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DAA
Chartered Accountants

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Case Law update

❖ Cognizant Technology Solutions Vs. Commissioner. Of ST

Appellants developed software for exports and domestic clearances under Management, Maintenance and Repair Services. They paid Service Tax in cash as well as from CENVAT Account on their domestic clearances and the Appellants are also been granted for registration of software development.

Since Appellants not only does local clearances but also export software, therefore they are eligible for refund of export turnover which includes the SEZ Export turnover. Tribunal granted refund to the Appellant and also held that partial rejection of refund by not including the SEZ Export turnover is unsustainable.

❖ Indo Hong Kong Industries (P) Ltd Vs. Commissioner

Appellants hired out equipment's and utilities such as air conditioning plants, DG Sets, chairs, work stations, pantry and kitchen equipment, access control, security system etc. Appellants have thus provided infrastructural support coming under Business Support Services and the matter was remanded back to Adjudicating Authority for quantifying Service Tax payable on collections made on account of providing these equipments.

Since Appellants have paid Service Tax along with interest before issuance of SCN, penalty was not imposable and dropped.

○ Wipro Ltd Vs. CCE Pondicherry: 2018 (10) GSTL 172 (Mad)

Appellants manufactured computers and automatic data processing machines falling under Chapter Heading 8471 of Central Excise Tariff Act, 1985. They availed Input Service Credit of Service Tax paid on housekeeping, gardening and courier services. The Tribunal allowed Input Credit on courier however disallowed the credit on gardening and housekeeping. Against the order appeals were filed before High Court which held that the credit was availed within the manufacturing premises and hence Appellants were eligible for credit.

❖ Collabnet Software Pvt. Ltd Vs. Asst. Commissioner. Of ST-I, Chennai: 2018 (10) GSTL 177 (Mad.)

The Adjudicating Authority passed orders granting part refund under Section 11B of the Central Excise Act on the appeals filled by the Appellants before the Appellate Authority and the refund was granted in full. Department filed appeals before Tribunal which upheld the Appellate Authority Order. Department again appealed before the High Court which held that Adjudicating Authority had passed its impugned orders without application of mind and that Appellants filed refund claims on time fulfilling conditions prescribed in Section 11B and succeeded in getting favourable orders in the Tribunal, hence the impugned orders were set aside and refund was directed to be granted within 8 weeks from date of receipt of order.

❖ Forech India Pvt Ltd Vs. Commissioner. Of Customs(ICD), New Delhi: 2018 (10) GSTL 180(Del.)

The question that arose for consideration before the High Court was whether Tribunal was correct in remanding the case to adjudicating authority particularly when appeal against Delhi High Court order is pending before the Supreme Court with regards to the issue of jurisdiction.

The High Court held that that Tribunal should decide the case on merits and also whether DRI had the jurisdiction to issue a Show Cause Notice, despite the fact that on the very same matter Supreme Court has held against the Appellant on the grounds of jurisdiction.

❖ Shree Maruthi Road Carriers Vs. Deputy Commissioner. Of ST, Chennai: 2018(10) GSTL 204(Mad.)

The High Court held that hearing notice should be served on the address provided by the Appellant and if the notice did not reach the Appellant based on an earlier address provided, the dispute cannot be proceeded exparte which would be a violation of the principals of natural justice. The High Court thus remanded the matter back to the Adjudicating Authority to decide the case on merits after giving the Appellants an opportunity to be heard.

❖ Sheth and Sura Engineering Pvt Ltd. Vs. UOI: 2018 (10) GSTL 239 (Bombay.)

The question that arose for consideration was whether prior to June 2007 works contract can be vivisected into various component services such as erection and commissioning. This question arose when the larger bench of Tribunal in the case of Turbotech Precision Engineering Pvt Ltd held that works contract can be vivisected and errection, commissioning and installation services are liable to Service Tax.

Mumbai High Court in this case held that Larson & Turbo judgment was clear and Supreme Court held that works contract cannot be vivisected. Since the demand was prior to June 2007 the said services is not liable to Service Tax and hence for the prior period Appellants were granted refund under 11B of the Central Excise Act, 1944.

❖ Lemon Tree Hotel Vs. Commissioner. Of Cus. & CE Hyderabad-IV: 2018 (10) GSTL 241(Tri.-Hyd)

Appellants utilized project management and architectural professional services and availed Input Services for bringing the building into existence for the purpose of providing hospitality business and render mandapkeeper, health club, internet cafe, and fitness center services. All these services in dispute is covered by Rule 2(l) 0f CENVAT Credit Rules, 2004 and related to Appellants business.

Departments plea was that Jetty constructed through a contractor was an exempt hence not eligible for Input Service Credit.

The Tribunal rejected departments plea and relied on Gujarat HC judgment where the court held that Input Services utilized for bringing into existence an immovable property is eligible for availment of CENVAT Credit. The High Court judgment squarely applies to Appellants case and hence allowed their appeals.

❖ Cybercom Datamatics Information Solutions Ltd Vs. Commissioner. Of ST: LD/66/134

Appellants an SEZ unit exported services and filed refund claims under Rule 5 of CENVAT Credit Rules, 2004. Department challenged orders granting refund claims by Adjudicating Authority before the Appellate Authority and finally before the Tribunal.

The question that arose before the Tribunal was whether Services provided by SEZ unit constitute export of services and whether Rule 6A of Service Tax Rules, 1994 would prevail. Tribunal held that SEZ Act was a special legislation which promotes exports by SEZ units though export of service was part of Service Tax Rules, 1994. Hence held that Section 26 and 51 of the SEZ Act would prevail over Rule 6A of Service Tax Rules,1994. SEZ Act overrides the provisions of Service Tax law.

About us

D Arvind & Associates LLP (DAA) is a Chartered Accountant Firm founded in 2009 by D Arvind, an Ex-partner of KPMG with a vision top provide to create innovative and insightful solutions to resolve Complex Business & Tax Challenges.

D Arvind, apart from being a Chartered Accountant is also a Company Secretary & Arbitrator, having 30 Years of Experience in Large Industries as Tax & Legal Head and Partner in Big 4 Consulting Firms. This puts him in unique position to see Complex tax Issus from Business & Solutions perspective.

DAA is a boutique tax firm specialising in GST, Customs, Foreign Trade Policy including representation to Government, Appearance before Tax Authorities & Tribunal apart from practicing in Internal Audit and Corporate Governance.

DAA operates out of Mumbai, Chennai & Bangalore with wide range of clientele across Industries assisting them in their Tax positions, Tax Litigations up to High Court, Tax Optimization and End to End Tax Compliance Management.

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