

TAX ALERT

DAA
Chartered Accountants

25th JUNE 2018

This alert summaries the following writ petitions & AAR filed and outcome of such petitions .

The key issues raised before the courts and Authority for Advance Ruling are :

- ▽ **AAR Ruling on valuation of goods supplied to branch.**
- ▽ **Whether supply of goods with transportation services - naturally bundled and treated as composite supply.**
- ▽ **Service Tax on salary of staff reimbursed to distributors under Business Auxiliary Services.**
- ▽ **Value of certain reimbursable activities included as a part of service**
- ▽ **Refund claim on excess duty paid due to variation in price**
- ▽ **Failure to pay service tax by the C & F agents**
- ▽ **Refund of excess input tax paid under the Delhi value added tax**
- ▽ **Denial of VAT refund claim by exercising Revisionary Powers**

GKB Lens (P.) Ltd., In Re (2018) 93 Taxmann.com 477 (AAR – WEST BENGAL)

- The assessee is a re-seller and importer of sun glasses, frames, lenses etc., having head office in West Bengal.
- It transferred such goods from the head office to its branch in other states.
- It filed an application before Authority for Advance Ruling (AAR) seeking whether goods supplied to the branch officers can be valued at cost price under the second proviso to Rule 28 of the CGST Rules 2017, instead of at 90% of MRP as per the first proviso.
- The AAR held that the assessee had the option of not valuing the goods supplied to its branch offices at 90% of MRP.
- The assessee was **eligible to value goods supplied to branch officers at market price** by applying the second proviso to Rule 28.

IAC ELECTRICALS (P.) Ltd., In Re (2018) 93 Taxmann.com 476 (AAR – West Bengal)

- The assessee had entered into two separate contracts with M/s Power Grid Corporation Of India.
- The first contract was for supply of materials and the second was for supply of allied services like transportation, insurance, loading or unloading etc., for delivery of materials at the contractee's site.
- The assessee filed an application for AAR regarding the taxability of these services supplied.
- The AAR held that the supply of goods and transportations to the contractee's site were not separately enforceable. Therefore, the supplies of goods and services of transportation **were naturally bundled**.
- **Hence, such supply would be treated as composite supply and the applicable tax rate on the entire transaction would be the tax rate applicable on principal supply.**

IPCA LABORATORIES Ltd. Vs. CCE & ST (2018) 93 Taxmann.com 338 (Mum. – CESTAT)

- The assessee had engaged distributors in various countries where the goods were exported and sold.
- These distributors appointed sales representatives for promotion of the goods and their salary was reimbursed by the assessee to those distributors on the debit note.
- The department held that the assessee was liable to pay service tax on the amount paid to the distributors under the category of "Business Auxiliary Services".
- The tribunal held that the amount was spent by the distributors for the promotion of their own products. Therefore, the service tax could not be demanded on the said service under the head of "Business Auxiliary Service".

UNION OF INDIA Vs. INTERCONTINENTAL CONSULTANTS AND TECHNOCRAFTS PVT. LTD 2018 (10) G.S.T.L. 401 (S.C.)

- The assesses are rendering services like, consulting engineering services, Share transfer agency services, Customs house agent services covered under the head "clearing and forwarding agent" and site formation ,clearances, excavation, earthmoving and demolition services and service tax is been paid on the same.
- While rendering the aforesaid services they are also been getting reimbursement on certain services rendered by them which are not included in 'Gross Value' and service tax is not paid on the same.
- The department alleged that the value of the said reimbursable activities is also to be included as a part of service provided.
- The tribunal dismissed the appeal under the fact that all expenditure or cost incurred by the service provider in the course of providing the taxable services shall be treated as consideration for the taxable services and shall be included in the value for the purpose of charging service tax

JINDAL STEEL & POWER LTD Vs. COMMISSIONER OF CENTRAL EXCISE, RAIPUR 2018 (359) E.L.T. 610 (Tri. -Del)

- The appellant is engaged in the manufacture of iron and steel and clearing the same for construction purpose on payment of duty
- The appellant has found that they have paid excess duty due to variation in price and therefore filed a refund claim with supporting documents
- The department rejected the refund claim on the ground that the appellant has not opted for provisional assessment during the impugned order.
- The appellant has been discharged the burden of unjust enrichment and therefore they are entitled for refund claim. As the appellant has approached the jurisdictional Asstt. Commissioner and the same has been rejected, the question of opting provisional assessment during the impugned period does not arise.

MAHARASHTRA SMALL SCALE INDS.DEV.CORPN.,LTD VS CST.,MUMBAI

- The assessee was rendering services of C&F Agents and failed to pay service tax under RCM due to the confusion regarding the person responsible to discharge tax liability.
- Notice was issued and imposed interest & penalty.
- It was held that, service tax liability on service of C&F agents placed in the hands of recipient of service by retrospective amendment reason given by the assessee is justifiable thus no penalty is warranted.

COMMISSIONER OF SERVICE TAX, MUMBAI Vs. IDEAL ROAD BUILDERS PVT. LTD. 2018

(12) G.S.T.L. 192 (Tri. - Mumbai)

- The respondent has purchased the right for the collection of toll from National Highway Authority of India under a tripartite agreement in an auction.
- The department alleged that the respondent are liable to service tax under the category 'Business Auxiliary Services' for the difference between toll collected and amount paid to NHAI.
- The appeal filed by the revenue department is dismissed as, they do not get any commission on account of collection of toll and therefore there is no deduction of tax at source, thus the difference between the toll collection and bid amount paid is no way can be termed as activity of Business Auxiliary Service

GARG ROADLINES VS C, T&T 2017 81 TAXMANN 54

- The assessee was an authorized agent of Bharat Petroleum Corporation Limited(BPCL).
- It claimed refund of excess input tax paid under the Delhi value added tax.
- The department without granting refund initiated default assessment proceeding by exercising the revisionary powers.
- The HC held that Authorities under DVAT cannot delay the refund claim by exercising the revisionary powers.

About us

D Arvind & Associates LLP (DAA) is a Chartered Accountant Firm founded in 2009 by D Arvind, an Ex-partner of KPMG with a vision to provide to create innovative and insightful solutions to resolve Complex Business & Tax Challenges.

D Arvind, apart from being a Chartered Accountant is also a Company Secretary & Arbitrator, having 30 Years of Experience in Large Industries as Tax & Legal Head and Partner in Big 4 Consulting Firms. This puts him in a unique position to see Complex tax Issues from Business & Solutions perspective.

DAA is a boutique tax firm specializing in GST, Customs, Foreign Trade Policy including representation to Government, Appearance before Tax Authorities & Tribunal apart from practicing in Internal Audit and Corporate Governance.

DAA operates out of Mumbai, Chennai & Bangalore with a wide range of clientele across Industries assisting them in their Tax positions, Tax Litigations up to High Court, Tax Optimization and End to End Tax Compliance Management.

DAA | MUMBAI :

BONANZA, Sahar Plaza,
Next to Kohinoor Hotel,
J.B. Nagar, Andheri (E),
Mumbai - 400059

DAA | CHENNAI :

#13, 3rd Floor, Bhagawathi Palace,
J Block, 3rd Avenue,
Anna Nagar (East),
Chennai - 600102

DAA | BANGALORE :

No.221, 16th Main Road, 19th
Cross Street, HSR Layout,
Bangalore - 560102
Tel +918056102618

DAA | COIMBATORE

No. 466, CPC Corporate Hub,
3rd Floor, above Durian Furniture
Thadagam Road, R.S. Puram,
Coimbatore - 641002
Tel +919677136300