

Case Laws

SALE OF 'GOING CONCERN' EXEMPT FROM GST : AAR

Sale of a going concern by a business house will not attract Goods and Service Tax (GST) according to an order by the Authority for Advance Ruling (AAR). The AAR stated, as per Government Notification any transfer of a going concern constitutes a 'supply of service' and 'nil' tax rate will apply on it and therefore, going concern is a concept of accounting and applies to the business of the company as a whole. The Karnataka Bench of the AAR gave its ruling based on an application filed by Rajashri Foods.

NO IGST ON SALE OF IMPORTED GOODS FROM CUSTOM BONDED WAREHOUSE BEFORE CLEARANCE

The Indirect Tax department has settled the issue of double taxation under the GST on imported goods kept in bonded warehouses and later cleared from there. An earlier circular raised an issue of imposition of the Integrated GST (IGST) twice on such transactions. Where a company imports goods and keeps these in a Customs-bonded warehouse, it has to pay IGST and again, when the goods are cleared for final sale.

However, the Central Board of Indirect Taxes and Customs has issued a circular stating that IGST will be levied and collected only at the time of final clearance of warehoused goods for home consumption i.e., it will now be imposed at the time of filing the ex-bond bill of entry.

SWAYAM SHIPPING SERVICES (P.) Ltd. V . CCE & ST (2018) 93 taxmann.com 259 (Ahd. – CESTAT)

Facts of the case : The assessee was involved in loading and unloading of timber logs into the truck and transporting the same to the location of the importer. It was issuing consignment note for transportation and discharged its duty under the category of 'Goods transport agency service'.

Dispute : The department held that the services provided by the assessee would fall under the category of 'Cargo handling service'

Judgment: The tribunal held that the ancillary activity undertaken with main contract of the transportation would not change the activity of the service provider. Therefore, the services provided by the assessee would not fall under the category of 'Cargo handling service'.

TORQUE PHARMACEUTICALS (P.) Ltd. Vs. STATE OF U.P (2018) 93 TAXMANN.COM 277 (All.)

Facts of the case : The assessee had dispatched the goods from one state to another. Meanwhile, the goods were unloaded and were loaded back in another vehicle for onwards journey. The assessee has downloaded the e-way bill mentioning the details of one vehicle as the portal was not permitting to mention details of two transport vehicle.

Dispute : The department seized the goods under transport as well as the vehicle on the ground that the details of the second transport vehicle been mentioned by hand.

Judgment: The High Court held that the assessee had no option except to mention the details of second vehicle in the e-way bill by hand. Therefore goods couldn't be seized merely on basis that details of second vehicle were not mentioned.

SUDHIR CHAND JAIN VS. COMMISSIONER OF CENTRAL EXCISE, GHAZIABAD 2018 (8) G.S.T.L. 302 (Tri.- All.)

Facts of the case : The assessee is a contractor having registered service unit in the capacity of a sub-contractor in the nature of civil construction in Noida-SEZ, under the main contractor, where the work was allotted to NBCC by the Deputy Commissioner of SEZ

Dispute : Whether the appellant is entitled to exemption from Service Tax.

Judgment : Here, the appellant as sub-contractor having provided services through their contractor at NSEZ therefore, it amounts to providing and consuming services to SEZ and hence, the appeal and the demand amount is set aside.

CENTRALGOODS AND SERVICE TAX Rules, 2017

Rule 133 (3) order of the authority amended vide Notification No. 14/2018

Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

- Reduction in prices
- Return to the recipient an amount equivalent to the reduction in price along with interest at the rate of 18% from the date of collection of the higher amount till the date of collection. In case the eligible person does not claim return of the amount or is not identifiable then the same has to be deposited in the Fund (as referred to in Section 57).
- Imposition of penalty as specified under the Act and
- Cancellation of registration under the Act.

PRABHAKAR MAROTRAO THAOKAR & SONS Vs. CCE (2018) 91 TAXMANN.COM 180 (Mum- CESTAT)

Facts of the case : The assessee is a wholesale distributor and under an agreement, the manufacturer gave discount of the assessee on supplied goods for further distribution.

Dispute : The department contended that the discount was nothing but a sales commission which was liable to service tax under the category of 'Business Auxiliary Service'

Judgment : The tribunal held that the discount by the manufacturer to the assessee and subsequently by the assessee to the individual trader were sales transaction. Hence, the trading margin could not be subject matter of levy of service tax.

KANPUR CARGO MOVERS Vs. CCE & ST (2018) 89 TAXMANN.COM 14 (All. - CESTAT)

Facts of the case : The assessee was engaged in providing Cargo Handling Services to its clients. It received services of Shipping Lines and Forwarder Companies to provide services to the customers. It received some brokerage from Shipping Lines and Forwarder Companies in lieu of payment of ocean freight on behalf of the clients.

Dispute : The department held that brokerage received by assessee was liable to service tax under the category of 'Business Auxiliary Service' and raised demand upon the assessee.

Judgment : The tribunal held that the notional surplus earned by assessee was from purchase and sale of space and not by acting for the client who had space on the vessel. Therefore, the brokerage received by assessee was not liable to service tax under category of 'Business Auxiliary Service'.

CST Vs. UPS WORLDWIDE LOGISTICS INDIA (P.) Ltd. (2017) 88 TAXMANN.COM 247 (Mum. - CESTAT)

Facts of the case : The assessee provides various services, viz., warehousing, transportation, logistics, etc., to its clients

Dispute : The department held that such services provided by the assessee would fall under the category of 'management or business consultant' services.

Judgment : In the instant case as the assessee had no connection with the management of the organization as it was providing services of warehousing, transportation, logistics, etc., which were independent services. Therefore, the services provided by the assessee provided by the assessee could not be classified as 'management consultancy services'.

GST ON REIMBURSEMENTS

Applicability of GST on reimbursements of business expenses to employees

- Reimbursement, in general parlance is a method of paying employees back what they have spent on business related expenses.
- Reimbursement of expenses claimed by employees for supplies received from registered dealer then the same shall not be subject to GST. In case tax invoice is raised in the name of employee then the employer will be unable to take credit of tax paid as the invoice does not contain the employer GSTIN.
- Reimbursement of expenses claimed by employees for supplies received from unregistered dealer then the same shall not be subject to GST. Therefore if goods are supplied by an unregistered dealer to a registered dealer then such person shall be liable to pay on reverse charge basis. Vide Notification No. 10/2018- Central tax (Rate), it is exempt till 30th June 2018.

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.

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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 Furnitures,
Thadagam Road,R.S.Puram,
Coimbatore - 641002
Tel +919677136300**