

CASE LAWS (SERVICE TAX)

1) Can the service tax liability created under law be shifted by virtue of a clause in the contract entered into between the service provider and the service recipient?

❖ Relevant Case –

- Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran (2012) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - With regard to the submission of shifting of service tax liability, service tax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability.
 - The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them.
 - There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.

2) Does preparation of ready mix concrete (RMC) along with pouring, pumping and laying of concrete amount to provision of service?

❖ Relevant Case –

- Commissioner v. GMK Concrete Mixing Pvt. Ltd. (2015) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - The contract between the parties was to supply RMC and not to provide any taxable services.
 - Therefore, since the Finance Act, 1994 is not a law relating to commodity taxation, the adjudication was made under mistake of fact and law fails.

3) In case where rooms have been rented out by Municipality, can it pass the burden of service tax to the service receivers i.e. tenants?

❖ Relevant Case –

- Kishore K.S. v. Cherthala Municipality (2011) (Ker.)

❖ High Court's Decision –

- As regards the contention that there was no mention of the service tax liability in the contract, the High Court held that –
 - This is a statutory right of the service provider/Municipality by virtue of the provisions under law to pass it on to the tenants. They may decide not to pass it on fully or partly.
 - It is not open to the petitioners to challenge the validity of the demand for service tax, as service tax is an indirect tax and the law provides that it can be passed on to the beneficiary.

- Further, the word “State” in Article 289 does not embrace within its scope the Municipalities. Hence, when service tax is levied on the Municipality there is no violation of Article 289.
- Therefore, Municipality can pass on the burden of service tax to the tenants.

4) Whether the activity of running guest houses for the pilgrims is liable to service tax?

❖ Relevant Case –

- Tirumala Tirupati Devasthanams, Tirupati v. Superintendent of Customs, C.E, S.T (2013) (AP)

❖ High Court’s Decision –

- The High Court held that –
 - Service provided to any person by a hotel, inn, guest house, club or camp-site, by whatever name called, for providing of accommodation for a continuous period of less than three months is a taxable service.
 - Therefore, as the petitioner was running guest houses, whether it was a shelter for pilgrims or not, it was providing the taxable services and was thus liable to pay service tax.

5) Whether supply of food, edibles and beverages provided to the customers, employees and guests using canteen or guesthouse of the other person, results in outdoor caterer service?

❖ Relevant Case –

- Indian Coffee Workers' Co-operative Society Ltd. v. CCE&ST (2014) (All.)

❖ High Court’s Decision –

- The High Court held that –
 - Taxability or the charge of tax does not depend on whether and to what extent the person engaging the service consumes the edibles and beverages supplied, wholly or in part.
 - What is material is whether the service of an outdoor caterer is provided to another person and once it is, the charge of tax is attracted.
 - The assessee is a person who supplies food, edibles and beverages to cater to persons who use the facility of a canteen, provided by NTPC or LANCO within their own establishments.
 - Therefore, since the assessee provides the services as a caterer at a place other than his own, he is an outdoor caterer and was liable for payment of service tax as an outdoor caterer.

6) Whether the course completion certificate/ training offered by approved Flying Training Institute and Aircraft Engineering Institutes is recognized by law (for being eligible for exemption from service tax) if the course completion certificate/ training/ is only for purpose of eligibility for obtaining ultimate licence/ approval for certifying repair/ maintenance/ airworthiness of aircrafts?

❖ Relevant Case –

- CCE & ST v. Garg Aviations Limited (2014) (All.)
- Indian Institute of Aircraft Engineering v. Union of India (2013) (Delhi)

❖ High Court's Decision

- The High Court referred to the judgment of the Delhi High Court in *Indian Institute of Aircraft Engineering v. Union of India*, observed that –
 - The expression 'recognized by law' is a very wide one. Thus, even if the certificate/ degree/ diploma/qualification is not the product of a statute but has approval of some kind in 'law', it would be exempt.
 - The Aircraft Act, 1934 (the Act) and the Aircraft Rules, 1937 (the Rules) and the Civil Aviation Requirements (CAR) issued by the DGCA, having provided for grant of approval to such institutes and having further provided for relaxation of one year in the minimum practical training required for taking the DGCA examination.
 - The certificate/training/qualification offered by Institutes which are without approval of DGCA would not confer the benefit of such relaxation. The Act, Rules and CAR distinguish an approved Institute from an unapproved one.
 - An educational qualification recognized by law will not cease to be recognized by law merely because for practicing in the field to which the qualification relates, a further examination held by a body regulating that field of practice is to be taken.
- Therefore, the High Court held that
 - The recognition accorded by the Act, Rules and CAR supra to the course completion certificate issued by the institutes as the petitioner cannot be withered away or ignored merely because the same does not automatically allow the holder of such qualification to certify the repair, maintenance or airworthiness of an aircraft and for which a further examination to be conducted by the DGCA has to be passed/cleared.
 - Thus, the assessee was not liable to pay service tax.

7) Whether deputation of some staff to subsidiaries/group of companies for stipulated work or for limited period results in supply of manpower service liable to service tax, even though the direction/control/supervision remained continuously with the provider of the staff and the actual cost incurred was reimbursed by the subsidiaries/group companies?

❖ Relevant Case –

- *Commissioner of Service Tax v. Arvind Mills Limited* (2014) (Guj.)

❖ High Court's Decision –

- The High Court held that –
 - The deputation of the employees by the respondent to its group companies was only for and in the interest of the assessee.
 - There is no relation of agency and client. The assessee company was not engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client.
 - Therefore, they were not liable to pay service tax.

8) Whether section 66E(i) of the Finance Act, 1994 which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is ultra vires the Article 366(2A)(f) of the Constitution?

OR

Questions of Law: The substantial questions of law which arose before the High Court were:

- a) Whether any service tax can be charged on sale of an item or vice versa?
- b) Whether in view of Article 366(2A) (f) service is subsumed in sale of foods and drinks and whether such Article is violated by section 66E (i) of the Finance Act, 1994?

❖ **Relevant Case –**

- Hotel East Park v. UOI (2014) (Chhatisgarh)

❖ **High Court's decision –**

- With reference to question (a) above, the High Court held that –
 - A tax on the sale and purchase of food and drinks within a State is in exclusive domain of the State. The Parliament cannot impose a tax upon the same. Similarly, there is no legislative competence with the States to impose a tax on any service.
 - Therefore, no VAT can be charged over the amount meant for service and that the amount over which service tax has been charged should not be subject to VAT.
 - Further, the State Government is directed to frame such rules and issue clarifications to this effect to ensure that the customers are not doubly taxed over the same amount.
- With reference to question (b) above, the High Court held that –
 - Article 366(2A) (f) of the Constitution does not indicate that the service part is subsumed in the sale of the food; it rather separates sale of food and drinks from service.
 - Section 65B (44) as well as section 66E (i) of the Finance Act, 1994, charge service tax only on the service part and not on the sales part.
 - Rule 2C of the Service Tax (Determination of Value) Rules, 2006 read with Notification No. 25/2012 ST presumes a fixed percentage of bill value as the value of taxable service on which service tax should be charged.
 - Therefore, section 66E (i) of the Finance Act, 1994 is intra vires the Article 366(2A) (f) of the Constitution of India.

9) Can a software be treated as goods and if so, whether its supply to a customer as per an "End User Licence Agreement" (EULA) would be treated as sale or service?

❖ **Relevant Case –**

- Infotech Software Dealers Association (ISODA) v. UOI (2010) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - Software is goods as per Article 366(12) of the Constitution. Supreme Court in case of TCS (2004) held that – A software, whether customized or non-customized, would become goods provided it has the attributes thereof having regard to (a) utility (b) capable of being bought and sold (c) capable of transmitted, transferred, delivered, stored and possessed.
 - When a statute, particularly a taxing statute is considered with reference to the legislative competence, the nature of transaction and the dominant intention of such transaction would be relevant.
 - In the instant case, the terms of EULA indicated the dominant intention of parties whereby the developer retained the copyright of each software, be it canned, packaged or customized, and only the right to use with copyright protection was transferred to the subscribers or the members. Thus, the software is not sold as such, but only the contents of the data stored in the software are sold which would only amount to service and not sale.
 - Further, such transactions could also not be treated as deemed sale under Article 366(29A)(d) of the Constitution of India as that requires a transfer of right to use any goods and in the instant case, the goods as such are not transferred.
 - Hence, though software is goods, the transaction may not amount to sale in all cases and it may vary depending upon the terms of EULA.

10) Whether service tax is chargeable on the buffer subsidy provided by the Government for storage of free sale sugar by the assessee?

❖ Relevant Case –

- CCE v. Nahar Industrial Enterprises Ltd. (2010) (P & H)

❖ High Court's Decision –

- The High Court held that –
 - Nobody can provide service to himself. The assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice.
 - He had stored goods in compliance with the directions of the Government of India issued under the Sugar Development Fund Act, 1982.
 - He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock.
 - Hence, the act of assessee could not be called as rendering of services.

11) A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service?

❖ Relevant Case –

- Mayo College General Council v. CCEx. (Appeals) (2012) (Raj)

❖ High Court's Decision –

- The High Court held that –
 - When the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing franchise service to the said schools and
 - if the petitioner realized the franchise or collaboration fees from the franchise schools, the petitioner was duty bound to pay service tax to the department.

12) Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services?

❖ **Relevant Case –**

- Wipro Ltd. v. Union of India (2013) (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - The nature of the services was such that they were rendered seamlessly, on continuous basis, it was impossible for the appellant to not only determine the date of export but also anticipate the call so that the declaration could be filed “prior” to the date of export.
 - Except the description of the input services, the appellant could not provide the value and amount of service tax payable as any estimation was ruled out by the use of the word “actually required” and the bill/invoice for the input services were received by the appellant only after the calls were attended to.
 - The very nature of things, and considering the peculiar features of the appellant's business, it was difficult to comply with the requirement “prior” to the date of the export.
 - So, if particulars in declaration were furnished to service tax authorities within a reasonable time after export, along with necessary documentary evidence, and were found to be correct and authenticated, object/purpose of filing of declaration would be satisfied.
 - Therefore, the rebate claims filed by the appellants are allowed and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.

❖ **Note –**

- As per Notification No. 12/2005 ST dated 19.04.2005, rebate is granted of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services used in providing taxable service exported out of India.
- Condition 3.1 of the Notification stipulated that the provider of taxable service to be exported has to file a declaration with the jurisdictional Assistant/Deputy Commissioner of Central Excise describing the taxable service intended to be exported with description, value and the amount of service tax/excise duty and cess payable on input services/inputs actually required to be used in providing taxable service to be exported, prior to date of export of such taxable service.

13) Is exemption in relation to service provided to the developer of SEZ or units in SEZ available for a period prior to actual manufacture (which is the authorized operation) of final product considering these services as the services used in authorised operations of SEZ?

❖ **Relevant Case –**

- Commissioner of Service Tax v. Zydus Technologies Limited (2014) (Guj.)
- CCEx. Vs. Cadila Healthcare Ltd. (2013) (Guj.)

❖ **High Court's Decision –**

- The High Court referring to the case of CCEx. Vs. Cadila Healthcare Ltd. (2013) (Guj.) held that–
 - The services rendered for a period prior to actual manufacture of final product is commercial activity/production and assessee is entitled to exemption by way of refund claimed.
- In the case of **Cadila Healthcare Ltd (2013) (Guj.)**, the High Court held that –
 - The assessee shall be entitled to refund; as though the operations did not reach to the commercial production stage, the input service of scientific & technical consultancy procured by them were in relation to the manufacture which would take place at a later date.

14) Is hiring of cab different from renting of cab for service tax purposes?

❖ **Relevant Case –**

- CCus. & CEx. v. Sachin Malhotra (2015) (Uttarakhand)

❖ **High Court's Decision –**

- The High Court held that –
 - Under rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle wherever he wishes, and he is only obliged to keep the holder of the license informed of his movements from time to time.
 - When a person chooses to hire a car, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with himself. The customer is merely enabled to make use of the vehicle by travelling in the vehicle and is expected to pay the metered charges on the basis of kilometers travelled.
 - Therefore, unless the control of the vehicle is made over to the hirer and he is given possession for howsoever short a period to deal with the vehicle, which the contract contemplates; there would be no renting.

15) Whether tax is to be deducted at source under section 194J of the Income-tax Act, 1961 on the amount of service tax if it is paid separately and is not included in the fees for professional services/technical services?

❖ **Relevant Case –**

- CIT v. Rajasthan Urban Infrastructure (2013) (Raj.)

❖ **High Court's Decision –**

- The High Court held that
 - If as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and is not included in the fees for professional services or technical services, the service tax component would not be subject to TDS under section 194J of the Income-tax Act, 1961.

16) Is it justified to recover service tax during search without passing appropriate assessment order?

❖ **Relevant Case –**

- Chitra Builders Private Ltd. v. Addnl Comm of CEx. & ST (2013) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - It is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and without following the procedures established by law.
 - However, in the present case, no such procedures had been followed. Also, Department had failed to show that the petitioner was actually liable to pay service tax.
 - Therefore, the amount collected by Department, from the petitioner, during the search conducted, could not be held to be valid in the eye of law, and directed the Department to return to the petitioner the sum of Rs. 2 cr, collected from it, during the search conducted.

17) Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved?

❖ **Relevant Case –**

- Infinity Infotech Parks Ltd. v. UOI (2013) (Cal.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per proviso to section 73(1), extended period of limitation can be invoked
 - if the service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud or collusion or wilful misstatement or suppression of facts or
 - contravention of any of the provision of Chapter V or of rules made thereunder with the intent to evade the payment of service tax.
 - Therefore, mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of service tax.

18) Would service tax collected but not deposited prior to 10.05.2013 be taken into consideration while calculating the amount of Rs. 50 lakh as contemplated by clause (ii) of section 89(1) of the Finance Act, 1994?

❖ **Relevant Case –**

- Kandra Rameshbabu Naidu v. Superintendent (A.E.) ST Mumbai-II (2014) (Bom.)

❖ **High Court's Decision:**

- The High Court held that
 - Since failure to deposit service tax with Central Government after collecting it from the customers was a continuing offence, entire amount of service tax outstanding (which is required to be deposited with the Central Government) as on 10.05.2013, would be taken into consideration while calculating the amount of Rs. 50 lakh as contemplated by section 89(1)(ii) of the Finance Act, 1994.

19) Whether best judgment assessment under section 72 of the Finance Act, 1994 is an ex-parte assessment procedure?

❖ **Relevant Case –**

- N.B.C. Corporation Ltd. v. Commissioner of Service Tax (2014) (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 72 could per se not be considered as an ex parte assessment procedure as ordinarily understood under the Income-tax Act, 1961.
 - Section 72 mandates that the assessee must appear and must furnish books of account, documents and material to the Central Excise Officer before he passes the best judgment assessment order. Thus, said order is not akin to an ex parte order.
 - Such an order will be akin to an ex parte order, when the assessee fails to produce records and the Central Excise Officer has to proceed on other information which may be available.

20) Whether penalty is payable even if service tax and interest has been paid before issue of the show cause notice?

❖ **Relevant Case –**

- CCE & ST v. Adecco Flexione Workforce Solutions Ltd. (2012) (Kar.)

❖ **High Court's Decision –**

- The Karnataka High Court held that –
 - The authorities had no authority to initiate proceedings for recovery of penalty under section 76 when the tax payer paid service tax along with interest for delayed payments promptly.
 - As per section 73(3), no notice shall be served against persons who had paid tax with interest; the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own.
 - If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.

21) Can an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid?

OR

Is assessee eligible to claim refund on service tax paid on construction activity so done by them?

❖ **Relevant Case –**

- CCE (A) v. KVR Construction (2012) (Kar.)
- Mafatlal Industries v. UOI (1997) (SC)

❖ **High Court's Decision –**

- The High Court held that –
 - The Supreme Court in the case of Mafatlal Industries v. UOI (1997), held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Therefore, mere payment of amount would not make it service tax payable by the assessee.
 - Also, once there was lack of authority to collect such service tax from the assessee, it would not give authority to the Department to retain such amount and validate it.
 - Further, provisions of section 11B of the Central Excise Act, 1944 apply to a claim of refund of excise duty/service tax only, and could not be extended to any other amounts collected without authority of law.
 - Therefore, refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.

❖ **Note:**

- Gujarat High Court in case of **Swastik Sanitarywares Ltd. v. UOI 2013 (Guj.)**, where the assessee had erroneously deposited the excise duty twice on the clearance of same goods, held that –
 - The payment made by the assessee the second time could not be considered as duty deposited or paid. Hence, repayment of such amount could not be seen as a refund claim made under section 11B.
 - Consequently, such amount is repayable to the assessee by the Department.

22) In a case where the assessee has acted bona fide, can penalty be imposed for the delay in payment of service tax arising on account of confusion regarding tax liability and divergent views due to conflicting court decisions?

❖ **Relevant Case –**

- Ankleshwar Taluka ONGC Land Losers Travellers Co. OP. v. CCE Surat-II (2013) (Guj.)

❖ **High Court's Decisions –**

- The High Court held that –
 - The levy was comparatively new and so both unawareness and confusion were quite possible particularly considering the strata to which the members of appellant society belonged to.

- The divergent views of different benches of Tribunal may have added to such confusion.
- The appellant had persuaded their right of reimbursement of payment of service tax with the ONGC by way of conciliation and arbitration cannot deprive them of the defence of bona fide belief of applicability of service tax.
- Therefore, even if the appellants were aware of the levy of service tax and were not paying the amount on the ground of dispute with the ONGC, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful misstatement or suppression.
- Moreover, when the entire issue for levying of the tax was debatable, that also would surely provide legitimate ground not to impose the penalty.

23) Whether the recipient of taxable service having borne the incidence of service tax is entitled to claim refund of excess service tax paid consequent upon the downward revision of charges already paid, and whether the question of unjust enrichment arises in such situation?

❖ **Relevant Case –**

- CCus CEx & ST v. Indian Farmers Fertilizers Coop. Limited (2014) (All)

❖ **High Court's Decision –**

- The High Court held that –
 - Supreme Court in case of **Mafatlal Industries Ltd. v. Union of India (1997) (SC)** held that –
 - Where the burden of the duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. The real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden and it is only that person who can legitimately claim its refund.
 - Therefore, since the burden of tax has been borne by the respondent as a service recipient, question of unjust enrichment will not arise as per section 11B of the Central Excise Act 1944 (as applicable to service tax under section 83 of Finance Act, 1994).
 - Supreme Court in the case of **Commissioner of Customs v. Toyo Engineering India Limited (2006) (SC)** held that –
 - The Revenue could not be allowed to raise submissions for the first time in a second appeal before the Tribunal.
 - Thus, once the finding of the adjudicating authority that the claim for refund was filed within the period of limitation was not challenged by the Revenue before the first appellate authority and CESTAT, Revenue could not assert to contrary and first time urge a point in an appeal before this Court which was not raised in grounds of appeal before authorities below.

24) Can the expression suppression of facts be interpreted to include in its ambit, mere failure to disclose certain facts unintentionally?

❖ **Relevant Case –**

- Naresh Kumar & Co. Pvt. Ltd v. UOI (2014) (Cal.)

❖ High Court's Decision –

- The High Court held that –
 - Willful suppression cannot be assumed and/or presumed merely on failure to declare certain facts unless it is preceded by deliberate non-disclosure to evade the payment of tax.
 - The extended period of limitation can be invoked on clear exposition that there has been a conscious act on the part of the assessee to evade the tax by non-disclosing the fact which, if disclosed, would attract service tax under sections 66B & 67 of the Finance Act, 1994.
 - The non-disclosure of the fact which, even if, disclosed would not have attracted the charging section cannot be brought within the ambit of suppression of fact for the purpose of extension of limitation period.

25) Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?

❖ Relevant Case –

- **C.C.E. & S.T. (LTU), Bangalore v. Dell Intl. Services India P. Ltd. (2014) (Kar.)**

❖ High Court's Decision:

- The Karnataka High Court held that
 - On a careful examination of the order of the Commissioner (Appeals), once the Committee of Commissioners did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there.
 - The said decision is final and binding on the Chief Commissioner also.
 - The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal.
 - Such a procedure is not contemplated under law and is without jurisdiction.

26) Can the Commissioner (Appeals) remand back a case to the adjudicating authority under section 85 of the Finance Act, 1994?

❖ Relevant Case –

- Commissioner of Service Tax v. Associated Hotels Ltd. (2015) (Guj.)
- Commissioner v. World Vision (2011) (Del.)

❖ High Court's Decision –

- The High Court held that –
 - Section 85(4) of the Finance Act, 1994 is worded widely and gives ample powers to the Commissioner while hearing and disposing of the appeals to pass such orders as he thinks fit including an order enhancing tax, interest or penalty.
 - Therefore, such powers would inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority.
 - Further, the scope of such powers flowing from sub-section (4), cannot be curtailed by any reference to sub-section (5) of section 85 of the Finance Act, 1994.

27) Whether the period of limitation or the period within which delay in filing an appeal can be condoned, specified in terms of months in a statute, means a calendar month or number of days?

❖ **Relevant Case –**

- CCus & CEx. v. Ashok Kumar Tiwari (2015) (All.)

❖ **High Court's Decision –**

- The High Court held that –
 - Where the legislature intends to define the period of limitation with regard to the number of days, it does so specifically.
 - Section 85 of the Finance Act, 1994 has defined the period of limitation as well as the power to condone the delay with regard to a stipulation in terms of months and such a stipulation can only mean a calendar month.
 - Section 3(35) of the General Clauses Act, 1897 also defines the expression “month” to mean a month reckoned according to the British calendar.
 - Thus, Commissioner (Appeals) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed.

❖ **Note –**

- **Supreme Court**, in case of **M/s. Econ Antri Ltd v. M/s. Rom Industries Ltd.**, has held that –
 - While computing the period of limitation, the day on which the offence is committed/ date of cause of action has to be excluded.

28) Can an appeal filed in time but to the wrong authority be rejected by the appellate authority for being time barred?

❖ **Relevant Case –**

- Chakiat Agencies v. UOI (2015) (Mad.)
- Radha Vinyl Pvt Ltd. v. Commissioner of Income Tax (A.P)

❖ **High Court's Decision –**

- The High Court held that –
 - Although the appeal had been addressed to the wrong officer, Department could not deny the fact that the appeal was pending before it.
 - Either the Department should have returned the appeal papers to the assessee to enable him to file appeal before the appropriate authority or should have handed over the appeal papers to the competent authority. Consequently, now the Department could not say that the appeal was not filed with the competent authority.
 - Thus, the appellate authority have to entertain the appeal and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.