

Service Tax Updates

Important Notifications:

1. Notification No. 25/2009-ST:

Through Notification No. 25/2009-ST an amendment was made to explanation to Rule 3 of Export of Service Rules, 2005.-For the purposes of this rule "India" includes the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India".

2. Notification No. 28/2009 – Service tax dated : August 31, 2009

Central Government exempts taxable service provided to any person in relation to transport of goods specified in Notification, by rail as referred to in section 65 (105) (zzzp) from whole of service tax leviable thereon, w.e.f. 01-09-2009.

Some of the items mentioned in Notification are: defense equipments, railway equipments, postal mail bags, relief materials, luggage of train passengers.

3. Notification No. 30/2009 – Service tax dated : August 31, 2009

In case of transport of coastal goods & goods transported through national water ways & inland waters, Central Government has exempted through this Notification, service rendered to any person in relation to items specified in Notification, from whole of service tax, w.e.f. 01-09-2009.

Some of the items mentioned in Notification are: edible oils, food stuffs including edible oil seeds, fishery, marine produce, poultry, fertilizer, petroleum products, pharmaceutical products, relief materials, news papers, luggage of passengers.

Important Case Laws:

1. *M/s Punjab Steels v. CCE, Chandigarh :009-TIOL-1315-CESTAT-DEL*

Facts: Assessee is a manufacturer of steel ingots & avails Cenvat credit on raw materials, capital goods & input services to pay excise duty. In later periods, he removes certain raw materials as such & reverses Cenvat credit availed except on GTA service.

Issue: Whether Cenvat credit is to be reversed on GTA service?

Decision: Since there is no provision for reversal of Cenvat credit availed on services, demand raised by revenue was set-aside.

2. *M/s Vicas Corpn v. CCE&C, Rajkot: 2009-TIOL-1305-CESTAT-AHM*

Facts: Assessee arranges loans to clients from financial institutions. There were doubts regarding applicability of service tax to the transaction carried out by assessee. Board's circular also pointed out that certain doubts exist in respect of said activity.

Issues: Whether Department can levy penalty u/s 78?

Decision: Tribunal held that when there was confusion during relevant period about taxability of the service (Business Auxiliary Service), penalty u/s 78 can be set aside as there is reasonable cause.

3. *Shri Chandraprasad Desai Memorial Foundation v. Commissioner of Service Tax, Ahmedabad :2009-TIOL-1294-CESTAT-AHM*

Facts: Assessee is a charitable Trust providing English speaking course and other courses and made profits. Revenue raised demand under the category of commercial coaching & training services.

Issues: Whether charitable trust can be considered as a commercial coaching & training center?

Decision: It was held that Charitable Trust can not be held to be commercial concern keeping in mind that services were mainly rendered to poor students.

4. *M/s Sayaji Iron & Engg Co Ltd v. CCE, Vadodara :2009 – TIOL – 1253 – CESTAT – AHM*

Facts: Assessee paid service tax on erection, commission & installation of windmills away from factory premises & claimed credit on the same.

Issues: Whether service of erection of windmills stated above can be taken as input service?

Decision: It was held that erection, commissioning & installation of windmills cannot be treated as input service & credit of service tax taken on it was disallowed.

5. *Parason Machinery (I) Ltd v. CCE, Aurangabad :2009-TIOL-1212-CESTAT-MUM*

Facts: Assessee went on appeal against order of Lower authority disallowing Cenvat credit on Xerox machine maintenance, photography services, air travel agent services & tourist taxi services.

Issues: Whether Cenvat credit can be allowed on the following?

- a. Xerox machine maintenance
- b. Photography services
- c. Air travel agent services
- d. Tourist taxi services

Decision: On Xerox machine maintenance & repairs Cenvat credit was allowed as it was used to take photocopy of drawings without which final product could not be manufactured.

Cenvat credit was disallowed on b, c, and d items.

6. *C & CCE, Vapi v. M/s DNH SPINNERS : 2009-TIOL-1216-CESTAT-AHM*

Facts: Assessee had invoices issued in the name of head office. There was no dispute with regard to the fact that invoices were received by assessee.

Issue: Whether CENVAT credit can be disallowed on procedural grounds that invoice was not in name of assessee?

Decision: Tribunal held that the substantive benefit cannot be denied on the procedural grounds & allowed CENVAT credit to the assessee.

7. *M/s Coca Cola India Pvt Ltd Pune Vs. The Commissioner of Central Excise Pune-III:2009-TIOL-449-HC-MUM-ST*

Facts: Appellants manufacture branded concentrates and supply to bottling companies who resell to distributors for ultimate sale. Sales-promotions are done by appellants on all India bases.

Issues: Whether services of advertisement and marketing procured by appellants for advertisement for aerated waters are covered by definition of input services in Rule 2(1) of Cenvat credit Rules 2004?

Decision: Advertising /marketing services and/or sales promotion services procured by manufacturers of concentrates for marketing aerated beverages are input services and service tax paid thereon is available as input service credit.

8. *CCE, Bhopal Vs. M/s M.P. State Dairy Cooperative Federation:2009-TIOL-1293-CESTAT-DEL*

Facts: Respondent is federation of Milk Unions and issues instructions to unions on various issues.

Issues: Respondent federation gets some charges for such consultancy and is it taxable under category of management consultancy services?

Decision: Activity carried out is not commercial in nature & held not taxable.

9. Commissioner of Central Excise, Ahmedabad Vs. M/s Fine Care Biosystems: 2009-TIOL-1352-CESTAT-AHM

Facts: Cenvat credit has been taken on outward transport on exported goods and air ticket service charges.

Issues: Whether such credits are admissible?

Decision: In respect of exports, outward freight upto the loading port is taken as input service as it is place of removal and air ticket service charges are admissible as air travel is performed for the company's business.

10. CCE, Pune – I v. Premier Ltd [2009-TIOL-1354-CESTAT-MUM]

Facts: Revenue appealed against allowing CENVAT credit on outdoor catering. Its objection is that all the expenses are not borne by company, hence the service cannot be held to be for the purpose of business.

Issue: Whether outdoor catering service can be considered as service for the purpose of business when food is supplied at subsidised rates?

Decision: Tribunal held that even if 25% of expenses of catering service were borne by employees, 100% credit is allowed on outdoor catering service, considering it as service in relation to business.

11. Inox Air Products Ltd v. Commissioner of Customs & Central Excise, Nagpur [2009-TIOL-1341-CESTAT-MUM]

Facts: Liquid oxygen, nitrogen & medicinal gas delivered to buyers in cryogenic tanks maintained at sub-zero temperature & mounted on goods transport vehicles. Appellant claimed service tax credit on outward transportation.

Issue: Whether service tax credit on outward transportation (during the period Feb, 2005 to Sep, 2005) is admissible?

Decision: Tribunal allowed service tax credit on outward transportation as ownership of goods & property therein remain with seller till delivery of goods in acceptable condition. Board's circular no. 97/8/2007- ST dated 23.08.2007, which allows Cenvat credit in similar situation was also considered.