

Case Laws

CCE Jaipur Vs. National Engineering Industries Ltd: 2018 (11) GSTL 235 (Raj.)

Facts of the case: Appellants were providing commission agent services and registered under Business Auxiliary Services.

Dispute: The issue that arose for consideration was whether Appellants were liable to pay Service Tax on commission received in foreign currency for services rendered within India

Judgment: The court held that the Appellants are a distributor on behalf of foreign clients and received commission in foreign currency for promoting sales of their products. Foreign entities had no branch and the case was of export of services not liable to Service Tax though the foreign entities subsidiary company has branch in India and Appellant had no relation with them.

CCE Lucknow Vs. Kumbhi Chini Mills: 2018 (11) GSTL 261 Mad.)

Facts of the case: Appellants are running a maritime education cum training academy.

Dispute: Appellants filed an appeal against Order in Original on time but before Commissioner Appeals LTU instead of the Commissioner before whom the appeals had to be filed in the same building. Appellants realized the mistake and requested the LTU office to return back the appeal paper books which was returned and filed before correct Commissioner Appeal's office that dismissed the appeals on the ground that appeals were filed beyond 60 days from date of receipt of order.

Judgment: The court held that Appellants had paid pre deposit and filed appeals within the time period but only before different commissioner appeals in the same building. Hence date of original filing could only be considered for computing limitation period.

Principal Commr. of CGST Vs. Barmalt India Pvt Ltd: 2018 (11) GSTL 302 (P&H)

Facts of the case: Appellants manufacture malt and malt extract and during manufacturing waste emerged namely Chhika, Dundli, Bhushi and Sprout which was subject to nil rate of duty.

Dispute: The department issued notices alleging that when these waste was cleared at nil rate of duty, Appellant failed to pay amount equal to 10% of total value. Commissioner Appeals and the Tribunal also rejected the Appellants appeals.

Judgment: The court held that though the exempted goods are marketable no manufacturing took place and hence Rules 6(1), 6(2) & 6(3) of Cenvat Credit Rules, 2004 was not applicable. Waste and scrap are by-products not liable to Excise Duty.

Commr. of Cus Vs. AASU EXIM Pvt Ltd: 2018(11) GSTL 226 (SC.)

Facts of the case: Appellants are importers of yarn.

Dispute: The allegations pertain to mis declaration of grade of imported yarns by the Appellants. Appellants graded the goods as A, B & C instead of A & AA. The Appellants appeals before Commissioner was dismissed and the Tribunal held in Appellants favour

Judgment : The Tribunal held in Appellants favour on perusal of the material evidence that there exists no case for mis declaration of imported yarn and undervaluation on the basis of contemporaneous imports was not established which was a stand affirmed by the Supreme Court in its final order.

CCE Delhi Vs. Sun Pharmaceuticals Industries Ltd: 2018 (11) GSTL 326 (Tri.-Del.)

Facts of the case: Appellants manufactured bulk drugs and used aluminum foils for packing drugs manufactured.

Dispute: The dispute arose as to whether cutting and silting of aluminum foils from jumbo rolls within the factory is manufacturing and were issued Show Cause Notices. Appellants reversed the credit availed and in turn obtained favorable order for which refund claims were filed. The refund claims were alleged to be erroneous hence they were denied vide another Show Cause Notice.

Judgment: The appeal before Commissioner Appeals was dismissed and the dispute was before the Tribunal who held that the main issue regarding manufacturing activity was in dispute, and Appellant had closed down their factory before proceedings ended and hence cannot utilize the credit. Thus credit amount reversed is eligible for refund.

CCE Chennai Vs. Toshniwal Hyvac Pvt Ltd

Facts of the case: Appellants are manufacturers of flow meters.

Dispute: Whether stamping, verification and testing charges collected from customers to be included in assessable value for levy of duty was held against the Appellant. As per Section 4 of Central Excise Act, 1944 verification of stamps and weights and measures necessary process for making the product marketable.

Judgment: The case was held against the Appellant on the grounds of merits. However on the grounds of limitation the Tribunal held that Show Cause Notice previously issued but withdrawn cannot be issued again if the facts and allegations are identical except for difference in quantification of demand.

Sudama Construction Prop Vs. CCE & ST Lucknow: 2018 (11) GSTL 316 (Tri.-All)

Facts of the case: The appellants are engaged in the manufacture of medicaments which attracts nil rate of duty. They are a contractor providing services to M/s. Dalla Cement Factory.

Dispute: Appellants deposited Service Tax amount along with interest. However levy of penalty was disputed by Appellant which was upheld by the Commissioner Appeals.

Judgment: The tribunal held that different modes of accounts maintained by service provider and recipient is not a case of non levy or nonpayment. There exists no case for any suppression or misstatement with intent to evade payment of duty.

Garden Silk Mills Ltd. Vs. UOI: 2018 (11) GSTL 272(Guj.)

Facts of the case: The appellants manufactured and sold polyester filament based yarns and textile products at Surat and exported from Nhava Sheva.

Dispute: Re credit of duty paid on post clearance expenses in Cenvat Account.

Judgment: Payment of additional amount in the nature of deposit with government cannot be withheld and Appellants request for re credit to Cenvat Account is valid.

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 to 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 a unique position to see Complex tax Issues from Business & Solutions perspective.

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