

TAX ALERT

DAA
Chartered Accountants

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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:

- **Services rendered by one govt. authority to other govt. authority is exempt from GST (AAR)**
- **Allahabad HC allows manual filing of TRAN-1 in special cases if electronic system doesn't respond. (HC)**
- **No service tax to be levied on amount received as reimbursement expenses from clients (New Delhi - CESTAT)**
- **Product 'Lightning Arrester' classifiable as 'Electric Apparatus' under Heading No. 8535 (AAR)**
- **Seized vehicle could be released without demanding security if there was no possibility of evasion of tax (All. - HC)**
- **Charges collected for activities other than CHA are not liable under Service Tax (Bangalore - CESTAT)**
- **Brackets & Clamps of cast iron classifiable as other cast articles of iron or steel; taxable at the rate of 18% GST (AAR)**
- **Determination of liability on High Sea Sale Transactions (Maharashtra - AAR)**
- **Taxability on recovery of food expenses from employees for the canteen services provided by the company. (AAR - GST)**
- **Service tax liability on hiring of dredges/vessels from the foreign company (Tri - Chennai)**

IT DEVELOPMENT AGENCY (ITDA), In Re (2018) 94 taxmann.com 329 – (AAR - UTTARAKHAND)

- The assessee is an Information Technology development Agency (ITDA) of Uttarakhand Govt.,
- An application was filed on the issue 'whether the goods or services received by it from Indian Institutes of Technology (IIT) are exempt from GST
- The Authority for Advance Ruling held that the local authority means any authority authorized by any state Govt and thus, ITDA is a local authority under the control of Uttarakhand Govt.
- Further, the IIT's also falls under the definition of Govt.
- Therefore, the services are provided by one Govt. authority to other Govt. authority and hence, such services would be exempt from GST.

NATIONAL CHEMICAL & DYES COMPANY Vs. UNION OF INDIA (2018) 94 Taxmann.com 167 (All.)

- The assessee filed a writ petition in the High Court stating that the electronic system of the department did not respond on the last date, i.e., December 27,2017 for filing the form GST TRAN – 1
- As a result the application was not entertained and it was likely to suffer loss of the input tax credit.
- The High court directed the GST counsel to re-open the GST portal
- If not possible, then manually application will be entertained and the orders will be passed after due verification of credits claimed by the assessee.

TEXT HUNDRED INDIA (P) Ltd Vs. CST (2018) 94 Taxmann.com 170 (New Delhi – CESTAT)

- The assessee received the reimbursable expenses from the client on actual basis.
- The department held that such amount was includible in the gross value for the purpose of payment of service tax.
- The tribunal held that the reimbursable expenses cannot be considered as amount charged for providing the taxable service and the assessee was entitled for receiving actual expenses incurred.
- Therefore, such expenses could not be included in the gross value for the purpose of payment of service tax as such amount was not towards the consideration received for providing the taxable service.

RAPID ELECTRODES (P.) Ltd., In Re (2018) 94 Taxmann.com 149 (AAR – Guj)

- The assessee is carrying out manufacturing, assembling, fitting, repairing, renovation and installation of all kinds of 'Earthing Products'.
- An application was filed for advance ruling for the classification of Lightning Arrester.
- The Authority for Advance Ruling held that the base of Lightning Arrester is fabricated, so that the rod with other fittings fits with it.
- The Tariff Heading 8535 covers the products 'Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits.
- Thus, the product 'Lightning Arrester' is specifically covered under Tariff Heading 8535

PUNEET AUTOMOBILES LTD. Vs. STATE OF U.P (2018) 94 Taxmann.com 228 (All.)

- The assessee's goods were seized by the competent authority on the grounds that it had not furnished E-Way bill at the time of detention.
- The competent authority imposed penalty under section 129 (3) of the CGST Act.
- The assessee filed writ petition in the High Court on the ground that the E- Way bill rules were not applicable under the CGST on the date of seizure.
- The high Court held that the goods was duly supported by other documents ensuring no possibility of tax evasion.
- Therefore, the competent authority was directed to release the goods without demanding any security from the assessee.

BAX GLOBAL INDIA LTD. Vs. COMMISSIONER OF SERVICE TAX

- The assessee is a customs house agent and discharged service tax liability on the same.
- The assessee had also undertaken work as freight forwarders and other activities related thereto and collected charges for that, viz., air freight, cartage revenue, MSIL/JWG charges, due carrier, documentation charges, etc. In all these cases, services were rendered by third party and assessee initially made payment for these activities on behalf of clients and later collected amount from them.
- The department demanded service tax on all such charges collected by the assessee.
- Since charges collected by assessee for activities undertaken by it were not related to activity of CHA, therefore assessee was not liable to pay service tax

ALKA INDUSTRIES, In Re 2018 94 Taxmann.com 455 (AAR-GUJARAT)

- The applicant manufactures CI Casting for which it purchases pig iron, scrap, molasses, coal, foundry minerals, sand etc. and melts pig iron and is poured into molding boxes of sand and required shape of cast article according to the requirement of customers.
- The applicant also manufactures bracket and clamp of cast iron, which are used for hanging wash basins etc., and the applicant is of the view that the products manufactured by it are required to be classified under Chapter Heading 7325 or 7308 or 7326 of the HSN.
- Chapter Heading 7325 covers all cast articles of iron or steel, not elsewhere specified or included and the cast iron manufactured by the applicant are product of casting industry.
- The brackets and clamps so manufactured are not machined by the applicant therefore the same cannot be termed to have acquired the essential character as parts of sanitary ware. In view thereof, articles (brackets and clamps) manufactured by the applicant fall under Chapter Heading 7325 taxable at 18%.

IN RE : BASF INDIA LIMITED (Maharashtra - Authority for Advance Ruling)

- The applicant is engaged, inter alia, in the manufacture & trading of chemicals and allied products.
- The applicant is selling its products purchased from its overseas related party to its customers in India before the goods are entered for customs clearance (High Sea Sale Transaction).
- An application was filed for advance ruling to determine whether IGST is leviable on such sales and if not the input tax relating to such inputs, input services and common inputs are to be reversed.
- The AAR held that the goods which are sold on high seas sale basis are non-taxable supply as no tax is leviable on them till the time of customs clearance in accordance with and compliance of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975.
- The goods sold on High Sea Sale basis being non-taxable supply as per Section 2(78) of the CGST Act and being exempt supply as per Section 2(47) of the CGST Act, the input tax credit to the extent of inputs, input services and common input services would be required to be reversed by the applicant as per Section 17 of the CGST Act.

IN RE : CALTECH POLYMERS PVT. LTD. 2018 (12) G.S.T.L. 350 (A.A.R. - GST)

- The applicant is a Private Limited Company engaged in the manufacture and sale of footwear and they are providing canteen services exclusively for their employee's.
- They are incurring the canteen running services and are recovering the same from its employees without any profit margin.
- An application was filed for advance ruling on whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and is taxable under Goods & Service Tax Act.
- The AAR held that, as there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" and since the applicant recovers the cost, there is consideration too.
- Therefore it is hereby clarified that recovery of food expenses from the employees falls under the definition of 'outward supply' and taxable as a supply of service under GST.

INTERNATIONAL SEAPORT DREDGING LTD. Vs. COMMISSIONER OF S.T., CHENNAI 2018 (12) G.S.T.L. 185 (Tri.- Chennai)

- The appellant are engaged in Dredging, reclamation of seaports and allied activities.
- The department alleged that the appellant is liable to service tax on hiring of dredgers/vessels from the foreign company under the category of 'Supply of tangible goods services' on reverse charge basis and the inclusion of customs duty, entry tax on the import of material paid by the clients on actual basis.
- The impugned order is not legally sustainable and the same is set aside as there is transfer of asset along with complete right of possession and transfer of control and hence is a deemed sale not liable to Service Tax.
- Custom duty, entry tax, etc. are not consideration for actual taxable service and are hence not includible.

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.

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