

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.88407 of 2014

[Arising out of Order-in-Original No.21/ST/COMMR/2014, dt.30.04.2014, passed by the CCE & ST, Aurangabad]

M/s Millenium Beer Industries Ltd

"UB Tower", UBCT #24, Vittal Mallya Road,
Bangalore 560 001

.....Appellant

VERSUS

CCE, Aurangabad

N-5, Town Centre, CIDCO,
Aurangabad 431 030

.....Respondent

Appearance:

Shri Anand Bhandari & Anil Malani, Advocates for the Appellant
Shri Roopam Kapoor, Pr. Commr. (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MR. SANJEEV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86241 / 2019

Date of Hearing: 15.01.2019

Date of Decision: 11.07.2019

PER: D.M. MISRA

This appeal is filed against Order-in-Original No.21/ST/COMMR/2014, dt.30.04.2014, passed by the CCE & ST, Aurangabad.

2. Briefly stated the facts of the case are that the Appellants, during the period 23.09.2009 to 15.11.2011, on the basis of an Agreement/Contract dt.01.04.2005 entered with M/s United Beverages Ltd (UBL) manufactured and sold alcoholic beverages to the customers/indenters of UBL as per the instruction of UBL. Alleging that the said activity is classifiable under the taxable

category of Business Auxiliary Service, as amended w.e.f 01.9.2009 and since they failed to discharge service tax of Rs.21,92,03,724/- during the said period demand notice was issued to them on 19.12.2012 for recovery of the said amount along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. The learned Advocate Shri Anil Malani for the Appellant has submitted that by brewing agreement between the Appellant and M/s UBL dt.01.04.2005 and further amended by the agreement dt.02.03.2009, M/s UBL being owner of 'King Fisher' and 'London Pilsner Brands' permitted the Appellant to manufacture and sell the branded beer. Under the said agreement, UBL granted non-assignable, non-transferable and non-exhaustive rights to the Appellant to brew the beer under the brand owned by UBL. The Appellant had paid UBL all inclusive consideration of Rs.5/- per case of beer for usage of brand names of UBL and UBL has discharged service tax liability on the said amount under Intellectual Property Right Services. The Appellant has undertaken manufacturing of beer on his own and sold the same to third party in the same manner it manufactured and sold beer under on its own brand name. The entire production bearing the brand name of UBL has been sold by the Appellant directly to the customers, distributors of UBL and also to UBL. Such sales are made under invoices raised by the Appellant on all customers including UBL and applicable sales tax was paid by the Appellant. It is his contention that the allegations in the show cause notice is that they have rendered services under the taxable category of business auxiliary service Sec. 65(19) of Finance

Act, 1994 i.e. under clause (v) "production or processing of goods for, or on behalf of the client", pursuant to the amendment brought to the said definition w.e.f. 01.09.2009. The Revenue has issued the demand notice on the ground that even if the activity results into manufacture of goods leviable to state excise duty, but the same results into rendering business auxiliary service, which is incorrect, in view of the Board's Circular No.249/1/2006-CX-4, dt.27.10.2008. It is their contention that the circular issued on 27.10.2008 mentions several types of arrangements between the Brand owner (BO) and the contract manufacturer of alcoholic beverages (CBU) viz. (i) brand licensing arrangement, (ii) contract manufacturing arrangement, and (iii) lease arrangement. It is his contention that if is the contract brewing unit (CBU) undertakes the complete processes of manufacture of alcoholic beverages under contract bottling arrangement, then such activity would not fall under the taxable service of business auxiliary service and hence not chargeable to service tax. In case the activity undertaken by the CBU falls short of the definition of 'manufacture' (like packing, labeling, etc) then such activity would fall within the said category. In the present case, since the Appellant undertakes entire process of manufacture, hence their service would not fall under business auxiliary service.

3.1 Further they have submitted that the agreement between the Appellant and UBL is on principal to principal basis, hence it is to be inferred that manufacturing activity is carried out by the Appellant. It is further argued that the contract between the parties clearly

indicate that UBL has given intellectual property right to the Appellant for which the Appellant paid an amount of Rs.5/- per case to UBL. Therefore, the transaction as per agreement dt.01.04.2005 cannot be considered as production or processing on behalf of the client. In support, they have referred to the judgment in the case of Parle Beverages Ltd Vs UoI & Others – 1982 (10) ELT 142 (Bombay), Poona Bottling Company & Another Vs UoI – 1981 (8) ELT 389 (Delhi), Rubicon Formulations Ltd Vs CCE & ST, Aurangabad – 2010 (19) SER TR 515, UOI Vs Cibatul Ltd – AIR 1986 SC 281, CIT Vs B.M. Kharwar – AIR 1969 SC 812, Hindu Shipyard Ltd Vs State of Andhra Pradesh – AIR 2000 SC 2411.

3.2 Learned Advocate has vehemently argued that in any transaction of service tax, there has to be a service provider who renders service and the service receiver of the said service. In the present case, service provider has been rendering service under IPR service in terms of Circular No.249/1/2006-CX-4, dt.27.04.2008. Since UBL has already provided service on its beer brands manufactured by the Appellant, on the same transaction again how Appellant could have provided service to UBL. It is his contention that Service tax cannot be calculated at both ends of the same transaction. Referring to Section 67 of the Finance Act, 1994, the learned Advocate has submitted that receipt of consideration is a pre-requisite for service tax levy; in the present case the consideration was for the goods supplied and not for the services rendered. The Appellant had not received any consideration from UBL for rendition of any service. Referring to the Board Circular

dt.30.10.2009, he has submitted that the service tax should be payable on bottling, job charges, distribution cost and other reimbursable. As regards the statutory levy, they do not represent consideration for rendering the service. Such amount will not be included in the value for charging service tax. Similarly, the surplus/profit earned by the brand owner being in the nature of business profit, not chargeable to service tax. In the present case, UBL does not pay any bottling, job charges to the Company nor any distribution cost to the Company. Also, UBL does not reimburse any expenses to the Company and the Appellant had sufficient evidence indicating the value of inputs. Narrating various costs incurred by the Appellant during the manufacture of beer, the learned Advocate has submitted that the said costs are common whether it is for manufacture of own brand or brands belonging to UBL. Referring to the draft circular of November 2006, the learned Advocate has submitted that manufacture of alcoholic beverages falls outside the scope of Union List and therefore, the Central Excise Act cannot be made applicable to production of alcoholic beverages. Hence, the same has been kept outside the scope. Accordingly, the activity of blending, production, bottling, packing or labeling of alcoholic beverages does not amount to manufacture within the meaning of Clause (f) of Section 2 of Central Excise Act, 1944.

3.3. The Ld. Advocate submitted that the definition of 'Business Auxiliary Service' included the services of production or processing of goods for or on behalf of the client. It specifically excluded any activity that amounts to manufacture of excisable goods. "Excisable goods" has defined under Section 2(d) of Central Excise Act, 1944.

If the product emerging out of processes carried out by the job worker is not excisable good, the services were not excluded from the definition. With effect from 01.07.2012 any process amounting to manufacture or production of goods as specified in Clause (f) of Section 66(D) of Finance Act, 1994 fall under the negative list and accordingly not taxable. Further the Item No.30 of Notification No.25/2012-ST, dt.20.06.2012 allowed exemption to certain services provided as a job worker, which were exempted from payment of service tax by different notification prior to 01.07.2012. Applying the same analogy of manufacture of goods, being purely a "manufacturing activity" service tax also cannot be levied for the period 01.09.2009 to 30.06.2012 as the period prior to it exempts applicability of service tax on manufacture.

3.4 Learned Advocate has further submitted that as per the scheme of amalgamation sanctioned by BIFR, the Appellant has merged in UBL w.e.f. 01.04.2010, hence there is no question of any liability of service tax after the said date. He has submitted that the amalgamation is done as per Section 17 (2) of Sick Industrial Companies (Miscellaneous Provisions) Act, 1987 and the said Act is having over-riding effect over all other laws for the time being in force. The scheme has attained finality under the said Act. In support, he has referred to the judgment on the issue viz. Marshal & Sons Vs Income Tax Officer – 1997 (2) SCC 302, CCE Trichy Vs IOC Ltd – 2011 (23) SER TR 625.

3.5 He has further contended that once applicable sales tax/VAT is paid on the transaction, service tax is not payable again in relation

to the subject transaction. He has referred to the judgment in the case of Idea Mobile Communication – 2006 (4) STR 132 (T), Thermax Ltd Vs CCE Pune-I – 2007 (8) STR 487 (T).

3.6 The learned Advocate has further submitted that extended period of limitation cannot be made applicable as there has been no willful suppression of facts on behalf of the Appellant in manufacturing and selling of beer bearing the brand name of M/s UBL when the consideration paid for use of brand name has already suffered service tax and known to the department. Further, he has submitted that the computation of demand is incorrect as they are entitled to benefit of Notification No.12/2003, dt.20.06.2003. In support, they have referred to the judgment of Hon'ble Supreme Court in the case of Maruti Udyog Limited – 2002 (141) ELT 3 (SC). Further, they have submitted that in absence of any intention to evade payment of duty, imposition of penalty is bad in law.

4. Per contra, the learned A.R. for the Revenue Shri Roopam Kapoor, Principal Commissioner has submitted that the vires of levy of service tax post amendment to the definition of Business Auxiliary Service has been upheld by Hon'ble Delhi High Court in the case of International Spirits and Wines Association of India Vs UOI – 2016-TIOL-1646-HC-DEL-ST. While upholding the constitutional validity of Sec. 113(A)(i) of the Finance Act, 2009 which amended Sec. 65(19) of Finance Act, 1994 the Hon'ble High Court has clearly held that the transaction of contract manufacturing would be amenable to service tax since there is a clear distinction between manufacture of alcoholic liquor by oneself and for others. The latter partakes the

character of rendition of service which is not amenable to be accommodated within the act of manufacture by oneself.

4.1 It is his argument that from the manufacturing agreement/contract between the Appellant and M/s UBL, it is clear at Para 2.1(a) and from various other clauses that the Appellant has been authorized for manufacture and bottling of beer in respect of trade marks belonging to UBL, that branding of such beer shall be sole responsibility of UBL and the branding shall be done at the premises of brewer and the beer shall be disposed of as per the orders received from UBL. Therefore, there is no doubt about the fact that the activities undertaken by the Appellant clearly fall within the scope of 'manufacturing for or on behalf of another'. The stand of the Appellant that they were not manufacturing beer on behalf of M/s UBL, but were using the rights of brand name used by them for which they were paying Rs.5/- per case, is not correct. On the contrary, every aspect of production as well as disposal was controlled by UBL which has been clearly spelt out in the adjudication order passed by the Commissioner.

4.2 Referring to the Notification NJo.39/2009-ST, dt.23.09.2009, the learned A.R. has submitted that valuation in this regard has been prescribed, which is equivalent to the cost of production less the value of the input, based on which the taxable value of the goods could be arrived at. However, the basic condition to apply the said notification is that the service provider should maintain separate account of receipt, production, inventory and dispatches of goods as well as the financial transaction between the alcoholic beverages

manufactured on his own account and manufactured on behalf of another. In the present case, the Appellant has not complied any of the said condition. Further, he has submitted that reliance placed on the Circular of 2008 was erroneous, especially in view of Notification NoI.39/2009 which encompasses various charges liable for arriving at the valuation of the goods.

4.3 Further, rebutting the argument of amalgamation of the Appellant with M/s UBL from the appointed date of 01.04.2010, the learned A.R. has submitted that on verification from division office, it has been ascertained that M/s UBL was issued a service tax registration on 05.12.2012 only for various services on the address of the Appellant. It was submitted that no application for amendment of ST-3 returns had been filed by the Appellant before the jurisdictional authority, therefore, there was no representation to the Department regarding the merger being in effect prior to the date of application or from the date prescribed in the order of BIFR.

4.4 Referring to the scheme of amalgamation and the orders passed by BIFR, he has submitted that in the hearing dated 24.10.2011, it is recorded that Company is not seeking any significant relief from any Government/financial institution. This clearly shows that the demand of service tax is not in consideration before BIFR. Further, he has submitted that in any case, the issue of merger has been examined by various Courts in the case of CIT Central-I Vs Shaw Wallace Distilleries Ltd – 2016-TIOL-1228-HC-KOL-IT. The Hon'ble Kolkata High Court has held that if the Assessee did not bring the fact of amalgamation to the notice of the assessing

officer, the assessment order does not become nullity. He has submitted that besides the fact that these transactions were not covered within the scope of amalgamation as ordered by BIFR, the Appellant chose not to revise ST-3 return, accordingly the judgment in Shaw Wallace Distilleries Ltd case is squarely applicable to the facts of the present case. The learned A.R. has further submitted that in the case of Indus Tower Limited Vs State of Gujarat 2017-TIOL-1845-HC-AHM-VAT, the Hon'ble Gujarat High Court has held that provisions of Section 52 of GVAT Act and provisions of Section 391 or 392 of the Companies Act operate in two different manner. It is his contention that there is no similar provision as GVAT Act in the Service Tax, it is also a fact that there is no provision for amalgamation prescribed in Finance Act, 1994. However, there is a specific provision regarding amalgamation in the Income Tax Act and that the basis on which the aforesaid judgment has proceeded. Hon'ble Gujarat High Court has also held that in the instant case that there is no privity of Section 391 or 392 of the Companies Act over the GVAT Act.

4.5 The learned A.R. has further submitted that it is relevant to keep in mind that in applying the ratio of the judgment, the Hon'ble Courts have held that the precedent is valid for what it actually decides. In support, he has referred to the judgment in the case of Ambica Quarry Works & Anr. Vs State of Gujarat & Ors. – 1987 SCR (1) 562, CCE Mumbai Vs Fiat India Pvt. Ltd – 2012 (283) ELT 161 (SC).

4.6 On the issue of limitation, the learned A.R. has submitted that neither copy of the contract was declared to the Department nor the transactions had been mentioned in the ST-3 returns filed by the Appellant. As there was no declaration at any stage to the Department about the said activity pursuant to the brewing agreement, therefore, the Appellant has suppressed the material facts, hence, the demand is rightly confirmed invoking extended period of limitation.

5. Heard both sides at length and perused the records.

6. The issues involved in the present appeal for determination are whether:

(i) the Appellants, who manufactured beer, affixed with the Brand name of M/s United Breweries Ltd. and sold under their instruction as per Bottling/Brewing agreement dt.01.4.2005 & 02.3.2009, rendered services under the taxable category of "Business Auxiliary Services"(BAS) and the computation of the demand is correct;

(ii) The merger/amalgamation of Appellant Company with M/s United Breweries Ltd. be taken as the appointed date i.e. 01.4.2010 as per the scheme of amalgamation sanctioned by BIFR, Bench-II under Sick Industrial Companies (Miscellaneous Provisions) Act, 1987 or 21.06.2012, the effective date when the certificate of incorporation was issued by Registrar of Companies, thereby, service rendered to self, for the disputed period, hence no tax is payable;

(iii) the demand is barred by limitation.

7. By virtue of an agreement between the Appellant and M/s UBL Breweries Ltd dt.01.04.2005, the Appellant agreed to manufacture beer, bearing the brand name owned by M/s UBL, and clear/sale the same in the local market to the customers/indenters of M/s UBL Ltd. or supply the same to M/s UBL itself. The sale proceeds are retained by the Appellant but were required to pay Rs.5/- per case to M/s UBL. The department confirmed service tax on the entire sale proceeds received by the Appellant on sell of the said beer.

8. The Revenue alleged that the Appellants had provided taxable service under the category of "Business Auxiliary Service", as amended w.e.f 01.9.2009 particularly under clause (v) i.e. production or processing of goods for, or on behalf of the client, hence liable to service tax.

9. The Appellants has submitted that even though under the bottling agreement, the Appellant is required to manufacture and sell the beer affixing/using brand name of M/s United Breweries Ltd., but the entire transaction is only that of a sale transaction with the customers under a separate contract and no service of 'production or processing of goods for, or on behalf of the client' has been provided to M/s UBL, since the goods were manufactured out of their own raw material, using their own infrastructure, and the consideration is paid by them to M/s UBL for using their Brand name, and no consideration was flowing from M/s UBL for the said service. In any case the demand of service tax cannot be confirmed on the sale price of the branded beer to the customer.

10. Before proceeding further, it is necessary to read the relevant provisions of the Finance Act,1994 i.e. the definition of Business Auxiliary Services (BAS) as contained in Sec.65(19) of the said Act prior to and after 01.09.2009.

Before 01.9.2009

[(19) “business auxiliary service” means any service in relation to, —

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
[* * * *]
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or
[*Explanation.* — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client;]
- [(v) production or processing of goods for, or on behalf of, the client;]
- (vi) provision of service on behalf of the client; or
- (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, [but does not include any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of Section 2 of the Central Excise Act,1944.

[*Explanation.* — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

- (a) ”commission agent” means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —
 - (i) deals with goods or services or documents of title to such goods or services; or
 - (ii) collects payment of sale price of such goods or services; or
 - (iii) guarantees for collection or payment for such goods or services; or
 - (iv) undertakes any activities relating to such sale or purchase of such goods or services;

.....

After 01.9.2009

[(19) “business auxiliary service” means any service in relation to, —

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
- (ii) promotion or marketing of service provided by the client; or
[* * * *]
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or

[**Explanation.** — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client;]

[(v) production or processing of goods for, or on behalf of, the client;]

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, [but does not include any activity that amounts to manufacture of excisable goods].

[**Explanation.** — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) “commission agent” means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services;

or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

[(b) “excisable goods” has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(c) “manufacture” has the meaning assigned to it in clause (f) of section 2 of the Central

11. The change that has been brought into the definition of the BAS w.e.f. 01.9.2009 is the nerve chord of dispute. In the previous definition the exclusion clause was expressed as:

“[but does not include any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of Section 2 of the Central Excise Act, 1944.”

12. The amendment to the said clause reads as:

“, [but does not include any activity that amounts to manufacture of excisable goods.

13. And the meaning of “manufacture” and “excisable goods” mentioned under the said clause read as:

“[(b) “excisable goods” has the meaning assigned to it in clause (d) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(c) “manufacture” has the meaning assigned to it in clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).”

14. Now, reading both these provisions in juxtaposition prevailing prior to 1/9/2009 and thereafter, it can be noticed that in the earlier provision it was prescribed that any activity that amounts to manufacture within the meaning of section 2(f) of Central excise Act, 1944 be excluded from the scope of the said definition. It did not prescribe the resultant of such activity whether excisable goods or otherwise, but, by implication, it is to be understood that goods which fall within the purview of the Central Excise Tariff Act, 1985 were only covered there under and excluded. In the amended provision, after 1/9/2009, it is stipulated that to fall within the exclusion clause, not only the activity should be 'manufacture' within the scope of section 2(f) of Central Excise Act, but the resultant should also be an 'excisable goods'. The meaning of 'manufacture' is retained as was assigned earlier however, the meaning of 'excisable goods' has been prescribed under the new provision.

15. The revenue's contention is that to remove the mischief in the earlier provision which excluded the activity of 'manufacture', applicable both to excisable goods as well as non-excisable goods, the amended provision restricted the exclusion clause only to 'excisable goods' as defined under section 2(d) of Central Excise Act, 1944. In other words, the activity carried out has resulted into 'manufacture' of non-excisable goods, such activity, even if satisfies the tests laid down in ascertaining whether a process or series of processes results into emergence of a product having different name, character, use, etc., and thus become 'manufacture', it would fall under the category of 'Business auxiliary service', and leviable

to service tax. The said argument of the revenue finds support from the circular issued by the board after amendment, the relevant portion reads as under:

Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

D.O.F. No.334/13/2009-TRU
New Delhi, 6th July, 2009

Dear Chief Commissioner/Director General/Commissioner,

The Finance Minister has introduced the Finance (No. 2) Bill, 2009 in the Lok Sabha on the 6th of July, 2009. Clause 112 of the Finance (No. 2) Bill, 2009 covers all the changes relating to Chapter V of Finance Act, 1994. Changes are also being proposed in the provisions of the, -

xxxxxxx

3. Alteration in the scope of existing taxable services :

The following alteration/modifications have been done in the existing taxable services. These changes would come into effect from a date to be notified after the enactment of the Finance (No. 2) Bill, 2009.

3.1 *Modification in Business Auxiliary Service (BAS) [section 65(19)] :-*

It may be recalled that production or processing of goods for or on behalf of a client falls within the purview of this service. However, if any such activity amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, the same is excluded from its purview. This exclusion has been modified to state that it would apply only if the activity results in manufacture of 'excisable goods'. Both the words/phrases i.e. 'manufacture' and 'excisable goods' would have the same meaning as defined under the Central Excise Act. The impact of this change would be that even if a process of manufacture is undertaken for the client, but the resultant product does not fall under the category of excisable goods, such as alcoholic beverages, the service tax would be attracted. Certain other goods which would also fall under BAS on account of the proposed change would be kept outside the tax net by way of exemption notification, to be issued at the appropriate time."

16. We find force in the argument of the revenue. After the amendment to the definition of Business Auxiliary Service with effect from 1/9/2009, the activity of manufacture of non-excisable goods, that is alcoholic beverages, would fall within the scope of Business Auxiliary Service. This receives support from the judgement of

Hon'ble Delhi High Court where under the constitutional vires of levy of service tax on the activity of brewing/bottling undertaken by independent bottling/brewing Manufacturers of alcoholic beverages for their clients, has been held to be constitutionally valid. Therefore, it can safely be concluded that the activity of manufacture of alcoholic beverages, being not an excisable goods, accordingly, does not fall within the exclusion clause of the amended definition of Business Auxiliary Services. Consequently, the CBEC Circular No. 249/1/2006-CX-4 dt. 27.10.2008 issued clarifying the applicability of un-amended definition of Business Auxiliary Service, hence is not relevant to the facts of the present case.

17. The next vital argument advanced on behalf of the appellant is that the activity undertaken by them does not come within the scope of the clause (v), that is,

[(v) production or processing of goods for, or on behalf of, the client;]

18. It is their contention that the beer is manufactured by them using their own raw materials, manpower, infrastructure and it is sold by them against consideration to the buyers under a separate contract, on payment of appropriate sales Tax/VAT, hence, the production and manufacture of beer is on their own account and not for or on behalf of M/s UBL, merely because of the fact that they affix the brand name belonging to M/s UBL. In support of their argument, they heavily relied upon the judgement of the Hon'ble Supreme Court in Cibatul Ltd.'s case, Delhi High Court judgement in Poona Bottling Co. Ltd.'s case, later upheld by the Hon'ble Supreme Court and other case laws on similar line.

19. In order to examine the said contention, it is quite essential to analyze the arrangement/agreement between the Appellant and M/s SKOL through the agreement dt.01.4.2005. In the recital of Agreement the intention and purpose behind such agreement has been spelt out in clear terms; it is M/s UBL who was on the lookout for reliable brewer for manufacturing and bottling beer in various territories. Under Clause 5.9 of the agreement, it is made clear that the Appellant was manufacturing and disposing UBL's beer to State Beverages Corporation / State regulated Depots or to the wholesalers, indentors holding necessary permit licences under the relevant Excise law and who are authorized to purchase/sale. beer in terms of relevant regulation upon their placing purchase orders/indents on the brewer. Clause 6 which makes it clear that the manufacture is for and behalf M/s UBL reads as follows:-

6. Quantity

6.1 Brewer shall manufacture and dispose off 9,60,000 cases of beer per annum on behalf of UBL. 3,60,000 cases from Aurangabad Brewery and 6,00,000 cases from Dharuhera Brewery.

Clause 9.4.5 which reads as follows:

In the event of expiration or termination of this Agreement, BREWER shall immediately return to UBL any written embodiments and sell at cost Raw Materials, plates, labels, packaging materials etc and specifications for brewing and packaging UBL beer and shall not howsoever make use of the same after termination or expiration. UBL shall take over the entire stock of all unused labels, unfinished goods, semi-finished goods in process or at landed cost in exchange of cost of such returnable goods.

20. Analysing the aforesaid stipulations, it reveals that the intention of the parties is to enter into a contract of manufacturing and sale arrangement for the production and sale of branded beer as per the quality and quantity prescribed by M/s UBL and the appellant

accepts to produce, bottle and dispatch the beer to M/s UBL and/or to its indenters.

21. The sum and substance of the said agreement is that the Appellant was to procure raw materials, packing materials, lables, chemicals, consumables, manufacture using its own infrastructure, manpower in accordance with the specifications and standards, affix the brand name belonging to M/s UBL under the strict supervision of M/s UBL, maintain the quality and standard; the price of the branded beer would be determined by M/s UBL and the goods were to be sold only under the instructions of M/s UBL to the customers/indenters as may be directed.

22. The Revenue's contention, on the other hand is that the conditions of arrangement between the Appellant M/s UBL is that of production of goods for, or on behalf of M/s UBL.

23. In response, the contention of the learned Advocate for the Appellant referring to the judgment of Hon'ble Supreme Court in Cibatul Ltd.'s case (supra), is that the buyer in the said case could not be designated as a 'manufacturer' of the goods for and on behalf of the seller merely because the same were manufactured bearing brand name of the seller-supplier and out of raw materials and joint manufacturing programme drawn by the buyer and the seller.

24. In the said case the facts in brief are that M/s Cibatul Ltd (the seller) had entered into an agreement with M/s Ciba Geigy of India Ltd.(the buyer) on 24.07.1971 under which the products, namely,

UF resins and MF resins were to be manufactured by the seller in accordance with the manufacturing programme drawn up jointly by seller and the buyer. The Resins were to be manufactured in accordance with the restrictions and specifications constituting buyer's standards and they were supplied at the prices agreed upon between the sellers and the buyers from time to time. The buyer was entitled to test a sample of each batch of these goods and it was only after approval by the buyers the goods were released for sale to the buyers. The buyer, who obtained trademarks from its foreign company, authorised the seller to affix the trade mark and the seller was to do so "as an agent" for and on behalf of the buyer and not on his own account. The Respondents M/s Cibatul Limited filed price list declaring the wholesale prices of the manufactured goods. The Assistant Collector revised the wholesale prices upward on the basis of wholesale prices at which the buyer sold the products in the market. The question before Hon'ble Supreme Court was whether the wholesale price of the goods at which it was sold by the seller to the buyer for assessment or the price at which the buyer sold the goods in wholesale in the market be adopted for the purpose of assessment. In these circumstances, the Hon'ble Supreme Court has held that the goods were manufactured by the seller M/s Cibatul Ltd. on his own account and not on behalf of the buyer, hence, the whole sale price at which it was cleared/sold to the buyer M/s Ciba Geigy Ltd. be relevant for excise duty purpose.

25. In Poona Bottling's case, the petitioner was manufacturing and bottling of soft drinks like Gold Spot, Limca, Thums up etc. They are

registered with the Central Excise Department for the purpose of manufacturing the said soft drinks and installed the bottling plant by an investment of about Rs.40 lakhs. For the manufacturing of soft drinks it has to purchase numerous articles such as bottles, crown corks, sugar, citric acid etc. Besides these, it also purchased essence from M/s Parle under franchise agreement dt.25.07.1977 and 27.02.1978. The issue was whether because of franchise agreement between the petitioner and M/s Parle, it would be construed that the petitioner deemed to have been manufacturing the soft drinks for and on behalf of M/s Parle. By virtue of Notification No.No.211/77 dt.4.7.1977 a manufacturer of aerated waters allowed partial exemption from duty, not exceeding fifty lakh bottles for home consumption by or on behalf of a manufacturer from one or more factories during any financial year subsequent to 1977-78 and for such clearances not exceeding thirty seven lakh bottles during the period commencing from July 4, 1977 and ending till March 31, 1978. Analyzing the franchise agreement and the provisions of Contract Act, the Hon'ble High Court has held that the petitioner are the manufacturers of soft drinks and not M/s Parle who was not issued with demand notice for exceeding the prescribed limit while allowing the exemption from excise duty.

26. We do not find relevance of the principle laid down in the aforesaid judgments, inasmuch as the question involved in these cases for determination as to who was the manufacturer within the provisions of Central Excise Act for the propose of valuation in Cibatul Ltd.'s case and eligibility of exemption Notification in Poona

Bottling Ltd.'s case. In the present case, the levy is on rendering of services, in contrast to the aforesaid cases, where the taxable event is on the manufacture of goods and liability to discharge the duty is on the manufacturer of goods. Further, the question in the instant case is neither the assessment of beer, nor who the manufacturer is, but it is the service rendered by the Appellant in the production of the beer to cater to the marketing needs of M/s SKOL. Therefore, the ratio laid down in the aforesaid judgments cannot be made applicable to the present case.

27. It is the contention of the Appellant that in any service, consideration flows from the service receiver to the service provider, whereas in the present case, the appellants paid Rs.5/- per case to M/s UBL, and M/s UBL paid service tax under the category of IPR service on the said amount, hence, it is not a service. At the first blush the argument sounds quite attractive but on deeper analysis will not sustain. The reason for not discharging service tax under Business Auxiliary Services as the amount paid by the Appellant to M/s UBL suffered service tax in the hands of M/s UBL cannot be a valid ground. It is the agreement/arrangement that determines the liability. The arrangement/agreement for manufacture and sale of branded alcoholic beverages between the appellant and M/s UBL is a complex one; even though the appellant is authorised to sale the manufactured branded beer in the local market, but the customers/indenters are as per the instruction of M/s UBL; the sale price is fixed by M/s UBL after mutual consultation. Thus it is not a simple provision of service agreement, where under, the service is

flown from appellant to M/s UBL and the consideration is received against the service rendered. It is the argument advanced on behalf of the revenue that the service charges are adjusted against the sale price, and the balance amount returned to the service receiver out of the sale proceeds of manufactured branded beer for and on behalf M/s UBL. Thus, in determining the taxable value, in the present circumstances, Notification 39/2009 ST dt. 23.9.2009 has been issued, allowing deductions on the value of inputs used in the manufacture/processing of alcoholic beverages, subject to the conditions laid down there under. The said Notification reads as:

Business Auxiliary Services — Exemption to value of inputs used for providing taxable service during manufacture/processing of alcoholic beverages

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service specified in sub-clause (zzb) of clause 105 of section 65 of the Finance Act, provided by a person (hereinafter called the 'service provider') to any other person (hereinafter called the 'service receiver') during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely :-

- (a) that no Cenvat credit has been taken under the provisions of the Cenvat Credit Rules, 2004;
- (b) that there is documentary proof specifically indicating the value of such inputs; and
- (c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

2. This notification shall come into force on the date of publication in the Gazette of India.

Explanation.- For the purposes of this notification, the words or phrase 'input', or as the case may be, 'capital goods' shall have the meaning as is assigned to them under rule 2 of the Cenvat Credit Rules, 2004.

[Notification No. 39/2009-S.T., dated 23-9-2009]

28. Therefore, the value of the services needs to be determined keeping in mind the aforesaid notification and the principles of valuation prescribed under Section 67 of the Finance Act and the Valuation Rules, 2006. The Adjudicating authority has erred in adopting the sale price of the Appellant.

29. The next issue for determination is the date of amalgamation/merger of the Appellant's unit with M/s United Breweries Ltd. In the scheme of arrangement as per the direction of BIFR for amalgamation of the Appellant's brewery division with M/s United Breweries Ltd., the appointed date and the effective date have been defined under Definition Clause 1.2 & 1.4 of the said scheme, respectively, as follows:-

1.2 **"Appointed Date"** means the 1st day of April 2010 or such other date as may be approved by the BIFR.

1.4 **"Effective Date"** means the date of filing of the certified copies of the BIFR Order with the Registrar of Companies, Bangalore.

In Clause 2 of the said arrangement, it is mentioned as:

2. Date of Taking Effect and operative date:

The scheme shall be deemed to be effective from the appointed date, but shall be operative from the Effective date.

30. The BIFR sanctioned the said Scheme on 11.11.2011 and copy of said Order filed with Registrar of Companies On 16.11.2011. It is the contention of the Appellant that the appointed date

i.e.01.04.2010 as mentioned in the scheme be considered as deemed date of merger/amalgamation of the Appellant Company and not the effective date, whereas Revenue's contention is that the scheme of amalgamation would come into force only on submission of the BIFR order and receipt of new certificate of incorporation from the Registrar of Companies, i.e. 16.11.2011. as per clause 18 of the scheme dealing with conditionality of the Scheme.

31. The learned Advocate, in support of their contention that the appointed date be considered as the date of merger/amalgamation the Appellant's Unit with M/s UBL, placed reliance on the judgment of Hon'ble Supreme Court in the case of Marshal & Sons & Co India Ltd Vs ITO (1997) 2SCC 302, CIT Vs. Swastic Rubber Products Ltd, 1983 (140) ITR 304 (Bom.), State of Andhra Pradesh Vs Jindal Strips,(2007) 10VST 777; Usha International Ltd. Vs CCE 2016 (43)STR 552 (Tri.-Del), CIT Kanpur Vs Reliance Media Works Ltd.(2017) 394 ITR427; Gujrat High Court Order dt. 16.7.2012 in Cadilla Healthcare Ltd Vs Dy.Commissioner of Sales Tax., National Organic Chemical Industries Ltd Vs State of Maharashtra 2004 (135) STC (Bom).

32. The learned A.R. for the Revenue, on the other hand, submitted that the Appellant had not brought to the notice of the Department about the fact of amalgamation scheme presented to BIFR. The Registration Certificate was amended only on 05.12.2012. Therefore, the merger/amalgamation cannot be 01.4.2010. In support, he has referred to the judgment of Shaw Wallace Distilleries

Ltd case. Further, the learned A.R., referring to the judgment of Hon'ble Gujarat High Court in the case of M/s Indus Tower Ltd Vs State of Gujarat – 2017-TIOL-1845-HC-AHM-VAT, has submitted that the liability of service tax for the services rendered by the Appellant till the effective date cannot be obliterated merely because of the fact that amalgamation was deemed to have been effected from the appointed date.

33. The principle in this regard have been considered in the context of Income Tax Act, 1961 by Hon'ble Supreme Court in Marshal & Sons Co. India Ltd.'s case (supra). Their Lordships at Para 14, observed as follows:-

"14. Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz. 1.1.1982. it is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the Court does not prescribe any specific date but merely sanction sanctions the scheme prescribed to it – as has happened in this case – it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under Section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound to take some time because several steps provided by Sections 391 and 394-A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e. the Transferor Company and the Transferee Company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the scheme before us, clause 6(b) does expressly provide that with effect from the transfer date, the Transferor Company (Subsidiary Company) shall be deemed to have carried on the business for and on behalf of the Transferee Company (Holding Company) with all attendant consequences. It is equally relevant to

notice that the courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income Tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the Transferor Company (Subsidiary Company) should be deemed to have been carried on for and on behalf of the Transferee Company. This is the necessary and the logical consequence of the Court sanctioning the scheme of amalgamation as presented to it. The order of the Court sanctioning the scheme, the filing of the certified copies of the orders of the Court before the Registrar of Companies, the allotment of shares etc may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be 1.1.1982. This is also the ratio of the decision of the Privy Council in *Raghubar Dayal Vs Bank of Upper India Ltd.*”

34. The Hon’ble Andhra Pradesh High Court in *Jindal Strips Ltd.’s* case, while considering the issue whether the merger of two companies was w.e.f. 01.04.1995 or from the effective date i.e. 19.09.1996, for the purpose of demand of sales tax/VAT, following the ratio laid down by Hon’ble Supreme Court in *Marshall Sons & Co.’s* case, held that while approving the scheme if the Court has not fixed any specific date as the effective date, then the date agreed upon by the parties would be the effective date of amalgamation.

35. This Tribunal in the case of *ITC Hotels Ltd.’s* case (supra) was confronted with the question whether the amalgamation of M/s ITC Hotels Ltd and M/s Ansal Hotels Ltd with the parent company M/s ITC Ltd. was as on 01.04.2004, i.e. the appointed date as per the Amalgamation scheme duly approved by the Hon’ble High Courts or the effective date of amalgamation, when the application filed with Registrar of companies that is 23.03.2005. Following the judgment of Hon’ble Supreme Court in *Marshall Sons & Co. Ltd.’s* case, it is

held that the date of amalgamation would be the 'appointed date' presented in the scheme. Further, the Tribunal has observed that even though the said judgment was delivered in the context of Income Tax law, but binding relating to the issues arising under Central Excise Act or under Chapter V of Finance Act, 1994. It is observed as:

“10. The law declared by the Apex Court is binding and is required to be followed. The submission of the learned DR that the ratio of the above judgment given in the context of income tax would not be applicable to the facts of the present case as there is no specific provision to that effect under the Central Excise Act or under the Chapter V of the Finance Act, 1994 cannot be appreciated inasmuch as the law declared by the Supreme Court is binding on all the Courts, in terms of the Article 141 of the Indian Constitution. The Hon'ble High Court of Delhi and the Kolkata having held the date of amalgamation as 1-4-2004 has to be considered as the correct date of amalgamation. If that be so, admittedly, the appellant cannot be held to be providing services to itself. The Tribunal in the case of *Precot Mills* - 2006-TIOL-818-CESTAT-BANG. = [2006 \(2\) S.T.R. 495](#) (Tri.-Bang.), has held that for levability of service tax, there should be a service provider and a service receiver. No one renders service oneself, as such, there can be no question of levability of service tax. Having held that the amalgamation is effective from 1-4-2004, the service provided by the respondent has to be considered as provided to himself, in which case, no service tax would arise against them. The order of the Commissioner cannot be faulted upon on this ground. At this stage, we may take into consideration the learned DR's reference to clause 7 of the scheme of amalgamation which is as follows :

“7. *Savings of concluded Transactions* : The transfer of the undertaking of the Transferor Companies under clause 4 above, the continuance of the proceedings under clause 5 above and the effectiveness of contracts and deeds under clause 6 above, shall not effect any transaction or the proceeding already concluded by the transferor companies on or before the effective date and shall be deemed to have been done and executed on behalf of the Transferee Company.”

By referring to the above clause, the contention of the learned DR is that any transaction or proceeding conducted by the transferor company on or before the effective date will not be affected by the scheme of amalgamation. However, we find that such clause stands incorrectly interpreted by the learned DR. A reading of the above clause is reflective of the fact that the action of the transferor company on or before the effective date shall be deemed to have been done and executed on behalf of the transferee company. As such, it is clear that the said clause supports the respondent's stand that any business conducted by the respondents is to be held as having been conducted on behalf of the transferee company. As such, the service tax provided to the ITC Ltd. and Ansal Hotels Ltd. have to be considered as having been provided on behalf of the transferee company viz. ITC. Ltd., in which case, no service tax liability would arise against the service provider.”

36. Subsequently, this Tribunal, in Usha International Ltd.'s case, have considered all the aforesaid three judgments. The facts leading to the issue before the Tribunal was that a refund claim of Rs.84,76,586/- of service tax paid on royalty paid by the transferee company Usha International Ltd to M/s Joy Engineering Ltd, the transferor Company was filed on the basis of High Court's order dt.26.05.2008 approving the merger w.e.f. 01.04.2007 being the appointed date. This Tribunal, applying the principle laid down in Marshall Sons & Co. and that of Jindal Strips Ltd, held as follows:-

"7. In the light of the foregoing binding precedents there remains no scope for any debate that the date of amalgamation in the present case is to be held to be 1-4-2007 and not 20-6-2008. Obvious consequence of this is that the service rendered during the impugned period (1-4-2007 to 31-3-2008) became service to self and consequently service tax paid during the said period became eligible for refund."

37. Revenue has referred to the judgment of Hon'ble Patna High Court in Tata Iron & Steel Co. Ltd's case. In the said case, there was merger/amalgamation of its subsidiary M/s Indian Tube Co. Ltd with the holding company i.e M/s Tata Iron & Steel Co. Ltd. The issue before the Court was what pay scale, dearness allowance and other benefits the employees are entitled and from which the same shall be given to them. The Tube company merged with Tata Iron & Steel Co. Ltd with effect from 1.4 1983, the appointed date, where as the Bombay High Court and Calcutta High Court had passed the Order on 15.5.1985 and the copy of the Orders were filed with the Registrar of Companies on 01.9.1985 and the scheme of amalgamation became effective from 01.10.1985 . Taking note of the clauses relating to the effective date of operation of the scheme

vis-à-vis clause 7 of the scheme which provides that the transferee company shall give a general notice of offer to the date preceding the effecting date offering employment to all the employees of the transferor company, the Hon'ble Patna High Court held that for the said purpose, the effective date would be considered for transfer of employees from the transferee company to transferor company as 01.10.1985. We do not find any relevance of the said judgment to the facts of the present case.

38. The revenue has further argued that since the service tax was payable on the services rendered by the appellant to M/s UBL from 1/4/2010 to 15/11/2011, the said liability cannot be extinguished because of merger deemed to have been applicable from the appointed date. In support, they referred to the recent judgment of Hon'ble Gujarat High Court in Indus Tower Ltd.'s case. In the said case a writ petition was filed under Article 226 of Constitution of India with a prayer seeking declaration of Section 52 of GVAT Act 2003 as ultra vires to the Constitution of India. Their Lordships, distinguishing the judgment of Hon'ble Supreme Court in Marshall Sons & Co. Ltd case, observed as follows:-

"21. The decision of the Hon'ble Supreme Court in the case of Marshall Sons & Company Limited V. ITO (supra) is concerned, their cannot be any dispute with respect to the proposition of law laid down by the Apex Court, however, the same shall not be applicable to the facts of the case on hand; more particularly, considering Section 52 of the GVAT Act. As observed hereinabove, neither Section 52 of the GVAT Act cannot be said to be an encroachment upon the powers of the Union Legislation, as envisaged under Section 246 of the Constitution nor the same can be said to be in conflict with the provisions of the Companies Act, 1956. Therefore, the decision of Hon'ble Supreme Court in the case of State of West Bengal &Ors Vs Committee for Protection of Democratic Rights, West Bengal &Ors. (supra) as well as UCO Bank &Ors. Vs Dipak

Debbarma & Ors. (supra) relied upon by the learned Counsel for the petitioners shall not be of any assistance to the petitioners. As observed hereinabove, both the Acts operate in different fields and with respect to different eventualities. Therefore, considering the pith and substance of Section 52 of the GVAT Act, it cannot be said to be in conflict with the Union Legislation."

39. Consequently, upholding the constitutional vires Section 62 of GVAT Act, 2003, their Lordships observed as follows:-

"28. In view of the above and for the reasons afore stated, it is held that Section 52 of the Gujarat Value Added Tax Act cannot be said to be beyond legislative competence, and therefore, the same cannot be said to be ultra vires to Article 246 & 252 of the Constitution of India. It is held that Section 52 of the GVAT Act is within the State legislative competence under Entry 52 of List II of Seventh Schedule and the same cannot be said to be encroaching upon the powers of the Union legislation. Therefore, challenge to the constitutional validity of Section 2 (23) (d) and 52 of the GVAT Act fails."

40. We do not find any relevance to the present case as no such enactment has been passed validating levy of collection of service tax under the Finance Act, 1994 similar to that of Sec. 52 of GVAT Act. Therefore, the 'appointed date' i.e. as on 01.4.2010 be taken as the date of amalgamation/merger of the Appellant Unit with M/s UBL as sanctioned by the BIFR.

41. On the issue of limitation, the learned Advocate for the Appellant has submitted that the demand notices were issued invoking extended period of limitation when there is no willful suppression of facts about the manufacturing and selling of branded beer under the agreement dt. 01.04.2005 with M/s UBL, particularly when the consideration was paid by them @ Rs.5/- per case for use of M/s UBL's brand name reflected in the same agreement on which

M/s UBL has paid service tax under the taxable category of IPR. He has further submitted that during the period in question, there was confusion in the law; as per the Circular dt.27.10.2008 they were not required to discharge service tax on the activity carried out by them. Hence, invoking extended period of limitation alleging suppression of facts is untenable in law. Revenue's contention on the other hand is that even though the amendment was made to the definition of Business Auxiliary Service w.e.f. 1.9.2009. Circular was issued in this regard by the Board for knowledge of the trade about the liability to discharge service tax, on the said service clarifying the position after amendment. In the self assessment era they are required to pay duty correctly and the Appellant cannot claim bonafide in not discharging as at no point of time they have disclosed to the Department about manufacturing or processing of alcoholic beverages for and on behalf of M/s UBL.

42. There is no dispute of the fact that on the same agreement dt.01.04.2005, the consideration of Rs.5/- per case has been paid to M/s UBL by the Appellant, and applicable service tax was paid under the taxable category of Intellectual Property Right by M/s UBL. Thus, the arrangement between the Appellant and M/s UBL for manufacture of branded beer on behalf of M/s UBL has been disclosed and within the knowledge of the Department. In these circumstances, the allegation of suppression cannot be sustained against the Appellant. Therefore, the demand is barred by limitation.

43. We summarize are finding as follows:

- (i) During the relevant period, the Appellant had rendered services to M/s United Breweries Ltd, falling under the amended definition of "Business Auxiliary Service" as laid down under Section 65 (19) of Finance Act, 1994 and the computation of demand ought to have been carried out taking note of Notification No.39/2009, dt.23.03.2009.
- (ii) The appointed date in the scheme of amalgamation i.e. 01.04.2010 as approved by BIFR be considered as the date for considering the service tax liability and not the effective date when the certificate of incorporation was issued by the Registrar of Companies i.e. 16.11.2011.
- (iii) Demand is barred by limitation.

44. In view of the above, the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on 11.07.2019)

(D.M. Misra)
Member (Judicial)

(Sanjeev Srivastava)
Member (Technical)