

# TAX ALERT

**DAA**  
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23<sup>rd</sup> JULY 2018

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

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

- **Amount retained by hospital from fees charged by contractual doctors not taxable as fee for support services (New - Delhi)**
- **Delivery of cargo from consignor's place to consignee's place cannot be categorized as Cargo Handling Services. (Gujarat - HC)**
- **No credit of service tax paid on 'Outdoor catering service' exclusively used for employees ( Mumbai - CESTAT)**
- **Procurement of purchase orders on commission basis does not fall under 'Clearing & forwarding agent service' (All. - HC)**
- **Exporter can claim refund of duties paid on inputs services used in manufacturing of goods. (SC)**
- **Recovery of food expenses from employees for canteen services provided by company falls under definition of 'outward supply ' (Kerala -AAR)**
- **Absence of ARE - 1 number in shipping bill amounts to clandestine clearance of goods (Chandigarh - CESTAT)**
- **3hearings must be given before deciding a case (Mumbai - CESTAT)**
- **Operation of power plant cannot be classified as 'Maintenance and repair services' (Chennai - CESTAT)**
- **Movement of goods from one state to another for delivery of goods purchased online would be treated as inter-state sale ( Punj. & Har. - HC)**

### **SIR GANGA RAM HOSPITAL Vs. CCE (2018) 94 Taxmann.com 226 (New Delhi – CESTAT)**

- The assessee, a hospital, had engaged doctors on contractual basis and has provided space to the doctors in the hospital with required facilities to attend patients.
- The professional fee was paid to doctors in terms of contracts, was computed on the basis of amount received by the assessee from the patients
- The department held that the collections charges / facilitation fees retained by the assessee was liable to service tax under the category of 'Support Service' on the ground that such fees were retained due to infrastructural support provided.
- The tribunal held that the share of clinical establishments was not liable to service tax under the category of 'support service' on the mere fact that they had supported the commerce or business of doctors by providing infrastructural support.

### **COASTAL CONTAINER TRANSPORTERS ASSOCIATION Vs. UNION OF INDIA (2018) 89 Taxmann.com 325 (Guj.)**

- The assessee was goods transport operator engaged in transportation of goods supplied by customers.
- It delivered the cargo from place of consignor in Gujarat to place of consignee in south India and contended that the services provided by it would be taxable under the category of 'Goods Transport Agency service'.
- The department issued SCN to assessee demanding service tax from assessee under category of 'Cargo Handling Service'
- The High Court held that even if any ancillary service of loading or unloading was provided by assessee along with transportation of goods, such transactions could not be classified as cargo handling services.

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### **EMPIRE INDUSTRIES Ltd. Vs. CCE (2018) 89 Taxmann.com 438 (Mumbai - CESTAT)**

- The assessee claimed Cenvat Credit of the service tax paid in respect of 'Outdoor Catering Services' exclusively used for the employees.
- The department disallowed the assessee's claim on the ground that such service was exclusively provided for personal use and consumption by the employees.
- The tribunal held that the 'Outdoor catering services' for personal use was covered under the exclusion of the Cenvat credit rules.
- Therefore, the assessee was not eligible for Cenvat credit of service tax paid on 'Outdoor catering services'.

### **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.

### **CCE Vs. DRISH SHOES Ltd. (2018) 90 Taxmann.com 39 (SC)**

- The assessee is engaged in the manufacture of finished leather, which was wholly exempt from payment of duty.
- It exported manufactured leather and claimed refund of Cenvat credit of duty paid on inputs purchased by it to convert raw leather into finished goods.
- The department rejected the refund claim of the assessee.
- The Supreme Court held that a manufacturer, who exports the final products which were exempt from duty, can claim refund of Cenvat Credit paid on inputs and input service in the manufacture of excisable products

### **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 on the issue 'whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and are taxable under Goods & Service Tax Act'.
- Though 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

### **BROADWAYS OVERSEAS Ltd. Vs. CCE (2017) 84 Taxmann.com 107 (Chandigarh – CESTAT)**

- The assessee was a manufacturer of aluminum fence fittings.
- It supplied goods to its parental unit for export and cleared them through ARE-1 without payment of duty and the parental unit did not mention ARE-1 number in the shipping bill.
- The department alleged that the goods covered under ARE-1 had been cleared clandestinely by assessee without payment of duty and held that goods were not exported and confirmed demand of duty along with penalty.
- The Tribunal held that, as the proof of export had not been produced and the goods were cleared from the factory.
- Therefore, the absence of ARE-1 number in shipping bill amounts to clandestine clearance of goods.

**WIZCRAFT INTERNATIONAL ENTERTAINMENT (P.) Ltd. Vs. CST (2017) 84 Taxmann.com 156  
(Mumbai – CESTAT)**

- The assessee was engaged in providing Event Management Services and it was collecting additional amount from clients on account of various expenses in name of reimbursement and claimed said reimbursement as not liable to service tax.
- The department alleged that the appellant was collecting additional amount on account of various expenses in the name of reimbursement and claimed such reimbursements as not liable to service tax.
- The assessee filed an appeal before the tribunal on the ground that only one hearing was granted for which they sought for an adjournment
- The Tribunal held that as per statutory provisions, notice must be given for three hearing before deciding a case.
- Therefore, the matter was remanded to department for passing a fresh order after giving sufficient opportunities of personal hearing to assessee.

**SHAPOORJI PALLONJI INFRASTRUCTURE CAPITAL COMPANY Ltd. Vs. CST (2017)84  
Taxmann.com 106**

- The assessee entered into an agreement with SPCL for operating and maintaining power generation plant.
- It was paying service tax on maintenance and repair charges.
- Later, the assessee took a stand that it was not liable to pay service tax on such maintenance and repair activities, and filed refund claims.
- The department rejected the claim of assessee.
- The Tribunal held that the assessee was operating the power plant to generate electricity on behalf of the owner for supplying the same.
- Hence, the operation of power plant couldn't be classified as 'Maintenance of repair service'.

**WS RETAIL SERVICES (P.) Ltd. Vs. UNION OF INDIA (2017) 84 Taxmann.com 92 (Punj. & Har.)**

- The assessee carried on the business of selling goods through online portal and when order was placed by a customer of Punjab, it bought goods from its warehouse situated outside Punjab to its delivery hub located in Punjab.
- The assessee filed the declaration at ICC contending that it did not have any taxable turnover in the state of Punjab and also stated that it had paid the central sales tax in respect of the goods bought into Punjab.
- The department issued SCN stating that it had undertaken trading/ sale/ purchase in or from the state of Punjab.
- The High Court held that in Form VAT-36, the assessee had mentioned its TIN of Punjab and thereafter the goods were picked from the hub and delivered to the customer. Hence the sale would be treated as Inter-state sale.

## 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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