

Latest Judgments

1 **Dhunseri Petrochem Ltd 2016 (340) ELT 421 (AAR.)**

Will the process of crushing of coal amount to manufacture under the Central Excise Act, 1944?

Authority for Advance Rulings' Decision: AAR held that neither the coal crushing activity would amount to 'manufacturing activity' nor the crushed coal would be a manufactured product.

2 **Commr. of ST v. Tavant Technologies India Pvt Ltd. 2016 (43) STR 57 (Kar.)**

Can the Department deny the claim for refund of CENVAT credit available under rule 5 of the CENVAT Credit Rules, 2004 on the ground that the person claiming the refund is not registered?

High Court's Decision: The High Court upheld the order of the Tribunal that Department could not deny the claim for refund of CENVAT credit available under rule 5 of the CENVAT Credit Rules, 2004 on the ground that the person claiming the refund was not registered.

3 **Eveready Industries India Ltd. v. CESTAT, Chennai 2016 (337) ELT 189 (Mad.)**

The adjudicating authority has passed an order for refund under section 11B of the Central Excise Act, 1944 which was alleged as erroneous by the Department. Can Department recover such refund under section 11A of the Central Excise Act, 1944 without review of the refund order in terms of section 35E of the Act?

High Court's Decision: The High Court held that once an application for refund is allowed under section 11B, the expression 'erroneous refund' appearing in sub-section (1) of section 11A cannot be applied.

If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under section 11A(1).

One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, the High Court answered the question of law in favour of the appellant/assessee and allowed the appeal.

4 **Universal Services India (P) Ltd., In re 2016 (42) STR 585 (AAR)**

The applicant proposes to provide payment processing service to a US company which in turn provides name registration, web hosting, designing and other services to customers in India. What would be the place of provision of services provided by applicant and whether such services would qualify as 'export of service'?

AAR's Decision: AAR held that place of provision of service proposed to be provided by applicant would be location of recipient of service, i.e., location of WWD, i.e. outside India, in terms of rule 3 of PoPS. Further, since all the conditions enlisted under rule 6A of the Service Tax Rules, 1994, are satisfied, said service will also qualify as export of service.

5 **Federation of Hotel & Restaurants Association of India v. UOI 2016 (44) STR 3 (Del.)**

Whether section 66E(i) of the Finance Act, 1994 to the extent it seeks to constitute the service portion in an activity of supply of food or other articles as 'declared service' and rule 2C of the Service Tax (Determination of Value) Rules, 2006, constitutionally valid?

High Court's Decision: In the light of the aforementioned discussion, the High Court upheld the constitutional validity of section 66E(i) of the Finance Act, 1994 read with section 65B(22) and 65B(44) thereof and rule 2C of the Service Tax (Determination of Value) Rules, 2006.

6 **Suresh Kumar Bansal v. UOI 2016 (43) STR 3 (Del.)**

Whether levy of service tax on construction of complex services and on preferential location charges is constitutionally valid?

High Court's Decision: In view of the above, the High Court negated the challenge to levy of service tax on preferential location charges, but held that service tax cannot be levied on such charges as contracts are composite. Further, it accepted the petitioners' contention that no service tax under charging section of the Finance Act, 1994 could be charged in respect of composite contracts for purchase of units in a complex, such as the ones entered into by the petitioners with the builder.

7 **UOI v. Prashanthi 2016 (43) STR 350 (Kar.)**

Whether recovery provisions under section 87 of the Finance Act, 1994 can be invoked without an adjudication proceeding under section 73 of the Act?

High Court's Decision: The High Court held that the submission that the power under section 87 is independent and irrespective of the procedure under section 73, is not viable. The contention that when the power under section 87 is to be invoked, no procedure under section 73 can be undertaken, is not acceptable. Accepting such submissions and contentions would result in a situation that the power under section 87 be without an adjudication mechanism under section 73, which is neither conceived by the legislature nor can be the accepted position.

8 **Kunj Power Projects v. UOI 2016 (41) STR 3 (All.)**

Can the order directing the provisional attachment of property under section 73C of the Finance Act, 1994 be made without giving any opportunity of being heard to the assessee?

High Court's Decision: In the light of the aforesaid discussion, the High Court quashed the order for provisional attachment of property. It further held that the respondents need to be careful while resorting to exercise the powers of provisional attachment of property. Such exercise of power has to be resorted to with utmost circumspection and with maximum care and caution.

9 **Gopal Saha v. UOI 2016 (336) ELT 230 (Cal.)**

Whether the expression 'goods in respect of which any prohibition is in force' refers to smuggled goods or prohibited goods?

High Court's Decision: In the light of the aforesaid discussion, the High Court inferred that expression 'goods in respect of which any prohibition is in force' in the context of section 112 implies goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof. Consequently, the order imposing penalty on the petitioner was set aside and the matter was remanded for such limited purpose for the imposition of other permissible penalty.

64) Service by an acquiring Bank to a person in relation to settlement of amount upto Rs. 2000/- in a single Transaction transacted through credit Card.
[08-12-16]

Abatement

Tour operator - 40%.

ध्यान रखना है

All Input Services are eligible

[22-01-17]

26) Army, Naval and Airforce Group Insurance is exempt.
[02-02-17]

Education Services

Service provided to

- 1)
- 2)
- 3)
- 4)

} Only upto 10+2
[01-04-17]

MIRACLE MANTRA

-An Initiative by **CA VIJAY GAURAV**

CA-FINAL: (REGULAR COURSES) MAY 18

Subject	Mode	Start	End	Timings	Fees
Paper 6: International Taxation: 100 Marks)	Face to Face	15.11.17	15.12.17	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 15,000/-
Paper 7: Direct Tax Laws: 70 Marks & International Taxation: 30 Marks (earlier Direct Tax Laws: 100 Marks)	Face to Face	03.10.17	21.11.17	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 15,000/-
Paper 8: Indirect Tax Laws (GST: 75 Marks, Custom & FTP: 25 Marks)	Face to Face	18.12.17	31.01.18	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 15,000/-

!! Join any 2 Batches & Get a Flat Discount of Rs.2,000/- or All Batches & Get a Flat Discount of Rs.5,000/- !!

CA-FINAL: (CRASH COURSES) MAY 18

Subject	Mode	Start	End	Timings	Fees
Paper 7: Direct Tax Laws: 70 Marks & International Taxation: 30 Marks (earlier Direct Tax Laws: 100 Marks)	Face to Face	01.02.18	23.02.18	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 8,000/-
Paper 8: Indirect Tax Laws (GST: 75 Marks, Custom & FTP: 25 Marks)	Face to Face	01.03.18	23.03.18	05:00 PM to 09:00 PM (Mon to Sat)	Rs. 8,000/-

!!Join Both Batches & Get a Flat Discount of Rs.1,000/- !!

CA-IPC: (REGULAR CUM CRASH COURSE) MAY 18

Subject	Mode	Start	End	Timings	Fees
Paper 4: Taxation: 100 Marks	Face to Face	26.02.18	31.03.18	07:00 AM to 11:00 AM (Mon to Sat)	Rs. 10,000/-

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