

## Case Laws

### STAR PAPER MILLS LTD VS C,CT(2017) 87 TAXMANN 141

#### **Subject: Classification and Taxability of Burnt Coal**

The assessee was engaged in the manufacture of paper. A residue of coal was left at the end of the manufacturing operation, which was sold. The assessee classified such burnt coal under the entry of "coal including coke in all its form" and thus taxable under 4%. The department held that it was liable to be treated as "unclassified" and taxable under rate of 10%. HC held that Burnt coal was classifiable under entry 'coal including coke in all forms' taxable @ 4%.

### JAI MAHAL PALACE HOTEL VS COMMISSIONER OF C.EX. & S.T., JAIPUR –I 2017 (7) GSTL 463

#### **Subject : Denial of Benefit of Notification No. 1/2006**

The appeal is directed against the impugned order passed by the commissioner of service tax. The demands were confirmed on the issue namely, denial of benefit claimed under Notification No.1/2006-ST. on the ground that it had availed Credit on the input services used for providing output services. It was held that Credit availed reversed by the assessee suo motu and no proceedings initiated for recovery of such credit, upon reversal of credit on input service, it had to be construed that no credit has at all been taken by assessee benefit of said notification should be available to assessee.

### J.K. CEMENT WORKS VS STATE OF KARNATAKA 2017(7) GSTL 408

#### **Subject : ITC on tax paid on the purchase of cement**

The assessee, a manufacturer of cement, claimed ITC in respect of the tax paid by it on the purchase of cement prior to its commencement of commercial production and such cement being used for laying the foundation and erection of cement manufacturing plant and machinery. The department denied the credit. The HC held that ITC is admissible.

### S.R ENTERPRISES VS COMMISSIONER OF CENTRAL EXCISE 2017 (7) GSTL 466

#### **Subject: Value of Design supplied free of cost**

The assessee engaged in the manufacturing of machinery parts. They received Design from the customer at free of cost but failed to add the value of the Design in the value of the product while paying tax. The department passed an impugned order that the value of the Design received at free of cost is to be added to the value of the product. On appeal the tribunal held that Design value is to be added to the value of goods.

## FRANKLIN INSTRUMENTS MAINTACNENCE AND ERECTION TECH PVT LTD VS COMMISSIONER 2017 (7)

### Subject: Negligence in filing the appeal in time

In the present case an application for condonation of delay and the affidavit filed along with the application by the appellant. The tribunal as dismissed the application for condonation delay along with the appeal filed. The appellant claimed that it has as a good case on merits. The HC held that Mere Negligence, by itself would not disable assessee from having its matter decided on merits.

## MALAYSIA AIRLINE SYSTEM BERHAD VS COMMISSIONER OF SERVICE TAX 2016 (44) STR 275

### Subject: Service tax on Online Information and Data base Access or Retrieval services

The assessee engaged in providing Online Information and Data base Access Service to its customers. The appellant also received Computer Reservation System service from foreign Global Distribution System (GDS ) Companies the department raised a demand that the service received from the GDS companies is taxable under RCM. The tribunal held the case in favour of the assessee service tax not leviable.

## CHOTEY LAL RADHEY SHYAM VS COMMISSIONER OF C.EX & S.T., LUCKNOW 2016 (44) STR 266

### Subject: Service Tax on SIM card and Recharge coupons received by franchisee

The appellant was appointed as a franchisee for lucknow by BSNL for the sale of SIM card and recharge coupons of BSNL who in turn sells the same through network of retailers, which amounts to trading activity and the alleged agreement between him and BSNL was principal to principal basis. The department alleged that the above said activity is taxable under Business Auxiliary Service. It was held that the appellant relation with BSNL is on principal to principal basis engaged in pure trading activity service tax under aforesaid service not leviable.

## ANSHITA CHAWLA AND RAMESH CHAWALA VS COMMISSIONER OF SERVICE TAX. 2016

### Subject : Commission Received on Multi- level Marketing Scheme

The appellants were distributor/ Marketing agency of a private limited company and thus covered under Business Auxiliary Service but did not pay the service tax on the commission received by them. The revenue raised the demand. The assessee contended that they were selling their own goods. It was held that demand is based on the commission received by them under Multi level marketing scheme thus their plea is not tenable and the demand is sustainable.

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