

LD/69/22, [Bombay High Court: WP NO. 2005/2001, Kuber Builders Vs. Uol], 26/06/2020

The assessee is a partnership firm. Return of income for AY 1987-88 was filed showing loss. Loss was disallowed and tax liability was determined on appeal. Notice of demand dated 19.07.1991 was issued by TRO in respect of AY 1985-86 for ₹ 9,33,020 and for AY 1987-88 for ₹3,11,206. The assessee deposited ₹ 6,00,000 with Revenue in October 1991 and the demand was stayed. Revenue appropriated deposit amount towards petitioner's tax liability of ₹ 3,11,206 for AY 1987-88. Meanwhile, the assessee applied under the Kar Vivad Samadhan Scheme, 1998 settlement of its liability for AY 1987-88 only. So far as AY 1987-88 was concerned, in Certificate of Intimation dated 26.2.1999, liability of petitioner was determined @ 50% of total liability at ₹ 6,16,838 towards penalty and interest only. Now, since the Tax Recovery Officer had already adjusted amount of ₹3,11,206 out of deposit amount of ₹ 6,00,000, assessee was not liable to pay any interest on said amount of ₹ 3,11,206 and the balance amount after adjusting any other penalty and interest that might arise for AY 1987-88, would be adjusted towards outstanding liability for assessment year 1985-86. Thus, it was held that assessee is not liable to pay any interest on the amount of ₹ 3,11,206.

GST



LD/69/23, [2020-TIOL-872-CESTAT-MUM], M/s SRK Creatives Private Limited Vs. Commissioner Central Tax and GST Thane, 11/02/2020

The activity undertaken by the appellant of printing photographs on plain printing paper and thereafter binding them and selling as photo books is a manufacturing activity classifiable under chapter 4911. Thus no service tax is payable in respect of such activity. Tribunal noted that even under the GST regime classification of the said product will be under HS Code 4911 taxable @12% as clarified by Circular F.No. 332/2/2017-TRU dated December 2017.

Note: The similar view is taken by the Tribunal in the case of Commissioner of Central Excise And

Service Tax Ludhiana Vs M/S Gee 7 Graphics Pvt Ltd 2020-TIOL-866-CESTAT-CHD [19.12.2019]

Service Tax

LD/69/24, [2020-TIOL-1039-CESTAT-MAD-LB], Commissioner of Service Tax Vs M/S Repco Home Finance Ltd., 08/06/2020

The foreclosure charges are nothing but damages to compensate for the loss of "expectations interest" when the loan agreement is terminated pre-maturely which the banks are entitled to receive when the contract is broken and merely because the clause relating to damage is featuring in a contract, it would be incorrect to conclude that the party has been given an option to violate the contract. Hence, to treat eventuality of foreclosure as an optional performance is incorrect. The contract cannot be understood to be providing an option to the parties to either perform or not perform/violate.

LD/69/25, [CALICUT-673001, KERALA 2020-TIOL-861-CESTAT-BANG-LB], M/s South Indian Bank South Indian Bank House T B Road, Mission Quarters Thrissur-680001 Vs. Commissioner of Customs Central Excise and Service Tax-Calicut Central Revenue Building, Mananchira Kozhikode, 20/03/2020

The banks are entitled to avail CENVAT credit in respect of service tax paid on the premium paid to Deposit Insurance and Credit Guarantee Corporation for insuring the deposits of the public with the banks.

LD/69/26, [CESTAT SOUTH ZONAL BENCH CHENNAI 2020-TIOL-871-CESTAT-MAD], M/s Marine Container Services South Pvt Ltd Vs Commissioner of Central Excise Tirunelveli, 17/01/2019

The mark-up earned by steamer agents for charging freight to its customers over and above the freight paid to shipping companies cannot be charged to service tax as the same is in the nature of trading profits and cannot be regarded as commission earned for services provided on behalf of shipping companies

Disciplinary Case



Wrong disclosure of unsecured loan amounts by Respondent-auditor in the Balance Sheet of Company -- Plea of Respondent that management to vouchsafe for the accuracy of the financial statements, not acceptable -- Respondent being an auditor to ensure that Financial Statements do not portray a misleading statement of fact -- Held, Respondent guilty of Professional Misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Held:

Upon perusal of Balance Sheet as on 31.03.2013 and Balance Sheet uploaded with Form 23 AC, the Committee observed that the entire figures of Balance Sheet (including Unsecured Loans) as on 31.03.2013 and 31.03.2012 have been interchanged.

The Respondent has not pointed out this error. Thus, the Respondent had signed the Balance Sheet without application of mind and without proper verification and checking. The Respondent had also clarified that NWS wrongly credited whole amount received from the said Company against a Debtor under the head of Sundry Debtors and as such could not be detected by him and his staff during the audit and he relied upon the client as Cheque receipts were deposited in the bank and no evidence were available with the entry vouchers. The Committee was of the view that the above clarification of the Respondent is not tenable as the same could have been detected by the Respondent if he had carried out the audit with reasonable care and due diligence. If no evidence/papers were available with the entry vouchers, the Respondent could have applied alternate checks such as adopting techniques provided under SA 505 issued by AASB of ICAI regarding obtaining external confirmations from the third parties which in the instant case, the Respondent failed to do. The Committee noted that the Respondent has admitted his mistake and his plea that same has been rectified in the Financial Statements immediately in next financial year is not tenable as he failed to detect said vital mistake. Therefore, the Committee is of the opinion that the Respondent is guilty of professional misconduct falling within the meaning Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

