

Case Laws

GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LTD., In Re (2018) 93 Taxmann.com 201 (AAR – Kar.)

Facts of the case : The applicant provides hotel accommodation and restaurant services to the employees and guests of SEZ units and were charging GST at applicable rates.

Dispute : The applicant filed an application contending that the services has been supplied to SEZ and hence the rate of GST would be NIL.

Judgment : The authority of Advance ruling held that the place of supply of the services by way of lodging shall be the location of immovable property and incase of restaurant and catering services shall be the location where the services are actually performed. Therefore the services provided to the employees and guests of SEZ units could not be treated as supply of goods and services to SEZ units.

JET AIRWAYS (INDIA) LTD. Vs. CCE (2018) 93 TAXMANN.COM 86 (Chennai – CESTAT)

Facts of the case : The assessee is engaged in the business of air transportation and the main contention was to render transportation services and not cargo handling services.

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

Judgment : The term 'Cargo Handling Services' does not include handling of export cargo or passenger baggage or mere transportation of goods. Therefore, the services of transportation of goods by air would not be taxable under 'Cargo handling services'.

INTERFREIGHT SERVICES (P.) LTD. Vs. CST (2018) 93 Taxmann.com 197 (CHENNAI – CESTAT)

Facts of the case : The assessee is engaged in booking the space for cargo transportation in airlines or ships and pays the charges for booking the space to the airlines/agents and therefore collects the same from the customers by charging freight.

Dispute : The department held that the activities undertaken by the assessee would fall under the category of 'Business auxiliary services'.

Judgment : The tribunal held that the notional surplus earned from purchase and sale of space does not fall under the category of 'Business auxiliary services' as they do not act on behalf of the client. Hence, the impugned order is set aside.

M/s RELIANCE SECURITIES LTD. Vs. CST (LD/66/181)

Facts of the case : The appellant is a stock broking company and provides its customers access to trade in equity derivatives, mutual funds and IOPs. The appellant had entered into an agreement with M/s RMIL to provide consolidated services to investors and further RMIL discharges service tax on full amount and then remits 95% to the appellant.

Dispute : The department alleged that the appellant is liable to service tax under the head 'business support services' as they are engaged in providing infrastructure services to the clients of M/s RMIL.

Judgment : The tribunal held that, once an agent discharges service tax on entire amount collected from customers and then shares part of such amount with principal, no service tax can be demanded again on such sharing of fees as it would amount to double taxation.

SPYKAR LIFESTYLE PRIVATE LTD. Vs. THE COMMISSIONER OF CENTRAL EXCISE, THANE (LD/66/184)

Facts of the case : The assessee manufactures readymade garments in respect of their own manufactured goods as well as trading goods and the assessee is availing CENVAT Credit in respect of common input services. Further the appellant has reversed the CENVAT Credit in respect to the exempted traded goods.

Dispute : The department alleged that the assessee had not discharged the payment of interest on the late reversal of CENVAT Credit.

Judgment : CESTAT rejected assessee submission on non-chargeability of interest for a longer period. As per CESTAT, once the amount is admittedly reversed, interest shall be chargeable as piggy back of the principal amount. Therefore CESTAT dismissed Revenue's appeal.

M/s NYATI HOTELS AND RESORTS PVT. LTD. Vs. CCE (LD/66/183)

Facts of the case : The appellant had filed an appeal before first appellate authority within time limit stipulated. However pre-deposit was paid after filing such appeal and therefore the first appellate authority dismissed the case.

Dispute : The department alleged that the time limit prescribed for filing an appeal is also applicable for payment of pre-deposit.

Judgment : The tribunal held that once the appeal is filed within stipulated time limit, same cannot be dismissed on the ground of late payment of pre-deposit amount and therefore, tribunal remanded the case back to the first appellate authority and directed to hear the same on merits.

POWER MAK INDUSTRIES Vs. CCEC & ST (LD/66/179)

Facts of the case : The appellant had entered into hire agreement to supply diesel generators on hire basis and they do not have any control over DG sets subject to conditions as laid down in “hire agreement”.

Dispute : The department alleged that the appellant rendered services of “supply of tangible goods for use of service” and is liable to pay service tax.

Judgment : The tribunal held that the impugned transactions involving supply of DG sets on hire basis is nothing but supply of tangible goods with transfer of both possession and control and this is a case of supply of tangible goods for use, required to be treated as “deemed sale of goods”. Hence cannot be considered as “supply of tangible goods for use of service”, for the purpose of charging service tax.

BMW (INDIA) (P.) Ltd. Vs. CST (2018) 93 Taxmann.com 140 (Chd. – CESTAT)

Facts of the case : The assessee is engaged in the manufacture of BMW brand of motor vehicles.

Dispute : The department alleged that the assessee had not discharged service tax liability on salaries and perquisites of the employees under Manpower Recruitment / Supply Agency Service.

Judgment : The tribunal held that the employees had been deputed by parent company under the direct control and supervision of BMW India (i.e employer and employee relation exist) and therefore the service tax demanded was not sustainable on the salary.

Damages paid for breach of contract to attract 18% GST – Non-performance tax

The Maharashtra Authority for advance ruling has stated that liquidation damages paid on operation & maintenance and erection & commissioning contracts entered (applicant – Maharashtra State Power Generation Company) shall be taxable under GST at 18%. The Authority for Advance Ruling has ruled that payments in respect to non-performance of a contract would be liable to goods and service tax as typically the industry was not paying any service tax on these and has continued to adopt the same position under GST.

INDUS TOWERS LTD Vs. ASSISTANT STO (2018) 90 TAXMANN.COM 417 (KERALA)

Facts of the case : Assessee is a public limited company engaged in the establishment and maintenance of towers for telecom services providers.

Dispute : The department intercepted the goods transported and demanded penalty equal to the tax amount.

Judgment : The high court held that goods cannot be detained merely because of infraction of procedural rules under GST.

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.

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DAA | MUMBAI :

**BONANZA, Sahar Plaza,
Next to Kohinoor Hotel,
J.B. Nagar, Andheri (E),
Mumbai - 400059**

DAA | CHENNAI :

**#13, 3rd Floor, Bhagawathi Palace,
J Block, 3rd Avenue,
Anna Nagar (East),
Chennai - 600102**

DAA | BANGALORE :

**No.221, 16th Main Road, 19th
Cross Street, HSR Layout,
Bangalore - 560102
Tel +918056102618**

DAA | COIMBATORE

**No. 466, CPC Corporate Hub,
3rd Floor, above Durian Furnitures,
Thadagam Road, R.S.Puram,
Coimbatore - 641002
Tel +919677136300**