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Case Laws of The Week

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This alert summaries the AAR Rulings under the GST Regime, rulings of courts and tribunals under the erstwhile Indirect Tax Regime along with an expected amendment in IGST law:

- Customs Tariff Act, 1975 is a distinct legislation and case laws pertaining to the said Act of 1975 cannot apply to VAT cases: Ricoh India Ltd Vs. State of Maharashtra

- Service Tax cannot be demanded on commission paid to foreign commission agents : Wanbury Ltd Vs. CCE & ST Raigad

- Service Tax along with interest paid before issuance of Show Cause Notice covered under Section 73(3) of the Finance Act, 1994 : Onward E-Services Ltd Vs. Commr. Of ST, Mumbai-II

- Supply of goods before clearance from warehouse would not be subject to levy of IGST : Bank of Nova Scotia

- Officer is duty bound to pass speaking order when duty is paid under protest : Ingram Micro India (P.) Ltd. Vs. Principal Commr (HC - Chennai)

- Service tax liability on hiring of dredges/vessels from the foreign company : International Seaport Dredging Ltd. Vs. Commissioner Of S.T., CHENNAI(CESTAT - Chennai)

- Services deemed to have been consuimed within SEZ not liable to Service Tax- Vision Pro Event Management Vs. CCE & ST, Chennai

- Time period for filing refund claims under Section 11B : CCE Pune-I Vs. Sciformix Technologies Pvt Ltd

Ricoh India Limited Vs. State of Maharashtra 2019 (21) GSTL 127 (Bom.)

- Multifunction printers, machines, spares and parts etc.. where subject to concessional levy of tax as Appellants availed benefit of VAT Notification No. 1505/CR-116/Taxation-1 as per Schedule C , in Entry 56 of Maharashtra VAT Act.
- The dispute arose because Serial No.3 of the notification covered goods corresponding to Central Excise Tariff Heading 84.71. of Tariff Act. The department made a case by contending that Entry 56 did not cover Appellants products. Though the Excise Tariff Heading covered printers , notes could not be ignored.
- The dispute came up for hearing before Mumbai High Court which held that where description against any heading or sub heading is shown as other then interpretation provided in Note 2 of VAT Notification would apply.
- The court held that if description of a particular commodity is different from corresponding description in the Excise Tariff , then only those commodities described as aforesaid would be covered by scope of the VAT Notification and other commodities covered by corresponding description in the Tariff will not be covered by the scope of the VAT Notification.

Wanbury Ltd Vs. CCE , ST & Customs Raigad

- The Mumbai Tribunal has held that foreign commission agent services received for promoting sales of goods outside India which was nothing but services utilized for promoting sale of goods abroad which related to exports as the goods were exported hence Service Tax is not applicable on an export transaction.
- Pre inspection quality training for getting approval from a foreign food and drug administration are services not received by Indian supplier of goods hence not liable to Service Tax under Reverse Charge.
- The Appellants also paid fees for getting registered for membership of overseas stock exchange for listing securities of Indian entities supplying goods to overseas customers. Even such services are not liable to tax as stock exchange services.

Onward E-Services Ltd. Vs. Commr. Of ST, Mumbai-II: 2019 (21) GSTL 167 (Tri.-Mumbai)

- The question that arose for consideration by the Honourable tribunal is whether failure to deposit Service Tax collected from customers can be termed as an intention to evade tax if Appellants declared correct value of services in their ST-3 returns.
- Before issuance of notice the entire unpaid amount was paid along with interest which was well within the knowledge of the department. Hence the dispute was covered by Section 73(3) of the Finance Act, 1994.
- The tribunal held that merely because Service Tax was collected from customers but liability not discharged, intention to evade duty cannot be established . Correct value of taxable services declared in ST-3 returns and hence not a ground for suppression.

Bank of Nova Scotia: 2019 (21) GSTL 238 (AAR) GST

- The Appellants are leaders in bullion business and set up operations in Indian in 1997. The Appellants sought Advance ruling as to whether goods warehoused in FTWZ and supplied to DTA unit is liable to IGST in addition to Customs Duty payable.
- The Authority on perusal of Circular No. 3/1/2018- IGST which clarified that that supply of goods before their clearance from warehouse would not be subject to levy of IGST and IGST would be levied and collected only when warehoused goods are cleared for home consumption from customs bonded warehouse.
- This circular is applicable for supply of warehoused goods , while being deposited in customs bonded warehouse on or after April 2018. However while supply of warehouse goods, while being deposited in FTWZ on or after April 2018 Appellants needed not pay IGST at the time of removal of goods from FTWZ to DTA in addition to customs duty payable on removal from FTWZ.

M/s. Ingram Mircro India Ltd Vs. Principal: 2017 TIOL 1186 (HC – Madras)

- Appellants imported ethernet switches vide 7 bill of entries and claimed customs duty exemption under Notification No. 24/2005 dated 01.03.2005. However on 11.07.2014 the notification was amended to exclude carrier ethernet switches by taking a stand that such switches could not be cleared without payment of BCD. Appellants cleared goods in respect of 6 bill of entries on self-assessment basis but registered protest for the 7th bill of entry.
- Appellant filed appeal before Madras High Court seeking direction to pass speaking order with respect to 7 bill of entries filed and the department that sought testing cum expert opinion should make available the report.
- The Court held that as per the provisions of Section 17(2) of the Customs Act, 1962 the officer should verify Appellants claim in the light of the protest registered by him. The department did not make a case for rejection of protests or non-maintainability.
- Department stand that duty would be payable on clearance applies to all the 7 bill of entries. However taking a stand of passing speaking order in respect of one bill of entries viz a vis the 7 filed is untenable and preventing the Appellants from exercising their legal right to lodge a protest.
- Hence the court directed the department to pass speaking order with respect to 6 bill of entries and also supply test reports to the Appellants.

M/s. International Seaport Dredging Ltd Vs. Commr. Of ST Chennai: 2018 TIOL 3181 CESTAT Chennai

- Appellants are engaged in dredging , reclamation of sea ports and allied activities where dredgers/vessels were hired from companies not having a permanent establishment in India. The dispute pertains to ST liability on hiring of dredgers/vessels from foreign company under supply of tangible goods services.
- This dispute came up for consideration before the Honourable Tribunal which held that there was a transfer of possession and effective control to the Appellant however the owner of vessel continues to be the owner.
- The owner of vessel could impose restrictions and conditions on the Appellant who uses the vessels for intended purpose. Thus it is a clear case of deemed sale not liable to Service Tax under supply of tangible goods services.
- On the issue of Appellants bearing Customs Duty and Entry Tax payment and getting the same fully reimbursed by their client the tribunal held that this was not a consideration for dredging service but reimbursable expense incurred at actual not liable to Service Tax.
- Further when all the transactions are duly recorded in the books of accounts there is no question of suppression or will-full misstatement with an intent to evade duty.

Vision Pro Event Management Vs. CCE & ST, Chennai: 2019 (365) ELT 555 (Tri.-Chennai)

- Appellants rendered Event Management Service to SF Patel & Sons (India) an SEZ unit and had claimed exemption under Notification No. 04/2004-ST dated 31.03.2004. Both the Adjudicating and Appellate Authority took a stand that exemption was not available to the Appellant as services was not consumed within the SEZ.
- This dispute came up for hearing before the Honourable Tribunal which held that some services could be wholly consumed within the SEZ and some could be partly consumed within the SEZ. Appellants provided event management services for which the SEZ unit was a co-sponsor for the event which helped in advertising of product.
- Further the intention of SEZ Act was to grant exemption from taxes/duties payable on goods and services provided to SEZ Unit/Developer and such supplies are treated as deemed exports. Section 51 of the SEZ Act provides for overriding effect over any other law and hence benefit of notification cannot be denied.

CCE Pune-I Vs. Sciformix Technologies Pvt Ltd: 2019 (365) ELT 588 (Tri.-Chennai)

- The Appellants an SEZ unit had filed refund claims under Section 11B of Central Excise Act, 1944 within one year from the end of the quarter. The Adjudicating Authority rejected the refund claims which was allowed by the Appellate Authority.
- Against the order of the Appellate Authority department filed appeals before the Honourable Tribunal treating the relevant date as end of the month in which month the actual Service Tax payment was made by the SEZ.
- The Tribunal carefully perused Section 11B , Clause (f) of Central Excise Act, 1944 and also Notification No. 12/2013-ST and held that the dispute should not only be decided on the basis of Section11B but should also consider Notification No. 12/2013-ST when specific provisions for limitation is provided under the notification and thus remanded the matter back to Appellate Authority for fresh adjudication.

ABOUT DAA

DAA Consulting is a management consulting entity founded in the year 2010 by D Arvind who earlier worked in Big Four Firms as partner and Tax & Legal head in a large MNC prior to Big Four.

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