

## VS ASSOCIATES

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## SERVICE TAX

### Important Legal Issues and Court decisions on Service Tax

The validity of Service tax has been challenged in various courts of India, who have in their various decisions have upheld the legality of the levy. Few important decisions in this regard are given below.

The Gujarat High Court in the case of **Addition Advertising vs. Union of India (1998 (98) ELT 14)** has held that levy of tax on advertising service is not unconstitutional. It was held that this is not a tax on any profession, trade, calling or employment, but in respect of service rendered. If there is no service, there is no tax. It was further held that 'the tax is not on advertisement' but on the services rendered with reference to the advertisement and there is a clear distinction between the advertisement service and advertisement.

In another case of **M/s. Laghu Udyog Bharati v/s. UOI (1999 (89) ELT 247)** the petitioners challenged the Government's decision to shift the burden of duty liability to the service receivers in case of Goods Transport Operators and Clearing & Forwarding Agents. In this case, the Hon'ble Supreme Court upheld the contention of petitioners and held that the relevant provisions of Service Tax Rules were *ultra vires* the Finance Act, 1994.

The Hon'ble Supreme Court while deciding the case, observed as follows :-

"The service tax levied by reason of services which are offered. The imposition is on the person rendering the service. Of course, it may be indirect tax, it may be possible that the same is passed on to the customer but as far as the levy and assessment is concerned, it is the **person rendering the service who alone can be regarded as an assessee and not the customer. This is the only way in which the provision can be read harmoniously.**

The Hon'ble Apex Court further opined that "The charge of tax is on the value of services and it is only the person who is providing service can be regarded as an assessee. The rules, therefore, cannot be so framed which do not carry out the purpose of the Chapter (Statute) and cannot be in conflict with the same."

A number of trade bodies and individual service providers have challenged the levy of service tax by the Union Government under the residuary entry No.97, list I in VII<sup>th</sup> Schedule of the Constitution. They contended that the service tax is nothing but a tax on professions, which is specifically listed, in the State list. Therefore, the Union Government is not empowered to levy service tax on professional services.

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Additionally, the levy has also been challenged on the grounds of hostile discrimination vis-à-vis other services and/or the service providers within the same category. The Institute of Architects and certain representative bodies of Chartered Accountants have been in the forefront of this litigation. However, this challenge has not found favour with the courts.

The Gujarat High Court in its judgement dt.27.12.2000 (in SCA No.469/1999 and 7220/1999) and the Mumbai High Court in the judgement dt. 22.02.2001 (in the W/P no. 142/1999 and 1174/2000) have held that the tax on profession (which is in the State list) is a tax on the privilege of carrying on such profession. Therefore, such a tax is irrespective of the fact whether professional does or does not render professional service for remuneration. Whereas the service tax is a levy, which has to be paid each time a professional renders services for remuneration. Thus, professional tax and service tax are different in pith and substance. Further, the legislature is competent to identify and reasonably discriminate between various services and service providers for the purposes of taxation. Therefore, there is no ground to challenge the levy on the grounds of discrimination. The Madras High Court have also taken the same view in a plethora of petitions pending before them.

A number of trade bodies and individual service providers have challenged the levy of service tax by the Union Government under the residuary entry no. 97, list I in Seventh Schedule of the Constitution. They contended that the service tax nothing but a tax on professions, which is specifically listed, in the State list. Therefore, the Union Government is not empowered to levy service tax on professional services. Additionally, the levy has also been challenged on the grounds of hostile discrimination vis-à-vis other services and/or the service providers within the same category. The Institute of Architects and certain representative bodies of Chartered Accountants have been in the forefront of this litigation.

Considering the importance of early resolution of these disputes, the Directorate actively pursued such cases pending in Ahmedabad, Mumbai and Chennai High Courts have upheld the constitutional validity of the service tax law provisions contained in the Chapter V of the Finance Act, 1994 as amended and the Rules framed thereunder.

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