faster, pressure must be kept on the government. He added that the pressure of public opinion on those who want to obstruct growth must be equally powerful too. He said that if the kind of obstruction that was underway currently remained, then the Congress may succeed in hurting India's economy and detail it for sometime.

He said that this time around, there was a larger public opinion in favour of letting the Parliament continue working and enact laws that it wanted to. Most people didn't even realize there was a nation-wide strike a few days ago, Jaitley said, talking about the pan-India trade union strike. He said, there's been a change which reflects the direction in which India's popular mood is there.

Jaitley said that internal restlessness was a good sign, as it will only help India grow. "It's good for India now to become restless, it's only then that we will grow faster," he said. "The internal mood in India is, 'this is not enough, we have to grow more,' I think that's a great sign," he added.

About the Land Acquisition Bill, which is another keenly watched development by stakeholders and investors, Jaitley called it "probably one of the worst drafted, even in terms of legislative drafting laws that I have seen."

He said, "the draftsmen intended something else, ended up producing something else."
(Ref - http://www.dnaindia.com/money/report-only-matter-of-time-before-gst-is-passed-finance-minister-arun-jaitley-2123332)

24. Is India throwing in the towel on GST?

New Delhi: Finance minister Arun Jaitley on Wednesday appeared resigned to the possibility that the goods and services tax (GST) will miss its 1 April 2016 deadline.

"I would like to see GST being implemented by 1 April 2016 but if this kind of obstructionism remains, then perhaps the Congress party will succeed in hurting India's economy and delaying it for some time," said Jaitley at the Economist India Summit 2015 in New Delhi.

A delay in the rollout of one of India's most ambitious tax reforms is likely to further dent the image of the Narendra Modi government, already hurt by its decision to back down on land reforms in the face of opposition.

Jaitley, however, expressed hope that the Constitution amendment bill needed for GST's implementation may get passed soon.

"GST is now being almost supported by everybody. Even the objections being raised, I don't see much substance in it. It is only a matter of time since its passed," he said.

GST aims to remove barriers among states and unify the country into a common national market. It will subsume all indirect taxes levied by the Centre and the states.

The government has been struggling to bring on board the Congress party to support the Constitution amendment bill in the Rajya Sabha where it is short of numbers. It has also been considering bringing in a special session of Parliament but with Congress reiterating that it will support GST bill only subject to it's recommendations being met, it may not help in meeting the deadline.

The ruling Bharatiya Janata party is in a minority in the Rajya Sabha where it has only 48 members in a 245-member house. To get the Constitution amendment bill passed, the government needs a two-third majority, for which the support of Congress party with its 68 members is crucial.

Jaitley also said that the numbers in the Rajya Sabha will soon change with elections due in April 2016 in the upper house.

Communications minister Ravi Shankar Prasad and commerce minister Nirmala Sitharaman are also attending the summit, besides industry leaders including Kumar Mangalam Birla, chairman, Aditya Birla Group, Rahul Bajaj, chairman, Bajaj Auto and head of Bajaj Group and Prashant Ruia, group chief executive, Essar Group.
(Ref - http://www.livemint.com/Politics/hVZtIXjJc74KvSfxjhXktL/Is-India-throwing-in-the-towel-on-GST.html)

25. No special sitting for GST, monsoon session to be prorogued (Third Lead)

The government on Wednesday decided to prorogue the monsoon session of parliament, putting at rest speculation of a special sitting to pass the much-awaited Goods and Services Tax Bill.

Blaming the Congress for the delay in the passage of the bill, Finance Minister Arun Jaitley said that the government had been talking to the party over this and found that the chief opposition party was unlikely to change its stance on disrupting house proceedings. Congress was quick to reject the charge, saying that the finance minister's comments were "political kite-flying" and hit back at the Bharatiya Janata Party (BJP).

Jaitley told the media after a meeting of the union cabinet: "The Cabinet Committee on Parliamentary Affairs (CCPA) which met here has decided to request the president to prorogue the monsoon session of parliament.

"Initially there were indications that they will take a decision on whether to change their attitude on disrupting house proceedings, specially on the GST Bill. We tried to make them understand, but we have been told that this will continue."

The Congress which had been demanding the resignations of External Affairs Minister Sushma Swaraj, and Rajasthan Chief Minister Vasundhara Raje over the Lalit Modi issue and Madhya Pradesh Chief Minister Shivraj Singh Chouhan over the Vyapam scam, had repeatedly disrupted both the houses of parliament in the monsoon session.

Jaitley said that the "Congress party's anger seems to be both with the government and the people of India. Their attitude is guided by a revenge against the government as well as the people after they were reduced to 44 seats in the Lok Sabha.

"It (the Congress) has only one weapon of not letting the parliament function. Majority and numbers are against them. We tried to make them understand about the global slowdown and told them that all political parties should display elements of statesmanship.

"We will keep trying. We are in contact with all political parties. And nearly all parties except Congress are in favour of this bill. In Lok Sabha, except Congress, all political parties had voted in favour of the bill. Congress had walked out, they (other parties) had not walked out. If situation changes, then the cabinet will again reconsider the matter."

The GST Bill is now likely to be brought in the Rajya Sabha during the November-December winter session of parliament. While the Lok Sabha has already passed the bill, it will have to again do so as a parliamentary committee has suggested amendments to the bill.

The monsoon session of parliament was adjourned sine die on August 13 without transacting any substantial business due to the Congress protests.

In a strong rebuttal, Congress spokesperson Randeep Surjewala said: "Even as Jaitley gets into the political kite-flying mode, we would counsel him to take his role as the finance minister of the country more seriously, by spending time in South Block rather than in television studios."

"We would like to remind the finance minister that it was the Congress party and its government that authored the GST, and even today, our opposition is not to the bill, but limited to only those parts which kill the soul and spirit of the real GST legislation."

Surjewala, in a statement, said: "'Insinuations', 'innuendos', 'indiscretions' appear to have become buzzwords of the political conduct of finance minister. He has again tried to claim ownership of GST and the path to growth, even after having obdurately opposed GST for more than seven years."

"Instead of apologizing to the nation, on behalf of the entire BJP and the prime minister, who as the chief minister of Gujarat, had doggedly remained the staunchest opponent of arrival at a consensus on GST, the finance minister, is trying to give the Congress party sermons on economy, growth and inclusion," he added.
(Ref - http://www.business-standard.com/article/news-ians/no-special-sitting-for-gst-monsoon-session-to-be-prorogued-third-lead-115090901134_1.html)

26. 'India can't afford to spend too much time to bring GST'

NEW DELHI: Pitching for early implementation of GST, global giants IKEA and Huawei today said India cannot afford to spend too much time to bring the new indirect taxation system.

"It (GST) is massive. It has to happen...Let's move on and do not spend time on that. 5 per cent of the people are discussing and 95 per cent have pre consensus," IKEA India CEO Juvencio Maeztu said here at the Economist India Summit.

He added: "It has to move on and we can not spend time and I have seen as a foreign company, the most serious sign, it's time to move forward."

Underlining the importance of GST, Maeztu said: "It will reduce price for consumers and whatever is for the good of consumers is good for the economy...Let's put the size, you have to move with 95 per cent."

"It is not a political issue. We cannot afford to spend too much time," he said.
Expressing similar views, Huawei India CEO Jay Chen said if it can be solved "it'll be very useful for the industry" overall.

The GST is expected to usher in a new indirect taxes regime in the country, boosting business activity. Many industry leaders have expressed disappointment over the logjam in its implementation.

The GST Constitution Amendment Bill could not be passed in the last session of Parliament due to lack of political consensus.
(Ref - http://economictimes.indiatimes.com/news/economy/policy/india-cant-afford-to-spend-too-much-time-to-bring-gst/articleshow/48883982.cms)

3.0 Case Laws

3.1 Case Laws related to Excise

Sr. No.	1
Relevant Section	Section 11 read with 11E
Relevant Statute	Central Excise Act 1944
Issue	Refund cannot be withheld by revenue for adjustment of future demands
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Assessee filed a refund claim, which was sanctioned but adjusted against pending dues in other proceedings - Assessee argued that since demand in other proceedings was set aside and matter was remanded back by Tribunal, hence, refund claim was to be allowed - Department agued that refund may not be allowed till disposal of other proceedings - HELD : No dues were lying pending against assessee - Therefore, keeping said amount for adjustment of future demands is not sustainable - Hence, refund was ordered
Citation	[2015] 59 taxmann.com 303 (Mumbai - CESTAT) Commissioner of Central Excise, Aurangabad v. Terna Shetkari SSK Ltd.

Sr. No.	**2**
Relevant Section	Rule 3 read with Section 11A of the Central Excise Act 1944
Relevant Statute	CENVAT Credit Rules 2004
Issue	Shortage of Inputs Items at the same time excess of some input items due to accounting errors
Sub Issue	-
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Department found shortage of inputs and, alleging clandestine removal of inputs, sought reversal of credit of Rs. 25.67 crores - Assessee argued that : (a) alleged shortage was only 0.24 per cent; (b) many other inputs were in excess involving Rs. 27.59 crores; (c) alleged shortage/excess was due to accounting errors and there was no 'shortage' in fact - Revenue argued that amount involved is very huge - HELD : There was no shortage and variation was as a result of accounting errors - There were excesses also due to which there was no gain to assessee and this fact alone demonstrates bona fides of assessee in claiming credit - In view of finding of fact that there was no clandestine removal of inputs, revenue's appeals were dismissed
Citation	[2015] 60 taxmann.com 377 (SC) Commissioner of Central Excise v.Maruti Suzuki India Ltd.

Sr. No.	**3**
Relevant Section	Section 11B
Relevant Statute	Central Excise Act 1944
Issue	Refund to be granted as re-credit where duty is paid using Cenvat Credit
Sub Issue	-
Favour of	Revenue
Issuing Authority	Supreme Court
Judgment	Assessee paid duty on final products, partly in cash through PLA and partly using Modvat/Cenvat balance - On refund, Commissioner (Appeals) allowed : (a) cash refund of duty paid through PLA; and (b) refund by way of re-credit of duty paid through Modvat/Cenvat balance - Assessee argued that refund of duty paid using credit balance must be allowed in cash - Tribunal held that as per section 11B read with Cenvat/Modvat rules, there is no provision for refund of credit either by cash or cheque, except in case of exports without payment of duty/tax where refund of credit is allowed as incentive to exporter - HELD : Insofar as claim of refund of amount in cash, which has been

	rejected by Tribunal is concerned, it calls for no interference
Citation	[2015] 60 taxmann.com 378 (SC) Purvi Fabrics & Texturise (P.) Ltd. v.Commissioner of Central Excise, Jaipur

Sr. No.	4
Relevant Section	Section 4
Relevant Statute	Central Excise Act 1944
Issue	Optional Accessories value not to be included in value of Final Product
Sub Issue	-
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Bought-out Parts and Accessories - Assessee was manufacturer of 'flushing cisterns' - Assessee was also supplying Handle assembly, Ball valve assembly, overflow assembly, Syphon assembly, Outlet flange assembly and Flush pipe assembly, only to buyers who asked for that - Department sought inclusion of assemblies in value of 'flushing cisterns' - HELD : Assessee was buying aforesaid assemblies/components from market and supplying to buyers at their option - Hence, Tribunal has rightly declined to add value of aforesaid components (assemblies) which are not "part" of flushing cistern manufactured by assessee - Hence, appeals were dismissed more so, because tax involved was not much
Citation	[2015] 60 taxmann.com 373 (SC) Commissioner of Central Excise, Trichy v.Neycer India Ltd

Sr. No.	5
Relevant Section	Section 11B
Relevant Statute	Central Excise Act 1944
Issue	Assessee shall file refund claim within 1 year from the date of the order in his favour
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT Chennai
Judgment	Duty/Tax paid under Protest - Assessee paid service tax under protest on 14-8-2008 - Vide order dated 22-12-2010, assessee became entitled to refund - Assessee filed refund claim on 5-12-2011 but same was returned on 7-12-2011 for rectifying defect - Assessee resubmitted claim on 1-3-2012 - Department denied refund, as filed beyond 1 year from date of payment of tax on 14-8-2008 - Commissioner (Appeals) denied refund, as it was filed on 1-3-2012, even beyond 1 year from 22-12-2010 - HELD : Since tax was paid under protest and protest was vacated by adjudication order dated 22-12-2010, refund claim filed within 1 year from said date on 5-12-2011 was within time - Commissioner (Appeals) traveled beyond scope of notice and adjudication order in holding that refund claim was filed on 1-3-2012 - Refund was allowed
Citation	[2015] 60 taxmann.com 393 (Chennai - CESTAT) P.A.P. Exports v.Commissioner of Central Excise, Trichy*

Sr. No.	6
Relevant Section	Rule 2(k)
Relevant Statute	CENVAT Credit Rules 2004
Issue	Free supply of goods in Combi Pack whether input credit allowable
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT Chennai
Judgment	Assessee was : (a) getting detergent powder in bulk from its another unit, (b) repacking same into retail combi-pack of 500 grams with free supply of detergent soap and (c) discharging duty on combi-pack under section 4A - Department denied credit of detergent soap/cake supplied free in

	combi-pack on ground that it was an input - HELD : As against detergent powder of 500 grams, assessee had declared weight of combi-pack as 575 grams and paid duty based on combined MRP under section 4A - Hence, detergent soap/cake supplied free in combi-pack was an 'input' eligible for credit
Citation	[2015] 60 taxmann.com 395 (Chennai - CESTAT) Commissioner of Central Excise, Chennai-II v.Dynavista Industries (P.) Ltd.

Sr. No.	7
Relevant Section	Rule 3 , read with Rules 9 and 14
Relevant Statute	CENVAT Credit Rules 2004
Issue	Buyer can avail of Cenvat credit even if excise duty is charged by seller wrongly
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT New Delhi
Judgment	Assessee purchased inputs manufactured by EOU, through a registered dealer and took credit of duty paid by EOU - Department invoked extended period and denied credit on ground that supplier-EOU had paid duty in contravention of exemption Notification No. 23/03-CE - Assessee argued that it was not concerned with EOU violating exemption notification; and since inputs were received under proper invoice on payment of duty, credit could not be denied - HELD : In view of judgment in Balakrishna Industries Ltd. v. CCE 2014 (309) ELT 354 (Tri. - Del.), assessee was entitled to avail credit of duty 'paid' by input-manufacturer viz. EOU and assessments at his end cannot be reopened on ground that EOU has paid duty incorrectly - Hence, impugned credit was allowed

Citation	[2015] 60 taxmann.com 396 (New Delhi - CESTAT) Heena Pack Pet (P.) Ltd. v.Commissioner of Customs, Central Excise, UP

Sr. No.	8
Relevant Section	Section 35D read with Section 2(f)
Relevant Statute	Central Excise Act 1944
Issue	Reference to Larger Bench is must
Sub Issue	-
Favour of	Revenue/Matter Remanded
Issuing Authority	Supreme Court
Judgment	After finding a conflict of opinion rendered by two coordinate Benches, only course of action open for Tribunal is to refer matter to Larger Bench to resolve this conflict
Citation	[2015] 60 taxmann.com 375 (SC) Commissioner of Central Excise & Customs v.Kraps Chem (P.) Ltd.

Sr. No.	9
Relevant Section	Section 11B
Relevant Statute	Central Excise Act 1944
Issue	Duty Paid under Protest to be refunded
Sub Issue	-
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Assessee applied for refund of duty - Tribunal found that : (a) duty was paid under protest; and (b) assessee had not passed on burden of excise duty, so paid, to ultimate consumers - Department argued that assessee failed to satisfy test of unjust enrichment and hence, refund cannot be granted - High Court held that condition of unjust enrichment does not apply, as it was introduced in section 11B only from 1991 - HELD : Since Tribunal found that duty was paid under protest and burden of duty was not passed on, unjust enrichment would not apply -

	Therefore, it is not necessary to deal with issue as to whether section 11B would be applicable in present case or not - Hence, refund was granted with interest
Citation	[2015] 60 taxmann.com 376 (SC) Commissioner of Central Excise, Hyderabad v.I.T.C. Bhadrachalam

Sr. No.	**10**
Relevant Section	Section 35F
Relevant Statute	Central Excise Act 1944
Issue	Condonation of Delay
Sub Issue	-
Favour of	Revenue
Issuing Authority	CESTAT Ahmedabad
Judgment	Applicant-Assessee filed this application for condonation of delay of filing appeal for 175 days—Applicant claimed that, delay was caused due to financial difficulties, as Applicant failed to arrange money for making mandatory deposits for filing Appeal—Applicant also stated that, Tribunal granted stay to other Applicants on identical issues and referred decision of Supreme Court of India in case of Pirayam Subhash [2015 (39) S.T.R. 540 (S.C.)]—Applicant claimed that, delay of filing Appeal might be viewed leniently—Held, no force in submission of Applicant that, delay was for arranging fund for mandatory deposit under provision of law—Requirement of mandatory deposit under provision of Section 35F, of the Central Excise Act 1944 as amended was linked with filing of Appeal—Delay in filing Appeal for arranging fund for mandatory deposit would be general feature, without any material—Delay of filing Appeals would be considered on basis of facts of each case—Decision of Supreme Court in case of Pirayam Subhash (Supra) as referred by Applicant was in respect of merits of case—Hence, said decision would not be applicable, at this stage—In view of above, no reason found for condoning delay of filing Appeal—Application dismissed.
Citation	(2015) 22 CCHST 0813 AhdTrib M/S. SHREE GANESH CONSTRUCTION CO vs.C.C.E. & S.T. SURAT I

Sr. No.	**11**
Relevant Section	Section 11
Relevant Statute	Central Excise Act 1944
Issue	Where only assets of corporation in pursuance of winding up order & not the running business, whether Old CE due can be recovered from Buyer
Sub Issue	-
Favour of	Assessee
Issuing Authority	High Court of Allahabad
Judgment	Since the petitioner had only purchased the assets of the Corporation in pursuance of the winding up order passed by the High Court and had not taken over a running business of the Corporation, the liability of past CE dues payable by the Corporation cannot be fastened nor recovered from petitioner
Citation	2015-TIOL-2013-HC-ALL-CX M/s JAIPRAKASH ASSOCIATES LTD Vs UNION OF INDIA & OTHERS

Sr. No.	**12**
Relevant Section	-
Relevant Statute	Central Excise Act 1944
Issue	Non Payment post wothdrawal of exemption and levy of duty
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT Bangalore
Judgment	Non-payment of duty post withdrawal of exemption and levy of duty - Duty demand, interest and penalty - Sustainability - Ignorance of law though not an excuse, bonafides of appellant i.e., maintaining proper records, filing of

	proper returns, acceptance of such returns by the concerned officer, the statement of the Managing Director conclusively showed that appellant was not aware of withdrawal of exemption of goods in question - More over, departmental officers, who accepted the returns themselves were not aware of the levy of duty and withdrawal of exemption - In the circumstances, the assessee who is not a legal expert cannot be attributed withmalafides to evade duty - On facts held not a case of clandestine removal since all the removals were part of statutory records - Impugned order confirming duty, interest and penalty hence set aside.
Citation	2015-TIOL-1844-CESTAT-BANG KAISER SPOOLS PVT LTD Vs COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX BANGALORE-III

Sr. No.	13
Relevant Section	-
Relevant Statute	CENVAT Credit Rules 2004
Issue	Inputs destroyed by fire during manufacture
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT Bangalore
Judgment	Duty availed Inputs destroyed by fire during the course of manufacture of the final product - Appellant held not liable to reverse Cenvat credit of duty availed on said inputs - Impugned order of the Commissioner (A) set aside and order of the original adjudicating authority restored.
Citation	2015-TIOL-1849-CESTAT-BANG HETERO LABS LTD VsCOMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX HYDERABAD-I

Sr. No.	14
Relevant Section	Rule 9 read with Rule 3
Relevant Statute	CENVAT Credit Rules 2004
Issue	Where input suppier pays duty and files return dept. cannot say he is bogus
Sub Issue	-
Favour of	Assessee
Issuing Authority	CESTAT Ahmedabad
Judgment	Department denied input credit on ground that it was taken without actual receipt of inputs, as input-supplier A did not have manufacturing facilities and said fact was admitted by assessee's employees and brokers of supplier - Assessee argued that inputs were directly sent from supplier to job-worker and processed materials were received for further manufacture - HELD : Since A had filed returns and paid duty during relevant period, department's finding that 'A was non-existent' could not be upheld - Assessee had shown relevant invoices, transport receipts and job-work challans as well as purity-check results of goods, thereby, correlating receipt of inputs and job-work thereon - Assessee had discharged its responsibility and therefore, credit cannot be denied - Further, credit cannot be denied on ground of non-receipt of inputs, if department fails to prove that any alternative raw material was received and used
Citation	[2015] 60 taxmann.com 436 (Ahmedabad - CESTAT) STI Industries v.Commissioner of Central Excise & Service Tax,Vapi

3.2 Case Laws related to Service Tax

Sr. No.	1
Relevant Section	Section 76, 77 and 78
Relevant Statute	Finance Act 1994
Issue	Imposition of Penalty
Service Category	-
Favour of	Assessee
Issuing Authority	High Court of Punjab & Haryana
Judgment	Adjudicating authority did not impose evasion penalty - Revisional authority imposed penalty under Section 78 - Tribunal upheld penalty and denied benefit of 25 per cent penalty on ground that penalty was not paid within 30 days of receipt of adjudication order - Assessee argued that Tribunal order was erroneous, as no penalty was imposed by adjudication order - HELD : Tribunal lost sight of fact that adjudicating authority did not impose penalty and therefore, assessee did not get opportunity to deposit 25 per cent of penalty within 30 days - Matter was remanded back to Tribunal for fresh adjudication
Citation	[2015] 59 taxmann.com 304 (Punjab & Haryana) Care and Cure (P.) Ltd. v.Commissioner of Central Excise, Chandigarh
	Section 76, 77 and 78
	Finance Act 1994
	Imposition of Penalty
	-

Sr. No.	**2**
Relevant Section	Section 85
Relevant Statute	Finance Act 1994
Issue	Condonation of Delay
Service Category	-
Favour of	Revenue
Issuing Authority	High Court of Jharkhand
Judgment	Commissioner (Appeals) - Against adjudication order dated 31-1-2013, assessee filed writ in December 2013, which was dismissed on ground of alternate appeal remedy - Thereafter, assessee filed appeal before Commissioner (Appeals) seeking exclusion of time-period spent in writ remedy - Commissioner (Appeals) dismissed appeal as time-barred - HELD : Since delay was beyond '2 months plus 1 month' from adjudication order, it was not condonable by Commissioner (Appeals) - Since writ was preferred after expiry of time-limit to file appeal and was not pursued bona fide, benefit of section 14 of Limitation Act cannot be extended - Assessee could have simultaneously preferred statutory appeals also so as to avoid this situation; assessee took a chance by filing writ and not filing appeal - Hence, order of Commissioner (Appeals) was correct
Citation	[2015] 60 taxmann.com 451 (Jharkhand) Ramchandra Singh v.Union of India*

Sr. No.	**3**
Relevant Section	Section76, 77 and 78
Relevant Statute	Finance Act 1994
Issue	Penalty
Service Category	Transport of goods by road/goods transport agency Service
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Assessee manufactured castings and paid service tax under category of Goods Transport Agency on reverse charge basis—During audit of assessee's unit, reconciliation of ledger accounts with service returns revealed that they had not paid due service tax during relevant period—Entire amount of service tax was paid later but before issuance of show cause notice—Penalties were thereof imposed on assessee u/s 77 & 78 of the Finance Act, 1994—Commissioner

	(Appeals) upheld imposition of penalties—Held, non-payment of service tax was detected from books of accounts maintained by assessee and it indicated that assessee could not have any mala fide intention to evade payment of service tax—Adjudicating authority thus waived penalty u/s 76 by taking cover of s 80 on ground that tax had been paid prior to issue of show cause notice and that unit was registered under BIFR—Section 80(1) in this regard states that notwithstanding anything contained in the provisions of s 76, s 77 or first proviso to sub-s (1) of s 78, no penalty should be imposable on assessee for any failure referred to in said provisions, if assessee proved that there was reasonable cause for said failure—It was apparent that adjudicating authority found reasonable cause for waiving penalty u/s 76—High Court had also upheld decision that declaration of unit as sick company under Sick Industrial Companies Act, 1985 is a reasonable cause for waiving penalty u/s 80—Thus there was no justification for imposing penalty u/s 78 as well—Order of imposition of penalty was set aside—Assessee's Appeal allowed
Citation	(2015) 38 STR 527 (Tri-Mum) M/S. GORADIA SPECIAL STEELS LTD. vs.COMMISSIONER OF CENTRAL EXCISE, RAIGAD

Sr. No.	**4**
Relevant Section	Rule 2(I)
Relevant Statute	Cenvat Credit Rules 2004
Issue	Input Services - Input Services
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT Banglore
Judgment	Input Services—Non-registration—issue was providing cenvat credit facility to Appellants-Assessees in case of inputs used for various branches of Appellants, when those branches were not registered with Service Tax Department—Appellants made Application for registration of all branches under Service Tax law, however when registration was granted, branches were not registered but they could realize it only later—Another issue was in respect of claiming cenvat credit for input services like car parking, furniture rentals, DG Set charges, facility maintenance charges and so on used by Appellant for their Bangalore Head Office which had been registered with Service Tax Department—Appellant pointed out that, other branches of Appellant located at Coimbatore, Chennai, Hyderabad and Secunderabad had also been got registered with Service Tax Department later, that was after they realized that, Department did not register those branches though they had initially applied for their registration as well with Department—Held, Rule 2(l) of Cenvat Credit Rules 2004 for input services clearly said that, input service means any service, used by provider of [output service] for providing an output service or used by manufacturer, whether directly or indirectly, in or in relation to manufacture of final products and clearance of final products upto place of removal—It also included services used in relation to modernization, renovation or repairs of factory, premises of provider of output service or office relating to such factory or premises, advertisement or sales promotion, market research, storage upto place of removal, procurement of inputs etc.—Considering definition of input service given in Rule 2(l) of Cenvat Credit Rules 2004 and considering decision of CESTAT, Bangalore there could not be any two opinions that, Appellant was entitled to cenvat credit for all these input

	services—Appellant also entitled for facility of cenvat credit in case of branches of Appellants which were earlier not found registered with Service Tax Department—Non-registration, which might be by mistake, would not make Appellants disentitled to facility of cenvat credit for input services which they had used for their output service—All input services which were subject matter of this case had nexus with output service(s) of Appellants—Appeal allowed with consequential benefits to Appellants.(para 2,3,4)
Citation	(2015) 22 CCHST 0810 BangTrib NUANCE TRANSCRIPTION SERVICES INDIA PVT. LTD. vs.COMMISSIONER OF SERVICE TAX BANGALORE SERVICE TAX

Sr. No.	**5**
Relevant Section	Section 75A, 76, 77 and 78
Relevant Statute	Finance Act 1994
Issue	Penalty Imposition
Service Category	Clearing and forwarding agent Services
Favour of	Revenue
Issuing Authority	CESTAT Chennai
Judgment	Assessee were rendering services as operator of customer care to CIL—Assessee were registered with service tax for payment of service tax under category of Clearing & Forwarding services—Adjudicating authority in his order confirmed demand of Rs.41,244 against assessee and also appropriated the amount already paid by them—Penalty was also imposed on assessee u/ss 75A, 76 and 77 and equivalent penalty u/s 78 of the Finance Act—Commissioner (Appeals) rejected appeal filed by assessee against Order of tax demand—Held, LAA discussed in his order as to how functions of assessee would render them to liable for service tax—That assessee had claimed deductions towards reimbursable charges under head "VSAT Allowances & Delivery Charges" from CIL—That assessee entered into contract agreement with CIL which covered entire functions of clearing and forwarding of assessee—That service tax was demandable on gross amount and same could not be vivisected—In this regard, in case of Daleim Industrial Co. Ltd. Vs CCE, 2003 (155) ELT 457 (Tri) it was held that primary objection of contract would determine issue and same could not be vivisected and part of it be subjected to tax—LAA had rightly upheld demand made against assessee—No infirmity in impugned order and same was upheld—Assessee's appeal dismissed
Citation	(2015) 22 CCHST 0831 ChenTrib CHANDRA LUBRICARE vs.COMMISSIONER OF CENTRAL EXCISE, MADURAI

Sr. No.	**6**
Relevant Section	Section 73(3), 76, 77 and 78
Relevant Statute	Finance Act 1994
Issue	Penalty Imposition
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Joint Commissioner of Central Excise, Customs & Service Tax, demanded service tax from assessee along with interest—Penalties were also imposed on assessee u/ss 76, 77 & 78 of the Finance Act, 1994—Lower appellate authority confirmed the adjudication order—Held, it was not in dispute that assessee discharged service tax liability along with interest much before issue of show-cause notice—Show-cause notice was issued much after payment of statutory liabilities and there was no reason to issue notice except for imposition of penalties—Thus in view of specific provisions incorporated in s 73(3) of

	the Finance Act, 1994, imposition of penalties were unwarranted—Thus, penalties imposed on assessee under ss 76, 77 & 78 were set aside—However, there was no provision for waiver of late fee required to be paid under r 7(c) of the Service Tax Rules, 1944 and assessee was liable to discharge same—Assessee's appeal allowed
Citation	(2015) 39 STR 686 (Tri-Mum) S.K. ELECTRO ENGINEERS vs. COMMISSIONER OF CENTRAL EXCISE, NAGPUR

Sr. No.	**7**
Relevant Section	Section 76, 77 and 78
Relevant Statute	Finance Act 1994
Issue	Free Supervision Service
Service Category	Erection, Commissioning and Installation Service
Favour of	Assessee
Issuing Authority	CESTAT New Delhi
Judgment	Even if it is held that there was a service component in the form of supervision of erection and commissioning of the plant supplied, the said service was manifestly rendered free of cost and thus no service tax liability can arise in this case as the value of the goods supplied cannot be included in the assessable value even as per Notification No. 12/2003-ST as no Cenvat credit has been taken by the appellant in respect of such goods
Citation	2015-TIOL-1847-CESTAT-DEL LARSEN AND TOUBRO LTD VsCOMMISSIONER OF CENTRAL EXCISE, BHOPAL

Sr. No.	**8**
Relevant Section	Article 226 Read with Section 73
Relevant Statute	Finance Act 1994
Issue	Writ filed before replying to SCN
Service Category	-
Favour of	Revenue
Issuing Authority	Supreme Court
Judgment	Writ petition - Alternative remedy - Director of assessee-company avoided compliance with summons on many occasions and despite requisition, failed to furnish explanations - On issuance of notice, without even filing reply thereto, assessee challenged same in writ on ground that adjudicating authority was biased and had prejudged issue against assessee - HELD : In notice, there is a complete narration of facts and after referring to records/materials, authority has come to only a prima facie conclusion that service tax is leviable - Since notice merely shows a prima facie view, authorities have not prejudged issue - It was open to assessee to file reply to notice and assessee's objections would be duly considered and if any adverse order is passed, remedy may be availed as per law - Hence, writ petition filed even without furnishing reply to notice was dismissed as premature
Citation	[2015] 60 taxmann.com 453 (Rajasthan) Tanushree Logistics (P.) Ltd. v.Union of India

Sr. No.	**9**
Relevant Section	Section 65(68) read with Section 65(19)
Relevant Statute	Finance Act 1994
Issue	Activity of harvesting and transport of sugarcane from field to sugar factory whether manpower supply service
Service Category	Manpower Recruitment and Supply Agency
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Assessee entered into agreement with sugar factory for harvesting of sugarcane at fields of member-farmers and transporting same to sugar factory - Remuneration for harvesting and transportation was paid on per

	ton basis of sugarcane delivered - Department argued that since agreement provided for supply of labour, it was 'manpower supply service' - Assessee argued that activity was incidental to sale of crops and further, service tax had already been paid on supervision charges under Business Auxiliary Services - HELD : There was no supply of labour per se to sugar factory and labour was employed in undertaking work of harvesting and transportation of sugarcane to sugar factory - Sugarcane belonged to sugar factory in terms of agreement of sale executed between farmer and sugar factory - Hence, assessee's activity was one of procuring or processing of goods belonging to client and service tax had rightly been paid on supervision charges under 'Business Auxiliary Service' - Demand of service tax under 'Manpower Recruitment or Supply Agency's Services' was set aside
Citation	[2015] 60 taxmann.com 414 (Mumbai - CESTAT) Shriram Oos Tod Majoor Seva Sangh v.Commissioner of Central Excise, Customs & Service Tax, Aurangabad

Sr. No.	**10**
Relevant Section	Rule 2(I)
Relevant Statute	Cenvat Credit Rules 2004
Issue	Advertising services used an in input service for another input service
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Input services used in relation to business are covered in definition - All services used for modernization, renovation or repair of office premises are also covered - Any service which is an input for another input service will get covered under definition and hence, advertising which is an input service for Manpower Recruitment Service will be eligible - However, outdoor catering services will not be eligible for credit upto extent expenditure is borne by employees.
Citation	[2015] 60 taxmann.com 119 (Mumbai - CESTAT) Commissioner of Service Tax, Mumbai-II v.J.P. Morgan Services India (P.) Ltd.

Sr. No.	**11**
Relevant Section	Rule 3
Relevant Statute	Cenvat Credit Rules 2004
Issue	Registration is not a pre-condition for taking credit; hence, credit may be taken/availed even before registration is granted
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT Mumbai
Judgment	Assessee applied for centralized registration on 5-10-2006 but same was granted on 26-12-2008 - Assessee took cenvat credit, which was denied on ground that during relevant period, assessee was not registered - HELD : Under rule 4 ibid, registration is deemed to be granted within 7 days of application - There was nothing in series of communications between assessee and department to show that some important elements to be considered for registration were missing in application - Even otherwise, there is no restriction in availing Cenvat credit before registration is granted
Citation	[2015] 60 taxmann.com 119 (Mumbai - CESTAT) Commissioner of Service Tax, Mumbai-II v.J.P. Morgan Services India (P.) Ltd.

Sr. No.	**12**
Relevant Section	Section 35L read with Section 83
Relevant Statute	Finance Act 1994
Issue	Dept. couldn't reopen an issue before SC after admitting existence of favourable judicial precedent before Tribunal
Service Category	-
Favour of	Assessee
Issuing Authority	Supreme Court
Judgment	Before Tribunal, revenue conceded that issue raised in appeal was covered by earlier judgment of Tribunal in favour of assessee and Supreme Court had affirmed such earlier judgment of Tribunal - Revenue filed appeal before Supreme Court on ground that said earlier decision was clearly distinguishable on facts - HELD : Having conceded before Tribunal that issue raised stood concluded by an earlier decision, which attained finality on dismissal of appeal, revenue cannot be permitted to re-open same issue all over again before Supreme Court on ground that facts of two cases were not similar - Hence, appeal was dismissed
Citation	[2015] 60 taxmann.com 417 (SC) Commissioner of Central Excise, Gujarat v.Aditya Yarns (P.) Ltd.

Sr. No.	**13**
Relevant Section	Section 76
Relevant Statute	Finance Act 1994
Issue	Simultaneous levy of Penalty under section 76 and 78
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT New Delhi
Judgment	Penalty was imposed on assessee u/s 76 and subsequently in order-in-Appeal, the penalty imposed was dropped on ground that penalty u/s 78 had already been imposed on assessee—Revenue submitted that penalty u/s 76 and u/s 78 were not exclusive during relevant period and filed appeal against Order of order-in-Appeal—Held, Assessee fell within jurisdiction of Punjab and Haryana High Court—Punjab and Haryana High Court in case of CCE vs. First Flight Courier Ltd. 2011 (22) STR 622 (P&H) clearly observed that where penalty u/s 78 had been imposed, penalty u/s 76 might not be justified—In case of Pannu Property Dealers 2011 (24) STR 0173 (P & H) also, Punjab & Haryana High Court observed that even if technically penalties u/s 76 and u/s 78 are not mutually exclusive, imposition of penalty u/s 78 could be taken into account for levying or not levying penalty u/s 76—Hence, Revenue's appeal was dismissed
Citation	(2015) 22 CCHST 0824 DelTrib CCE, CHANDIGARH I vs.M/S. SANDAL TRAVELS PVT. LTD.

Sr. No.	**14**
Relevant Section	Section 73
Relevant Statute	Finance Act 1994
Issue	Liability worked out of presumptions and assumptions
Service Category	Multi System Operator
Favour of	Partly in favour of assessee and partly in favour of Revenue
Issuing Authority	CESTAT Mumbai
Judgment	In the absence of any additional evidence of there being a larger subscriber base, the differential ST liability for the period January 2006 to September 2009 has to be held as being worked out based upon presumptions and assumptions - Adjudicating authority is correct in dropping proceedings - Appeal rejected to this extent, however for the period October 2005 to December 2005, Revenue appeal allowed in view of Tribunal decision in appellants own

	case reported as -2014-TIOL-1659-CESTAT-MUM - interest payable but no penalty as major portion of demand set aside and as there could be confusion in the mind of the respondent
Citation	2015-TIOL-1858-CESTAT-MUM COMMISSIONER OF CE & SERVICE TAX, PUNE-III Vs INTERMEDIA CABLE COMMUNICATION PVT LTD

Sr. No.	**15**
Relevant Section	
Relevant Statute	Cenvat Credit Rules 2004
Issue	Iron and Steel Items used in Fabrication works
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT Banglore
Judgment	Cenvat credit on Iron and Steel items used in erection and fabrication of drying plant, a capital goods used in the manufacturing process - Permissible - Revenue failed to produce any evidence to show that such iron and steel items were used as mere supporting structures - Revenue appeal hence rejected.
Citation	2015-TIOL-1854-CESTAT-BANG COMMISSIONER OF CENTRAL EXCISE, CUSTOMS AND SERVICE TAX VISAKHAPATNAM-I VsFACOR ALLOYS LTD

Sr. No.	**16**
Relevant Section	
Relevant Statute	Cenvat Credit Rules 2004
Issue	Refund
Service Category	-
Favour of	Assessee
Issuing Authority	CESTAT Ahmedabad
Judgment	CENVAT Credit of input Service Tax on Courier service and CHA service - Revenue contends that ST tax paid by service provider under some different services (i.e. other than CHA), cannot be considered to be paid under CHA service - It is well settled that jurisdictional Central Excise officer of recipient of service, cannot question the classification of service of service provider - No dispute that assessee received the services specified in schedule to said notification and used for export of goods - Said fact was not disputed by Revenue - Commissioner (A) observed that assessee has submitted copies of all shipping bills and ARE-1 - Revenue had not mentioned non-fulfillment of specific conditions in their grounds of appeal - So, no force found in appeals filed by Revenue
Citation	2015-TIOL-1853-CESTAT-AHM COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, AHMEDABAD-II Vs M/s CADILA HEALTHCARE LTD

3.3 Case Laws related to Customs

Sr. No.	1
Relevant Section	Section 114A read with Section 78 of Finance Act 1994
Relevant Statute	Customs Act 1962
Issue	Penalty
Service Category	
Favour of	Partly in favour of Revenue
Issuing Authority	Supreme Court
Judgment	Assessee removed imported system from premises of EOU without permission from revenue and without payment of duty and used same in other premises in violation of condition of exemption - Tribunal upheld duty of Rs. 211 lakhs and redemption fine - Tribunal also held that since contravention/violation of exemption had taken place on or after 10-12-1996, when section 114A had come into force, penalty is leviable under section 114A even if import had taken place earlier thereto; but, penalty was reduced from Rs. 211 lakhs to Rs. 50 lakhs - HELD : Penalty was leviable, but, reduction thereof to even less than 25 per cent of duty was unwarranted - Hence, penalty was enhanced to 50 per cent of duty
Citation	[2015] 60 taxmann.com 339 (SC) Commissioner of Central Excise, Meerut v.Dewan Rubber Industries Ltd

Sr. No.	2
Relevant Section	Section 127B read with Section 123
Relevant Statute	Customs Act 1962
Issue	Settlement Commissioner whether can be approached for Gold
Service Category	
Favour of	Revenue
Issuing Authority	High Court of Delhi
Judgment	As part of his baggage, assessee imported 6452.600 gms. of gold - Since assessee had not shown same in baggage declaration, department alleged smuggling - Assessee approached Settlement Commission - Department argued that since it was a case of import of gold, settlement application was barred under third proviso to section 127B(1) - Settlement Commission overruled revenue's objections and settled said matter - HELD : In view of third proviso to section 127B(1), no application for settlement can be made if it relates to goods to which section 123 applies and section 123(2) specifically provides that said section applies to gold - There is no question of examining provisions of section 123(1) as also its applicability because that is not context of third proviso to section 127B(1); said third proviso only makes a reference to goods to which section 123 applies and not to section 123 itself - Therefore, no application under section 127B(1) can be made in relation to gold - Since this case clearly pertains to gold, Settlement Commission did not have jurisdiction to entertain such an application
Citation	[2015] 61 taxmann.com 2 (Delhi) Additional Commissioner of Customs v. Ram Niwas Verma

Sr. No.	3
Relevant Section	Section 12, 13, 14, 23 and 47
Relevant Statute	Customs Act 1962
Issue	Customs duty is different from purchase tax and is leviable only on quantity actually imported
Service Category	
Favour of	Assessee
Issuing Authority	Supreme Court

Judgment	Assessee imported crude oil, which was liable to duty on ad valorem basis - Department demanded duty based on quantity of crude oil mentioned in bills of lading, as assessee had paid price based on said quantity - Assessee argued that since quantity actually received into shore tanks in India was lesser, quantity actually received should be basis for payment of duty - HELD : Customs duty is a duty only on 'goods imported' i.e., goods brought into India from a place outside India - Since act of import is complete only after an order permitting clearance of goods for home consumption is made under section 47, duty can be demanded only on quantity of goods entering for home consumption - In accordance with said principles, no duty is demanded under sections 13 and 23 on goods which are pilfered, lost, destroyed or abandoned before clearance - Customs duty is different from purchase tax and therefore, quantity stated in a bill of lading is merely quantity involved in purchase transaction and can only be validly looked at in case of a purchase tax but not in case of an import duty - Whether customs duty is at a specific rate or is ad valorem makes no difference to above statutory scheme - Under section 14, value is determined only for goods imported and further, transaction value is price that is actually paid or payable only for 'imported goods' - Hence, quantity of crude oil actually received into a shore tank in a port in India should be basis for payment of customs duty - Circular dated 12-1-2006 was held to be contrary to law
Citation	[2015] 61 taxmann.com 58 (SC) Mangalore Ref. and Petrochemicals Ltd. v.Commissioner of Customs

Sr. No.	4
Relevant Section	Section 12, read with sections 15 and 16
Relevant Statute	Customs Act 1962
Issue	Imported warehoused goods shall attract duty in force on date of filing bill of entry for home consumption
Service Category	
Favour of	Assessee
Issuing Authority	CESTAT Chennai
Judgment	Assessee imported goods and warehoused them - Meanwhile, goods were made eligible for concessional rate of duty of 10 per cent subject to conditions - At time of clearance of goods for home consumption, assessee claimed rate of duty at 10 per cent - Department denied said exemption on ground that it was a conditional exemption and should have been claimed at time of filing into-bond bill of entry for warehousing and same cannot be allowed at time of ex-bond bill of entry for home consumption - HELD : As per section 15(1)(b), relevant date for rate of duty on warehoused goods cleared for home consumption is 'date on which a bill of entry for home consumption is filed' - Hence, applicable rate shall be rate in force on date of filing bill of entry for home consumption and therefore, assessee would be eligible for concessional rate, subject to conditions thereof
Citation	[2015] 60 taxmann.com 7 (Chennai - CESTAT) Commissioner of Customs, Tiruchirapalli v. Cethar Vessels

Sr. No.	5
Relevant Section	-
Relevant Statute	Customs Act 1962
Issue	Valuation
Service Category	
Favour of	Partly in favour of Revenue
Issuing Authority	CESTAT MUMBAI
Judgment	Set Top Boxes imported by the appellants are not leviable to CVD on RSP/MRP basis in terms of Section 4A of the CEA, 1944 except for the Set Top Boxes actually sold
Citation	2015-TIOL-1863-CESTAT-MUM M/s BHARTI TELEMEDIA LTD M/s DISH TV INDIA LTD VsCOMMISSIONER OF CUSTOMS (IMPORT) NHAVA SHEVA

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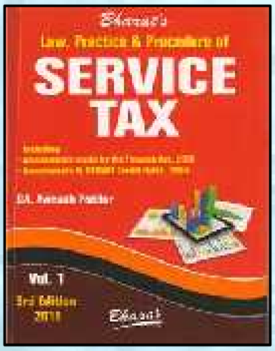

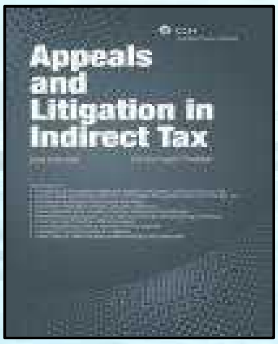

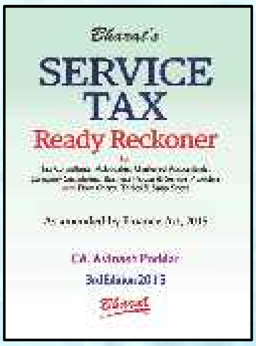

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