HIGH COURT RULING

2010-TIOL-620-HC-MAD-ST

Infotech Software Dealers Association Vs UoI (Dated : August 24, 2010)

Service Tax – IT Software Service - Software is goods; The law as to whether the software is goods or not is no longer *res integra* . A software programme may consist of various commands which enable the computer to perform a designated task. The copyright in that programme may remain with the originator of the programme. A 'goods' may be a tangible property or an intangible one. It 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. If a software whether customised or noncustomised satisfies these attributes, the same would be goods. In view of the settled law, it must be held that software is 'goods' as defined in Article 366(12) of the Constitution of India.

Whether the transaction would amount to sale or service would depend upon the individual transaction: The software being an intangible property can be considered as goods for the purpose of levy of sales tax. However, in a transaction whereby the software is delivered to the customers, the question is as to whether it would amount to an exclusive sale. There may be cases of exclusive sale or exclusive service or where the element of sales and service is involved. To decide the imposition of tax, the nature of transaction is relevant. When a statute, particularly a taxing statute is considered with reference to the legislative competency, the nature of transaction and the dominant intention on such transaction would be relevant. When a transaction takes place between the members of ISODA with its customers, it is not the sale of the software as such, but only the contents of the data stored in the software which would amount to only service. To bring the deemed sale under Article 366(29A)(d) of the Constitution of India, there must be a transfer of right to use any goods and when the goods as such is not transferred, the question of deeming sale of goods does not arise and in that sense, the transaction would be only a service and not a sale.

Parliament has the legislative competency to enact law in respect of tax on service: Parliament has the legislative competency to bring in enactments to include certain services provided or to be provided in terms of information technology software for use in the course or furtherance of business or commerce to mean a taxable service, in terms of the residuary Entry 97 of List I of Schedule VII, the challenge to the amended provision cannot be accepted so long as the residuary power is available.

Also see analysis of the Order

2010-TIOL-619-HC-DEL-ST

M/s Jet Lite India Ltd Vs UoI (Dated : August 20, 2010)

Service Tax – BAS – Promoting Real Estate Business in the air – PRE-DEPOSIT reduced to 60 Crores from 100 Crores: if the petitioner deposits a sum of Rs.60 crores and a bank guarantee for a sum of Rs.10 crores by 25th September, 2010, the tribunal shall proceed with the appeal and finalize the same by end of November,

2010.
2010-TIOL-618-HC-MAD-ST
M/s Chemplast Sanmar Ltd Vs CCE, Salen (Dated : August 20, 2010)
Service Tax – CENVAT Credit – Services used subsequent to manufacture – CESTAT Order stayed
2010-TIOL-604-HC-MAD-ST
A P Ravi Vs UoI (Dated : August 19, 2010)
Service Tax – Construction Service – Constitutional Validity of explanation to (zzzh) inserted by Finance Act 2010 – No coercive steps: in a similar matter, where the very same provision has been challenged, the Bombay High Court has granted an interim order to the effect that no coercive steps shall be taken against the petitioners therein for the recovery of service tax in relation to the provisions in question. However, assessment proceedings can go on. [2010-TIOL-526-HC-MUM-ST]

2010-TIOL-584-HC-KAR-ST
CST , Bangalore Vs M/s Toyoda Iron Works Co Ltd (Dated : June 24, 2010)
Service Tax – Consulting Engineer Service by Foreign Service Provider – not taxable prior to 18.4.2006: In view of the admitted facts that the respondent herein is a foreign company who is a service provider and only from the date of the aforesaid amendments, the service receiver would be liable to pay the service tax and that the respondent/assessee is not liable to pay any tax prior to amendment i.e., for the period in question 1/4/1999 to 31/3/2001.
Also see analysis of the Order
2010-TIOL-566-HC-KAR-ST

CST, Bangalore Vs M/s MAA Communications Bozell Ltd (Dated: June 3, 2010)

Service Tax – Second SCN alleging suppression - CESTAT required to pass reasoned order – Approach of the Tribunal very cursory – Matter remanded: the approach of the Tribunal in this particular case has been very cursory. In fact, in a matter the like this, if the facts are involved pertaining to suppression of material and second show cause notice has been issued, the entire factual matrix had to be considered in order to give a finding with regard to validity of the second show cause notice issued by the Assistant Commissioner. In the absence of there being any application of mind on this issue, the Tribunal could not have allowed the appeal of the assessee by merely relying on the Apex Court's decision. The Tribunal could not have passed such an order by merely referring to a precedent and dispose of the matter without laying any foundation for the same in the form of narrating the facts and giving reasons and only by relying on the basis of the facts narrated and the contentions urged by the counsel.

Also see analysis of the Order

2010-TIOL-547-HC-P&H-ST

CCE, Chandigarh Vs M/s Nahar Industrial Enterprises Ltd (Dated: January 22, 2010)

Service Tax – Storage and warehousing - Buffer subsidy received by Sugar Factory for storage of Sugar as per Government directive – No Service – No Tax: it is apparent that service tax can be levied only if service of `Storage and Warehousing' is provided. Nobody can provide service to himself. In the present case, it is undisputed that the Respondent-Assessee stored the goods owned by himself. After the expiry of storage period, the Respondent-Assessee was free to sell to the buyers of its own choice. The Assessee has stored goods in compliance to directions of government of India issued under Sugar Development Fund Act, 1982. The Respondent-Assessee has received subsidy not on account of services rendered to Government of India but has received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. The act of Respondent- Assessee can not be called as rendering of services. The Tribunal has rightly held that just because the storage period of free sale sugar had to be extended at the behest of Government of India, neither the Appellant- Revenue sugar mills becomes `Storage and Warehouse keeper' nor the Government of India become their client in this regard. The storage of specific quantity of free sale sugar cannot be treated as providing `Storage and Warehousing' services to the Government of India.

Also see analysis of the Order

2010-TIOL-526-HC-MUM-ST

Maharashtra Chamber of Housing Industry Vs Union of India (Dated: July 23, 2010)

Service Tax – Construction Service - Constitutional Validity of Finance Act 2010 Amendment challenged – No coercive steps till next hearing: Notice issued to Attorney General of India

2010-TIOL-517-HC-DEL-ST

Indian Railways Catering & Tourism Corporation Ltd Vs Govt Of Nct Of Delhi & Ors (Dated: July 19, 2010)

Service Tax/VAT – Providing food in trains is pure sale of goods; constitutional right of the State Government to levy VAT cannot be denied just because the Centre has collected Service Tax – Refund of Service Tax can be claimed: the transaction between the petitioner-company and Indian Railways, is a transaction purely of sale of goods and not a composite transaction for sale of goods and rendering of services; he State is competent to levy sales tax/Value Added Tax on the entire sale consideration in respect of sale of goods and we cannot deny the constitutional right to State to levy such a tax merely because **tax authorities have also collected service tax from the petitioner on the assumption that the contract between the parties was a contract of providing services or a composite agreement of providing services and goods;** It will, however, be open to the petitioner to claim refund of service tax already paid by it in respect of such transactions. If the refund is declined, the petitioner will be at liberty to initiate such proceedings, as may be open to it in law in this regard. If service tax is sought to be levied, upon the petitioner, in future, in respect of such transactions, it will be open to it, to challenge the same in appropriate proceedings.

Also see analysis of the Order

2010-TIOL-500-HC-KAR-ST

Chief Commissioner, Bangalore Vs M/s TNT India Pvt Ltd (Dated: April 16, 2010)

Service Tax – SCN mandatory before demand – Letter directing payment is an appealable order: if in the exercise of power under Section 73 or 83(a) or 84 by the Commissioner of Central Excise or under Section 85 by the Commissioner of Central Excise (Appeals) an order is passed, an appeal would lie to the appellate tribunal if the assessee is aggrieved by such an order. Further under Section 73 of the Act, recovery cannot be directed without issuing a show-cause notice under the said section. The respondent-assessee rightly invoked the appellate remedy by filing an appeal under Section 86(1) of the Finance Act. The Tribunal was therefore, justified in holding that the Communication dated 9.1.2006 was an order which was appealable before the CESTAT and that the said order was passed without complying with the principles of natural justice and thereby setting aside the same by allowing the appeal.

Also see analysis of the Order

2010-TIOL-498-HC-KAR-ST

CST, Bangalore Vs Turbotech Precision Engineering Pvt Ltd (Dated: April 15, 2010)

Service Tax – Prior to amendment in 2006 Companies were not included under the definition of consulting engineer. From the combined reading of the definition of Consulting engineer prior to 2006 and after 2006, it is clear to the Court that the service rendered by the Company had not been included under the definition of consulting engineer prior to 2006 as it stood under Section 65(13). As a matter of fact, this Court has decided the said point in CEA 12/2007 on 1st April 2010 – 2010-TIOL-451-HC-KAR- ST stating that prior to the Amendment Act, 2006, the Companies were not included under the definition of consulting engineer.

Works Contract only from 1.6.2007: So far as the execution of the works contract is concerned, the section has come into force with effect from 1-6-2007. After considering the contract entered into between the assessee and its employer, the case of the assessee falls under Section 65(105)(zzzza) Explanation (a) and (e). Even though the assessee's case falls under the definition of works contract, but the revenue has no power to call upon the assessee to pay service tax, interest and penalty therein, since the provisions of law has come into force with effect from 1-6-2007.

Also see analysis of the Order

2010-TIOL-497-HC-KOL-ST

M/s Naresh Kumar & Co Vs UoI (Dated: February 8, 2010)

Service tax - Spot recovery – The Department has no jurisdiction or authority to collect any amount at the time of raid : The authority concerned has no jurisdiction or authority to collect any amount at the time of raid; simply it is not empowered legally to do so. At the stage of recovery proceedings, all sorts of legitimate coercive measures can be taken, namely attachment of property etc.

HELD: the revenue department has no right to withhold the said amount and it is bound to return the same.

Also see analysis of the Order

2010-TIOL-494-HC-P&H-ST

CCE Vs M/s Vahoo Colour Lab (Dated: February 3, 2010)

Service Tax – Photography - service tax is not leviable on the sale portion: The photography films, printing papers, chemicals and envelopes are the integral and essential ingredients to complete the process of photography. Meaning thereby, the components of sale of photography, developing and printing etc. are clearly distinct and discernible than that of photography service. Therefore, as the photography is in the nature of works contract and it involves the elements of both sale and service, therefore, the service tax is not leviable on the sale portion, in the obtaining circumstances of the case.

Also see analysis of the Order

2010-TIOL-493-HC-KERALA-ST

M/s Speed And Safe Courier Service Vs The Commissioner (Dated: November 5, 2009)

Service Tax – Courier Service – Franchisee not liable to pay tax again when the courier agency has paid tax on the gross amount charged: the agent/franchisee is not doing independent business but is only acting as agent for collection and delivery of parcel as agent in the courier service. Apart from appointing the agent / franchisees, the appellants are not rendering any service to the franchisees. The franchisees also do not make any payment to the appellant which alone could be subject to tax.

The only provision under which tax can be levied for the entire transaction involving the appellant and franchisees/agents is the tax on courier service covered under section 65(33) read with Section 65(105)(f) of the Act.

Also see analysis of the Order