

# **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:

- **Consideration received on revenue sharing basis does not fall under category of Business Auxiliary Service (New Delhi- CESTAT)**
- **Officer is duty bound to pass speaking order when duty is paid under protest (Madras - HC)**
- **Ancillary services related to transportation of goods were not taxable under 'Cargo Handling Service' (Chennai - CESTAT)**
- **Assessee is entitled to rebate of duty paid on export of capital goods by reversing ITC availed (Bom. - HC)**
- **Designing charges reimbursed from customers are to be included in sale price (Bombay HC)**
- **Warehousing charges paid under protest can't be refunded (Delhi - HC)**
- **No credit of Krishi Kalyan Cess allowed under GST ( Maharashtra - AAR )**
- **Credit of GST paid on sanitary fittings not available as it is an integral part of buildings (Uttarakhand - AAR)**
- **Transaction between NDDB and State Govt. can't be considered as supply between related persons (Gujarat - AAR)**
- **Warehousing & logistic service provided by assessee can't be classified as 'Management Consultancy Service' (Mumbai - CESTAT)**

### **TIMES INTERNET Ltd. Vs. CCE (2017) 82 Taxmann.com 439 (New Delhi – CESTAT)**

- The assessee, a company, entered into agreement with various telecom companies for developing and supplying contents like news, cricket score, etc., on revenue sharing basis.
- The department held that these value added services were to be considered under the taxable category of business auxiliary service.
- The Tribunal held that such arrangement between assessee and telecom companies was on principal to principal basis.
- Therefore, the **consideration received on revenue sharing basis could not fall under category of Business Auxiliary Service.**

### **INGRAM MICRO INDIA (P.) Ltd. Vs. Pr. CC (2017) 83 Taxmann.com 104 (Madras)**

- The assessee is engaged in business of import and distribution of Ethernet Switches.
- The subject goods were exempted from Basic Customs Duty (BCD) as per Notification No. -24/2005 but after amended notification, the Carrier Ethernet Switches were excluded from exemption.
- The customs authority held that Ethernet switches could not be cleared without payment of BCD and levied 10% BCD without passing any speaking order.
- The assessee paid the custom duty under protest and filed a writ petition in the High Court against the same.
- The High Court held that the assessee protested against levy of duty which was registered at time when duty was paid for clearance of goods.
- Therefore, the proper officer was duty bound to pass a speaking orders within 15days from date of assessment of bill of entries.

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

- The assessee is registered under custom house agency service, it 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, unloading at yard.
- The tribunal held that the essential character of activity carried out by assessee was only transportation of goods and mere fact that it also performed ancillary activities of loading, unloading of goods etc., same would not be classified under category of “Cargo Handling Service”.
- Therefore the impugned order passed by the department was set aside.

### **UNION OF INDIA Vs. STERLITE INDUSTRIES (I) Ltd. (2017) 87 Taxmann.com 201(Bom.)**

- The assessee had imported used aluminum casting machines as capital goods and it availed credit by reversing the duty paid on those capital goods that were exported on payment of duty.
- 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 when the duty was 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.

**TATA JOHNSON CONTROLS AUTOMOTIVE Ltd. Vs. STATE OF MAHARASHTRA (2017) 84 Taxmann.com 237 (Bom.)**

- The assessee, a manufacturer of automotive seating systems, received designing charges and tooling cost from the customers by way of partial reimbursement of designing and tooling cost.
- The department held that the designing charges and tooling cost reimbursed to the assessee by the customers formed part of sale price.
- The High Court held that the 'sale price' means the amount of valuable consideration paid or payable to a dealer for any sale made.
- Therefore, the designing and tooling cost incurred by the buyer for the manufacture of seating system would be a part of the 'sale price' of the seating system.

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

- The department seized the goods of the assessee, an importer
- The assessee had kept such goods in warehouse of central warehousing and thereafter it required assessee to deposit warehousing charges.
- The assessee paid said charges under protest and made an application before department seeking refund of warehousing charges.
- The tribunal allowed the refund of warehousing charges and the revenue filed an appeal in the High Court.
- The High Court held that there was no provision in the Customs Act or any other law which contemplated refund of warehousing charges.
- Therefore the tribunal was not justified in granting relief to the assessee.

**KANSAI NEROLAC PAINTS Ltd. In Re (2018) 93 Taxmann.com 58 (AAR – Maharashtra)**

- In the Pre-GST regime, the assessee was registered as Input Service Distributor (ISD) for its Head office to distribute eligible credit to its respective manufacturing units.
- The assessee wanted to carry forward the accumulated credit of Krishi Kalyan Cess appeared in service tax return on June 30, 2017 to the electronic credit ledger under the GST Act.
- It filed an application for Advance Ruling regarding admissibility of KKC as input tax credit under the GSR Act.
- The Authority for Advance Ruling held that the taxable person is allowed to carry forward the credit to the extent admissible as Input Tax Credit under GST as per the transitional provisions but the definition of Input Tax under GST does not include any cess.
- Further, the KKC credit could be utilized only with KKC liability but there was no levy of KKC under GST.
- Therefore, KKC Credit will not be considered as admissible input tax credit and hence the ITC of KKC could not be carried forward under GST.

### **BAHL PAPER MILLS Ltd. In Re (2018) 94 Taxmann.com 70 (AAR – Uttarakhand)**

- The assessee filed an application before the Authority for Advance Ruling on the issue 'whether GST credit will be available on office fixtures & furniture, AC plant and sanitary fittings on newly constructed building for furtherance of business and accounting entry was capitalized in books of accounts.
- The AAR held that the Input Tax Credit of GST paid in relation to building or any other civil structure is not available as the sanitary fittings are integral part of building or any other civil structure.
- Therefore, the ITC of GST paid on such sanitary fittings is not available.
- However, the credit of GST is available on office fixtures & furniture, AC plant

### **NATIONAL DAIRY DEVELOPMENT BOARD, In Re (2018) 94 Taxmann.com 456 (AAR – Guj.)**

- The assessee, a statutory body entered into an agreement with State Govt. for an arrangement between assessee and unions.
- It filed an application for Advance Ruling on whether such arrangement would be considered as supply between related persons.
- The authority for Advance Ruling held that the unions are only beneficiaries of agreement entered into by the State Government with the assessee and the unions were only required to provide adequate support to the assessee.
- Therefore, the transactions undertaken by assessee is not considered as supply between 'Related persons' in accordance with Schedule I of the Central GST Act, 2017

### **CST Vs. UPS WORLDWIDE LOGISTICS INDIA (P.) Ltd. (2017) 88 Taxmann.com 247 (Mum.-CESTAT)**

- The assessee provided various services, viz., warehousing, transportation, logistic, etc., to its clients which were independent services.
- The department held that such services provided by the assessee would fall under the category of 'management or business consultant' services.
- The Tribunal held that the services in connection with the management of any organization would be covered under the 'management consulting service'
- Therefore, the services provided by the assessee could not be classified as 'management consultancy services'.

## **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 top 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 unique position to see Complex tax Issus 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 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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