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LANDMARK JUDGMENT:

In Lucknow Development Authority v. M.K. Gupta MANU/SC/0178/1994: 1994(1) SCC 243: State of A.P. v. Food Corporation of India 2004(13) SCC 53 and Delhi Airtech Services Private Limited and Anr. v. State of Uttar Pradesh & Anr. reported in MANU/SC/0956/2011 : 2011(9) SCC 354. SC held that the law is well settled that the public officers have to be also held accountable for their acts of omission and commission and observed as under:-.

"Even where there is no ministerial duty as above, and even where no recognized tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

CENTRAL EXCISE- BY SHRI PRADEEP K. MITTAL-9811044365

- The Supreme Court in the case of CCE Vs. National Glass Industries Limited MANU/SC/0065/2016 has observed that in case the purchaser has given sizeable advance to the supplier of the goods, effect of such advance is required to be examined by the Tribunal on the assessable value of the goods agreed to be supplied. If the advance has impact on the price agreed to be charged, interest to be added in the assessable value and excise duty payable on such enhanced value.
- Before 10.5.2013, the primary adjudicating order was required to be sent by Registered AD Post and sending it by speed post would not fulfill the requirement of Section 37C of Central Excise Act. The amended provision of Section 37C(1)(a) ibid effective from 10.05.2013 allows sending of the orders by speed post with proof of delivery. Hindustan Institute of Aeronautics MANU/CE/0008/2013.
- The Tribunal has held that appellants are eligible for cenvat credit on the input services viz. CHA services, Courier Services and the C & F Agents services since the goods have been sold on FOR basis. The Board vide Circular dated 28.2.2015 has clarified that in the case of

exports, the place of removal is Port. Fenner India Ltd Vs. Commissioner of Service Tax MANU/CC/0240/2015.

- The Tribunal held that there is clear nexus with manufacture and hence credit is eligible. The Tribunal observed that credit can be denied only when the service has been received after the place of removal. Therefore, the service tax paid in relation to service beyond the place of removal would not be eligible for cenvat credit. Lear Automotive India (P) Ltd Vs. CCE MANU/CS/0001/2016.
- During the pendency of adjudication proceedings, the provisional attachment of property was made without any notice and without hearing to the assessee, the whole action is in violation of the principle of natural justice and in violation of Rule 3 and Rule 4 of Service Tax (Provisional Attachment of Property) Rule 2008, the action of attachment of property is quashed and the hearing is fixed before the Commissioner to decide the case a fresh after giving him the opportunity. Kunj Power Projects Pvt. Ltd. Vs. Union of India 2016 (41) STR 3 Allahabad.
- The Division Bench of the Allahabad High Court has held that when the Order sent by the Department has been served upon the family member, it amounts to sufficient service unless the party alleges that the person was not a family member or not connected with the business of the firm. Jyoti Enterprises Vs. CCE 2016 (41) STR 19 Allahabad.
- When no appeal was filed before the Commissioner (Appeal) within a period of 90 days (60 days plus 30 days with condonation of delay) the High Court, in a writ petition, cannot hold that the Appellant is entitled to file an appeal beyond 90 days even if sufficient ground has been shown for not filing the appeal within the period of 90 days. No Court has power to grant condonation of delay

beyond the statutory period. Star Enterprises Vs. Jt. Commissioner 2016 (41) STR 20 A.P.

**SERVICE TAX –BY SHRI PRADEEP K. MITTAL-
9811044365**

- When the demand has been confirmed by the adjudicating authority for service tax towards supply of tangible good service, it is incumbent upon the party to file appeal before the CESTAT and the order confirming the demand cannot be challenged by way of writ petition before the High Court. Writ petition is liable to be dismissed since the alternative remedy is available by way of filing an appeal before CESTAT. GMMCO Ltd. Vs. Union of India 2016 (41) STR 32 Mumbai.
- When the credit was taken on IT enabled service for providing IT services which were exported. The services were provided at the Registered Office of the Company as well as other offices whose address were also included in the Registration Certificate, the Appellant is entitled to refund of unutilized/accumulated Cenvat Credit since there was export service. EXFO Electro-Optical Engineering Pvt. Ltd. Vs. Commissioner of Central Excise 2016 (41) STR 65 Tribunal.
- It is trite that the issue of classification of service is an issue between the service provider and the concerned service tax authorities having jurisdiction over it (i.e. the service provider) and it is not open to the service recipient or to the service tax authorities having jurisdiction over the service recipient to question the classification of the services received by it (i.e. the service recipient). CCE Vs. Midex Global (P) Ltd MANUCE/0007/2016.
- The Tribunal in the case of Sarthak construction Vs. CC & S Tax MANU/CE/0006/2016 has relied upon the judgment

of Supreme Court in the case of CCE Vs. M/s. Larsen & Toubro Ltd. 2015-TIOL-187-SC-ST and has held that no service tax was payable on the services rendered under works contracts prior to 1.6.2007. It is immaterial that the service provider was not registered under VAT because evasion of VAT would not automatically lead to liability to service tax.

- The Patna High Court in Overseas Enterprises Vs. Union of India MANU/BH/1126/2015 observed that when the petitioners had been put to a loss of at least Rs. 14,69,650/- on account of complete deterioration of quality of split betel nuts solely on account of deliberate laches on the part of the officials of the Custom Department, high court held that it would direct respondent the Department to pay a sum of Rs. 14,69,650/- along with interest at the rate of 9% per annum for the period 28.3.2013, the date on which the order of provisional release of the seized article was passed by the competent authority to the order directing release of the seized articles dated 9.8.2014 within a period of three months from today. The amount shall be recovered from the guilty officials who is responsible for this culpable acts.

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