

Updates -ST-January, 2009

(A) Notification No: 1/2009-ST

Central Government has exempted the following taxable services provided by any person to Goods transport agency w.e.f 29th June, 2008:

- Clearing & Forwarding services.
- Cargo handling agency services.
- Storage & warehousing services.
- Business Auxiliary services.
- Packaging services.
- Manpower recruitment services.
- Business support services
- Supply of tangible goods for use services.

Exemption is granted subject to issue of Invoice by service provider & mentioning of details in Invoice.

Comments: The above services provided to the GTA are exempt where the same are used by the GTA for providing the transportation services. Presumably to avoid double taxation. The exemption would be available even where the tax is paid by the service receiver.

(B) Circular No. 108/09-ST

The implication of the recent CBEC circular No. 108/09-ST dated 29.01.2009 is that developers / builders who transfer property after the completion on receipt of the total consideration provide services only to self and that too for the personal use of the buyer and therefore there is no liability. Past cases are to be decided considering the same. Now the builders / developers and buyers of apartments could be eligible for refunds since the service tax paid/ collected was not valid in law. However contractors who provide services to builders / developers / promoters would continue to be liable.

Comment: See article section for more details.

(C) Circular No. 107/01/2009 ST

CBEC's concept of 'commercial'

“As the phrase ‘commercial training or coaching centre’ has been defined in a statute, there is no scope to add or delete words while interpreting the same.

The definition commercial training or coaching centre has no mention that such institute must have 'commercial' (i.e., profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase.

Thus, services provided by all institutes or establishments which fulfil the requirements of the definition, are leviable to service tax."

Other aspect of CBEC's circular:

Great pains have been taken in the circular to explain the position regarding 'post school education'.

Disputes have arisen in respect of institutes that offer general course on improving communication skills, personality development, how to be effective in group discussions or personal interviews, general grooming and finishing etc. It is claimed that such training or coaching improves the job prospects of a candidate and therefore they are eligible for exemption as 'vocational training institutes. CBEC clarified that such institutes are not covered under the exemption.

Comments: What is given by the parliament is sought to be taken away by the tax administration. May not stand the test of the judiciary.

(D) Service Tax – clarification regarding 'Commission' covered under 'Business Auxiliary Service' – reg.

The Board is of the view that some companies make payment to their officials, such as Managing Directors/Directors, terming the same as 'Commissions'. This payment may be over and above the salary and other remunerations. *The relationship between an employee and the employer is distinct from the relationship between a service receiver and service provider. Thus action taken by an employee for the benefit of the employer cannot be in the nature of service.* Therefore, so long as the activities performed are duties within the framework of the terms of employment, the amount paid by an employer to an employee, even if it is termed as commission, would not be treated as 'commission' mentioned under the definition of business auxiliary service and service tax would not be leviable on such amount.

(E) Important Case Laws- January, 2009

1. **M/s PT - Education & Training Service Ltd., M/s Allen Career Institute., M/s Career Care., M/s Career point Vs CCE, Kanpur/ Jaipur/ Indore & vice versa. (2009-TIOL-110-CESTAT-DEL)**

Appellants collected fees in advance on basis of contract prior to 1.07.2003 & the services were rendered from 1.07.2003. SCN was issued to collect tax. Adjudicating authority confirmed demand of tax along with interest & penalty equal to tax. On appeal Tribunal held that service tax is liable for services rendered after 1.07.2003 even though amount is received in advance prior to 1.07.2003. Penalties were set aside because it is a case of interpretation of law.

Comments: This interpretation is applicable only up to the 16.6.2005, the date from which the levy from services provided to include "to be provided" After that date advance received prior to the imposition of the levy may not be liable.

2. **M/s HK Associates Vs CCE, Chandigarh (2009-TIOL-163-CESTAT-DEL)**

Facts: Submission that the payment of commission at the rate of 2% or 3% for the purpose of a simple assignment of collecting the cheques is very much the higher side cannot lead to a conclusion that the payment is for a different purposes. No investigation was carried out to prove the same.

Issue: The issue to be decided is whether M/s. H.K. Associates have rendered the services of advertising agency.

Decision: Tribunal held that Appellant is not an advertising agency but only receives commission on sales.

3. **M/s Hi-Tech Thermo coatings & M/s Pioneer Industries Vs CCE, Kochi (2009-TIOL-162-CESTAT-BANG)**

Facts: Appellants were involved in activity of powder coating on material supplied by customers and collection of job charges. The Revenue proceeded to demand the service tax under the heading 'Business Auxiliary Service' on the ground that the appellants are carrying on production of goods on behalf of their clients.

Issue: Whether entitled for the benefit of Notification No.8/2005?

Decision: Tribunal held that impugned order is set aside and the matter is remanded to grant the benefit of the Notification No.8/2005 which provides the exclusion of the value of the goods and materials sold to the customer.

4. M/s FINOLEX CABLES LTD Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-I (2009-TIOL-122-CESTAT-MUM)

Facts & Issue: This is an appeal against denial of Cenvat credit in respect of Service Tax paid on Insurance, Catering services and Mobile services.

Decision: Tribunal held that credit has been incorrectly denied & set aside the orders of commissioner (Appeals).

5. CCE, RAJKOT Vs M/s PORT OFFICER(2009-TIOL- 120- CESTAT-AHM)

Facts & Issue: Commissioner (Appeals) reduced the penalty under Section 76. Revenue filed appeal on ground that **Section 76 is unambiguous and does not provide any liberty to the officers deciding the case to reduce the penalty.**

Decision: Tribunal rejected the appeal filed by the Revenue against the impugned order.

6. CCE, VADODARA Vs SHRI VISHWAS R GOLE (2009- TIOL- 121-CESTAT- AHM).

Facts: Respondent is a salaried Director of the company. Revenue raises demand for providing consulting engineer service to same Company.

Issue: Whether services as director can be taxed under Consulting Engineer services?

Decision: Tribunal observed that the respondent is a full time employee Director of the company, for which he is being remunerated by the company, and his services as Director of the company cannot be held to be covered under the category of Consulting Engineer services. Revenue's appeal is rejected.

7. Nirulas Corner House Pvt Ltd Vs Commissioner of Service Tax, New Delhi (2009- TIOL- 130- CESTAT- Del)

Facts: Commissioner on basis of agreement held that Nirulas are rendering management consultancy service to Sagar. Appellant went on appeal.

Issue: Whether appellant is rendering management consultancy service to Sagar?

Decision: The decision of Tribunal in Basti Sugar mills [2007- TIOL- 657- CESTAT- DEL] was referred to, wherein it was held that Management consultant renders advisory service & not actual performance of management function. Tribunal held that an ocean separates a manager from management consultant & appellant is not rendering management consultancy service.

8. CCE, Vapi Vs M/s Neral Paper Mills P Ltd (2009-TIOL-134-CESTAT-AHM)

Facts: Respondent was availing services of GTA & 75% abatement was allowed on basis of declaration on letter heads of Goods Transport Agency. Revenue's contention was that declaration can be on consignment note only. Appellant appealed against order of Commissioner (Appeals).

Issue: Whether declaration can be on consignment note only?

Decision: Tribunal rejected Revenue's Appeal.

9. M/S Allengers Medical Systems Ltd. Vs CCE, Chandigarh (2009-TIOL-199-CESTAT-DEL).

Facts: The appellants are registered with the Central Excise Department for of medical equipment such as X-Ray machines, C-Arm Image Intensifier, Mammography, and Mobile Cath Lab classifiable under heading 9022 of the First Schedule to the Central Excise Tariff Act 1985.

Issues involved:

- Whether appellant is providing services like imparting training, erection, commissioning and installation of machines/equipments manufactured by them at customers place?

- Whether the activities of training, erection, commissioning and installation would amount to providing technical assistance to the buyers of machines and covered under the service of 'Consulting Engineering' up to 20th June, 2003 and thereafter it is covered under the category of "Erection, commissioning or installation" service to their customer/buyer?

Decision: Tribunal held that the erection and installation charges are covered in the value of the medical equipments and the central excise duty was discharged thereon. The impugned order is set aside. The appeal is allowed with consequential relief.

10. M/s Singh Brothers Vs Commissioner, Customs & Central Excise, Indore.

Facts: The appellants had entered into a contract with Sanjay Gandhi Thermal Power Station, Birsinghpur for handling work relating to unloading of coal from rail wagons and discharging them to the conveyor belt through the track Hopper. The work also includes breaking and pushing of coal lumps of bigger size into track Hopper. This work was being handled within the premises of the power house. The contract envisages that the appellants engage sufficient labourers for timely completion of the work of unloading.

Issue involved: The Commissioner has held that the work handled by them falls under the category of "Cargo Handling Services" and demanded service tax relating to the period 21.8.2002 to 2.5.2006 in pursuance of show cause notice date 18.10.2006.

(iii) Decision: Tribunal held that the issue involved interpretation of law and that there is no justification for invoking extended period of limitation and it set aside the penalties imposed on the appellants.