

Case Laws

IN RE : CALTECH POLYMERS PVT. LTD. 2018 (12) G.S.T.L. 350 (A.A.R. - GST)

Facts of the case : The applicant is a Private Limited Company engaged in the manufacture and sale of footwear and they are providing canteen services exclusively for their employee's. They are incurring the canteen running services and are recovering the same from its employees without any profit margin.

Dispute : Whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and are taxable under Goods & Service Tax Act.

Judgment : Though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" and since the applicant recovers the cost, there is consideration too. Therefore it is hereby clarified that recovery of food expenses from the employees falls under the definition of 'outward supply' and taxable as a supply of service under GST.

IN RE : AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL EMC Ltd.

Facts of the case : The applicant is engaged in supplying materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called the Tower Package.

Dispute : The Applicant contracts for supply of Tower Packages split up into two separate sets of contracts – one for supply of materials at ex-factory price and the other for supply of allied services which also includes inland/local transportation, in-transit insurance, loading/unloading of materials and storage, and a separate freight bills is raised on the contractee. The applicant wants a Ruling on whether he is liable to pay tax on such freight bills.

Judgment : The First Contract includes ex-works supply of all equipment and materials. The Second Contract includes all other activities required to be performed for complete execution of the tower package. It is apparent that the first Contract cannot be executed independent of the second Contract and there cannot be any 'supply of goods' without a place of supply. Therefore the freight and transportation is merely a component and not a separate and independent identity, and GST is to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc.

VSL Alloys (India) (P.) Ltd. Vs. State of U.P. [2018] 93 taxmann.com 119 (Allahabad)

Facts of the case : The petitioner is a private limited company and is engaged in manufacture and supply as well as export of industrial SS Tube, fittings and pipe fittings etc.. The goods were sold to the consignee with an e-way bill which consisted of all the details of the consignor, consignee, the challan number, its date, value of the goods, its HSN Code, the place of delivery of goods and the reason for its transportation.

Dispute : The respondent no.2 has detained the vehicle as well as goods by passing an order and has directed the petitioner to pay penalty as the Part-B of the said e-way bill was not filled up and no vehicle number has been quoted.

Judgment : Where all requisite documents accompanied goods when vehicle had been intercepted and seizure order had been passed, mere non mentioning of vehicle number in Part-B of e-way bill could not have been a ground for seizure of goods. Therefore, the writ petition stands allowed.

NOTIFICATION NO.20/2018-CENTRAL TAX

SECTION 55 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 - REFUND IN CERTAIN CASES - NOTIFIED SPECIALISED AGENCIES ENTITLED TO CLAIM A REFUND OF TAXES PAID ON SUPPLIES OF GOODS OR SERVICES OR BOTH RECEIVED BY THEM

Whereas, as per sub-section (2) of section 54 of the said Act, the specified persons, as notified under section 55 of the said Act, are entitled to a refund of tax paid by them on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received; and the facility for filing the claim of refunds under section 55 of the said Act has been made available on the common portal.

Therefore, in exercise of the powers conferred by section 148 of the said Act, the Central Government, on the recommendations of the Council, hereby notifies the specified persons as the class of persons who shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified, before the expiry of eighteen months from the last date of the quarter in which such supply was received.

NOTIFICATION NO. 15C / 2018 - STATE TAX

GST Commissioner of Maharashtra notified that E-Way bill for intra-state supplies will be applicable from May 31, 2018 in Maharashtra vide Notification

The commissioner of State Tax, Maharashtra has issued a notification amending an earlier notification which stated that on or after 30th May 2018, no e-way bill shall be required to be generated for the intra-state movement in respect of any goods of any value within the state of Maharashtra.

The new notification has amended clause 2 and has fixed an expiry date (i.e. 30th May 2018), this would mean that from 31st May onwards e-way bill will become mandatory for the inter-state movement that commences and terminates within the state of Maharashtra.

KANSAI NEROLAC PAINTS LTD. IN RE (2018) 93 TAXMANN.COM 58 (ARR – MAHARASHTRA)

Facts of the case : The assessee is registered as input service distributor for its Head office to distribute eligible credit to its respective manufacturing unit and the assessee wanted to carry forward the accumulated credit of Krishi Kalyan Cess.

Dispute : The assessee has filed an application for advance ruling regarding admissibility of KKC as input tax credit under the GST Act.

Judgment : The definition of Input tax under GST does not include any cess, therefore KKC credit will not be considered as admissible input tax credit. Hence, the ITC of KKC could not be carried forward under GST.

COMMISSIONER OF GST, MUMBAI CENTRAL Vs. EVERSTONE CAPITAL ADVISORS PVT. LTD. 2018 (12) G.S.T.L. 328 (Tri.- Mumbai)

Facts of the case : The respondent is engaged in providing export of services and has filed a refund claim within a period of one year.

Dispute : The issue is regarding whether the period of one year of filing the refund should be taken from the date of receipt of foreign exchange date or from the date of invoice and the remittance received against the export in Indian rupees will be considered as receipt of convertible foreign exchange for qualifying the supply as export.

Judgment : In case of export of services, the same qualifies as export only when convertible foreign exchange is received. The appellant has admittedly filed the refund claim within one year from the receipt of convertible foreign exchange, therefore the relevant date is the date of FIRC and not the date of service and regarding the receipt of remittance in Indian rupees, the Indian rupees received through foreign bank is considered as the payment in convertible foreign exchange

SWAYAM SHIPPING SERVICES (P.) LTD. Vs. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, RAJKOT

Facts of the case : The assessee is involved in loading/unloading of timber logs into the truck and transport of the same to the nearby location of the importer and It was issuing consignment note for these transportations and discharging duty liability under the category of 'goods transport agency services'.

Dispute : The Adjudicating Authority held that the services provided by the assessee would fall under the category of 'cargo handling service'.

Judgment : The appeal is allowed as mere loading and unloading of timber logs at the port or at the premises of the importer does not confirm the activity undertaken by them into cargo handling activity.

CIT Vs. CONTAINER CORPORATION OF INDIA LTD. (2018) 93 TAXMANN.COM 31 (SC)

Inland container depots are Inland ports; eligible for section 80- IA deduction : SC

The term 'Inland Port' has been defined under a Notification issued by the Central Board of Excise & Customs which holds that considering the nature of work carried out at Inland Container Depots they can be termed as Inland Ports. Further, communication issued on behalf of Ministry of Commerce and Industry also confirms that Inland Container Depots are Inland Ports.

SARDAR SINGH Vs. ANIL SPECIAL STEEL INDUSTRIES LTD. (2018) 92 TAXMANN.COM 294 (NCLT- New Delhi)

Unpaid employees can initiate insolvency resolution process against debtors : NCLT

The NCLT held that unpaid workmen who have provided services to corporate debtors, including those in employment with corporate debtors, comes within the purview of "Operational creditor" and they can initiate insolvency resolution process either in an individual capacity or in a joint capacity through their authorized representative.

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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