

Legal Update

intangibles and close connection with the Tata Group of Companies making a huge contribution to TCS towards brand equity, whereas Assessee was a captive service provider without much intangible and risks; High Court thus ruled in favour of the assessee and excluded TCS as a comparable.



GST

LD/68/43, [2019-TIOL-1656-AHM-GST], Shabnam Petrofils Pvt Ltd vs. Union of India & 1 other(s), 17/07/2019

HC struck down proviso prescribing lapsing of ITC accumulated up to 31.07.2018, in case of certain notified goods (mainly from textile industry) for which there were restriction on refund of unutilised accumulated ITC on account of inverted duty structure.

Service Tax

LD/68/44, [Central Excise Appeal No. 46 of 2019, Bombay High Court], Dilip Chhabria Design Pvt. Ltd. Vs. The Commissioner of Central Excise, Pune, 11/06/2019

Penalty for non-deposit of tax collected upheld inspite of financial difficulty of taxpayer.

Assessee had recovered amount from its customers and did not pay it to the Government; High Court stated that such non-payment was certainly with the intent to evade the service tax as there was no justification for keeping the amounts recovered from customer with itself and not passing it over to Government on whose behalf it is collected. Further Assessee had also misrepresented to its customer that the collected tax shall be paid over to the Government. As per High Court, malafide intention of assessee was also clear, and penalty under section 78(1) of the Finance Act 1994 was leviable. High Court opined that financial difficulties faced by the appellant can never justify the non-payment of tax to the Government.

LD/68/45, [2019-TIOL-2124-CESTAT-MUM], M/s Arcadia Shipping Ltd. Vs. The Commissioner of CGST & CX, 08/05/2019

Even prior to March 2016, 'ocean freight' cannot be regarded as 'exempt service', and no reversal under Rule 6(3) of CCR, 2004 is required for Cenvat Credit attributable to ocean freight.

LD/68/46, [2019-TIOL-1547-HC-AHM-ST] The Principal Commissioner Vs. M/s Shreno Ltd., 12/04/2019

High Court upheld order of Tribunal that the assessee is not required to reverse 8%/10% proportionate

Cenvat Credit under Rule 6(3) of CCR, 2004, as sale of immovable property after obtaining completion certificate is not exempt service at all.

LD/68/47, [2019-TIOL-2217-CESTAT-DEL], Siwal Infracon Pvt. Ltd vs. Commissioner of Central Excise and Service Tax, 03/12/2018

Tribunal held that no service tax liability would arise in case the amount of mobilisation advance is withdrawn subsequently as no service is provided.

Excise

LD/68/48, Excise Appeal No.2 of 2018, Bombay High Court Cipla Ltd. Vs. The Commissioner of Central Excise, Goa, 25/03/2019

During the course of audit, it was noticed that the assessee had availed credit of inputs to the extent used in manufacture of non-excisable products, which was subsequently reversed by the assessee. Revenue had levied interest under Rule 14 of Cenvat Credit Rules, 2004 with penalty under Rule 15, which was confirmed by CESTAT. Bombay High Court noted that even if the assessee had not utilised Cenvat Credit ultimately, however, since it had admittedly availed the credit on the entire inputs knowingly well that the entire inputs would not be used exclusively for excisable goods, it was liable to pay interest under Rule 14. High Court stated that amendment to Rule 14 whereby the words 'taken OR utilised' wrongly were substituted by the words 'taken AND utilised wrongly' were substituted, was applicable prospectively and not retrospectively; Notice of demand was issued much prior to date of amendment to Rule 14 and thus the benefit of such amendment was not available to the assessee; High Court thus upheld the demand of interest and penalty.

LD/68/49, [2019-TIOL-2005-CESTAT-Bang] M/s V M G R Hotels and Resorts Pvt. Ltd vs. Commissioner of Central Tax and Central Excise, 09/05/2019

Tribunal relied upon decision of Hon'ble High Court in *CCE, Coimbatore vs. Flow Tec Power: 2006 (202) ELT 404*; wherein it was held that unjust enrichment is not applicable even when the refund amount is shown as expenses in the Profit & Loss account as the assessee has suffered the duty and not passed on to the customers and held that claim of refund amount in Profit & Loss as expense does not amount to unjust enrichment.