



PRACTICE AREA UPDATE INDIRECT TAX

Relief from Service Tax Demands: CESTAT Holds Procedural Lapses Cannot Override Statutory Rights

In a case concerning a leading logistics and mailing solutions provider, the tax authorities initiated proceedings and passed an Order-in-Original, alleging irregular availment and utilization of CENVAT credit, liability under the reverse charge mechanism (“RCM”) in respect of services received from overseas, and wrongful availment of exemption on services rendered to Special Economic Zone (“SEZ”) units. The Department further invoked the extended period under Section 73 of the Finance Act, 1994 and confirmed demands along with interest and penalty.

The said order was challenged before CESTAT, Bengaluru wherein the Appellant contended that denial of CENVAT credit on account of non-registration as an Input Service Distributor (“ISD”) is legally untenable, as such registration is merely procedural and not a pre-condition for availment of credit under the Cenvat Credit Rules, 2004. It was further submitted that the Appellant had maintained complete records and satisfied all substantive conditions for availment of credit. On the issue of RCM, it was contended that the services were performed entirely outside India by the overseas service provider and, in terms of the Place of Provision of Services Rules, 2012, the place of provision lies outside the taxable territory, thereby excluding taxability under Section 66B of the Finance Act, 1994. With respect to SEZ services, it was submitted that the services were consumed for authorized operations and exemption cannot be denied for procedural lapses, with reliance on various judicial precedents.



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Upon a detailed consideration of the submissions and material on record, the Hon'ble Tribunal was pleased to set aside the Order issued by the Department, noting that non-registration as ISD is a procedural lapse and cannot be a ground to deny substantive CENVAT credit. It was further observed that the services provided by the overseas entity were performed outside India and hence not liable to tax under RCM. The Tribunal also held that exemption in respect of services provided to SEZ units cannot be denied on account of procedural non-compliance when substantive conditions are fulfilled. Additionally, it was noted that invocation of the extended period of limitation was unsustainable, particularly when the Department was already aware of the relevant facts vide the returns filed by the Appellant.

The client was advised by the firm, led by a team of Partner Prashanth Shivadass, Associate Partner Rishab J, Principal Associate Shradha Rajgiri and Senior Associate Nitin Aditya. The arguments in the court were led by Senior Advocate Mr. G Shivadass.



Mr. G Shivadass



Prashanth Shivadass



Rishab J



Shradha Rajgiri



Nitin Aditya