

TAX ALERT

DAA
Chartered Accountants

02nd JULY 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:

- ▽ **Goods can't be detained merely because of infraction of procedural rules under GST**
- ▽ **Service tax on commission received from foreign supplier for procuring orders from Indian buyers.**
- ▽ **Commission received on ticket sales exempted from Service Tax.**
- ▽ **No service tax leviable on business auxiliary service received from aboard for procuring export order.**
- ▽ **Procurement of purchase orders on commission basis couldn't fall under 'clearing & forwarding agent service'.**
- ▽ **Assessee entitled to rebate of duty paid on export of capital good by reversing ITC (Bom. - HC)**
- ▽ **Ancillary services related to transportation of goods (Chennai - CESTAT)**
- ▽ **CENVAT Credit couldn't be denied as capital assets were used at other premises (Mad. - HC)**
- ▽ **No denial of benefit of abatement if credit of duty availed is reversed (Mum. - CESTAT)**
- ▽ **Warehousing charges paid under protest couldn't be refunded (Del. - HC)**
- ▽ **Notification No. 12/2018 - Central Tax (Rate) - GST Provision on TDS, TCS & RCM**

INDUS TOWERS Ltd. Vs. Asstt. STO (2018) 90 taxmann.com 417 (Ker.)

- Assessee is a public limited company engaged in the establishment and maintenance of towers for telecom service providers and assessee has procured the batteries required for their various tower locations.
- The goods transported by the petitioner were intercepted by department and ordered that goods would be released only after payment of penalty towards CGST and SGST and equal amount towards penalty.
- The honorable high court held that mere infraction of the procedural rules cannot result in detention of goods.
- Therefore detention of goods merely for infraction of the procedural rules in transactions is without jurisdiction.
-

CCE Vs. NATIONAL ENGINEERING INDUSTRIES Ltd. (2018) 93 Taxmann.com 342 (Raj.)

- The assessee entered into a combined agreement for procuring orders from Indian buyers and was not paying the service tax on commission received in foreign currency for services rendered in India.
- The department held that the assessee was liable to pay service tax on the ground that the office of a subsidiary company in India would amount to an office of a holding company and not to be treated as export of services
- The revenue filed an appeal in the High Court
- The high court held that the branch of subsidiary company in India would not be treated as branch of the company.
- Hence, such services would be treated as export of services as service recipient was located outside India.

ARAFATH TRAVELS (P.) Ltd. Vs. CST (2017) 88 Taxmann.com 207 (Chennai – CESTAT)

- The assessee is a general sales agent (GSA) for Saudi Arabian Airline and was registered under the category of 'Air Travel Agent Service'.
- In terms of the agreement made between the assessee and Airline, the assessee was entitled to receive overriding commission at a fixed percentage.
- The department held that the overriding commission received by the assessee was liable to service tax .
- The tribunal held that the service rendered by the assessee to Saudi Arabian Airline was 'export of business auxiliary services'.
- Therefore such service is exempt from service tax.

CC, CE & ST Vs. STERIA INDIA LTD. (2017) 88 Taxmann.com 236 (All. – CESTAT)

- The assessee had received 'business auxiliary service' in the nature of procuring orders for export of 'information technology software service' from a foreign company during the period January to December 2006.
- The department held that the assessee was liable to pay service tax on the 'business auxiliary services' received from the foreign company on reverse charge basis.
- The tribunal held that the 'information technology software services' was taxable with effect from May16, 2008.

CCE Vs. TEHRI PULP & PAPER Ltd. (2017) 88 taxmann.com 280 (All.)

- The assessee has entered into a contract for procurement of purchase orders on commission basis.
- Also includes dispatch of goods, pursuing the customers regarding early payment, raising debit notes for payment of commission and supervising dispatches.
- The department held that the contract was of 'clearing and forwarding agent services' under service tax law.
- The High court held that such activities were only ancillary or supplementary to the activity of commission agency.
- Therefore, such services would not fall under the category of 'clearing and forwarding agent service' as alleged by revenue.

UNIONOF INDIA Vs. STERLING INDUSTRIES (I) Ltd. (2017) 87 Taxmann.com 201 (Bom.)

- The assessee imported used aluminum casting machines as capital goods.
- It availed credit of duty on those capital goods that were exported on payment of duty by reversing the input tax credit availed.
- Subsequently, the assessee claimed rebate of duty paid on export of capital goods.
- The department rejected the rebate claim of the assessee.
- The High Court held that the duty paid by debiting the credit entry, rebate claim was allowable and it was not open to the department authorities to argue to the contrary.
- Therefore, the assessee was entitled to rebate of duty paid on export of capital goods by reversing the input tax credit

DIAMOND SHIPPING AGENCIES (P.) Ltd. Vs. CCE (2017) 87 taxmann.com 177 (Chennai – CESTAT)

- The assessee is registered under customs house agent services and was engaged in transporting break-bulk cargo from one port to another.
- The department held that the assessee was providing cargo handling service as it was involved in transportation, storage, security, loading and unloading at yard.
- The tribunal held that the essential character of activity carried out by assessee was only transportation of goods.
- Mere fact that it also performed ancillary activities of loading, unloading goods etc., same would not be classified under category of 'cargo handling service'.

CCE Vs. BHARATH SANCHAR NIGAM Ltd. (2017) 84 taxmann.com 13 (Mad.)

- The assessee is in the business of providing telephone services throughout India and it has created Secondary Switching Areas in various parts of the country.
- The capital equipment, which was received by a zone SSA was used for provisioning of telephone services by other SSA's and claimed the Cenvat Credit on such equipment.
- The department issued a notice and raised demand along with interest and penalty.
- The High Court held that the assessee could not be denied Cenvat credit as there consist nothing in rule 3(1)(i) which suggested that Cenvat Credit would be available to an output service provider only if, capital goods were used in very same premises.

CCE Vs. INDIAN OIL TANKING (P.) Ltd. (2017) 83 taxmann.com 391 (Mum. – CESTAT)

- The assessee provides commercial and industrial construction service and erection, commissioning or installation service to a party and engaged other service providers and procured duty paid goods.
- It used accrued Cenvat credit for discharge of duty on output service and sought to avail of the benefit of abatement subject to condition that Cenvat credit of duty paid on inputs had not been availed
- The department denied the benefit of the abatement and demanded service tax on availed abatement.
- The Tribunal held that the assessee had reversed the Cenvat Credit of duty availed and there was sufficient compliance of condition for eligibility for abatement.
- Therefore, the assessee was entitled to benefit of abatement.

PRINCIPAL CC. Vs. SUREN INTERNATIONAL Ltd. (2017) 84 taxmann.com 192 (Delhi)

- The department seized the goods of assessee that had been imported and kept such goods in warehouse of Central Warehousing Corporation.
- The assessee paid said charges under protest and made an application before department seeking refund of warehousing charges.
- The High Court held that there was no provision in the customs Act or any other law which contemplated refund of warehousing charges.

NOTIFICATION NO. 12/2018 – CENTRAL TAX (Rate)

➤ GST provision on TDS/TCS, reverse charge mechanism deferred by 3 months

- The GST Council had suspended the provision for deduction of TDS, TCS as well as implementation of reverse charge mechanism till 30th June 2018.
- The revenue department has decided to keep in abeyance GST provision relating to Reverse Charge Mechanism, TDS & TCS for another 3 months i.e., till 30th September 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.

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