

## Case Laws

### **STERLITE OPTICAL TECHNOLOGIES LIMITED Vs. COMMISSIONER OF C.EX. & S.T.**

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**Facts of the case** : Ex-parte order passed against the Appellant for non-appearance.

**Dispute** : Appellant contested that the notice of the appeal was never served upon the appellant. The tribunal transpires that the appellant neither appeared nor made any request for adjournment before the Tribunal. Hence the case was disposed in the absence of any representative from appellant.

**Judgment** : The impugned order of the Tribunal has been quashed and one more opportunity has been granted to assessee for hearing before the CESTAT without the issue of a fresh notice owing to the fact that the Appellant had deposited the entire duty under question and that the department does not deny the fact of non-receipt of notice by the Appellant.

### **SAMSUNG (INDIA) ELECTRONICS PVT.LTD. Vs. COMMISSIONER OF COMMERCIAL TAXES, LUCKNOW**

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**Facts of the case**: The Appellant had sold mobile chargers as a part of a composite package comprising the Charger and the Mobile Phone and had treated the same as a composite supply without differential classification

**Dispute** : Contention of the respondent was that the sale of Mobile phones along with charger is treated as a composite package which bears a singular MRP and charger is not invoiced separately. It was contended by the Appellant that the charger is an accessory to mobile phones and it is to be taxed separately.

**Judgment** : The impugned order of the Tribunal shall be set aside as the components of a composite package cannot be taxed separately and hence charger need not be assessed separately.

### **COMMISSIONER OF CENTRAL EXCISE Vs. ADVANCE STEEL TUBES LTD.**

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**Facts of the case** : Appellant has paid an amount under protest on account of few discrepancies during investigation and has shown it is as revenue expenditure in the Balance sheet. The matter relating to discrepancies were settled by the settlement commissioner and the remaining amount was claimed as refund by the appellant.

**Dispute** : The refund claim was rejected by the Adjudicating Officer as the appellant had accounted the duty paid under protest as expenditure and their was an indirect unjust enrichment.

**Judgment** : The third member decision justified that it was not an indirect unjust enrichment and hence the appellant can claim the refund.

### **UFO MOVIEZ INDIA LTD. Vs COMMISSIONER OF SERVICE TAX - V, MUMBAI**

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**Facts of the case** : Appellant is engaged in conversion of analog cinema content into Digital format which are stored in their servers and which are delivered to theatres through satellite links.

**Dispute** : Demand raised on the Appellant stating that the legal rights of possession and effective control of digital cinema equipment's has not been passed over to lessee and hence lies with the Appellant and hence falls under the category " Supply of tangible goods for use" under Sec. 65 (105) (ZZZM) and the one time registration charges are to be treated as part of consideration

**Judgment** : Demand of Service tax on lease rentals and corresponding interest and penalty for the extended period is set aside being time-bar.

## COMPANIES MAY HAVE TO REWORK ON SALARY PACKAGES TO REDUCE GST IMPACT

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**Tax Alert:** GST could be charged on Reimbursements by the employer to employee on home rentals, telephone charges beyond a limit, medical premiums health check-ups and transportation, uniforms and ID cards. This is due to the recent Advance Authorities ruling (AAR) whereby it has clarified that the canteen expenses recovered from the employees should be subject to GST.

Though this is a case to case ruling, the employers would like to maintain their cost to company for employers and hence if such GST is to be levied the employers are likely to pass on the credit to the employees and hence a pitch has been made for exemption.

Further the cost if recovered from the employees' salaries would make it difficult to track such recoveries and pay GST. Moreover the companies, may also stop providing subsidized meals in a bid to avoid additional compliance making the case definite for exemption.

## 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.

DAA is a boutique tax firm specializing 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 a 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.

### **DAA | MUMBAI:**

BONANZA, Sahar Plaza, Next to  
Kohinoor Hotel, J.B. Nagar,  
Andheri (E),  
Mumbai 400 059

### **DAA | CHENNAI:**

#13, 3rd Floor, Bhagawathi Palace,  
J Block, 3rd Avenue,  
Anna Nagar (East), Chennai 600  
102

### **DAA | BANGALORE:**

No.221, 16th Main Road, 19th  
Cross Street, HSR Layout,  
Bangalore 560 102  
Tel +91 80 5610 2618