

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:

- **Determination of place of supply is out of purview of AAR (Chhattisgarh – AAR)**
- **Assessee not liable to pay interest for delayed payment of duty on issuing supplementary invoice (New Delhi – CESTAT)**
- **GST is chargeable on surplus profit transferred by manufacturer to brand owner (Kar. – AAR)**
- **Transportation services without consignment note to be considered as GTA service (All. CESTAT)**
- **No contravention of anti-profiteering rules as they have passed on benefit of reduced rate (NAA)**
- **Leasing of plant & machinery for manufacturing not classifiable as renting of immovable property service (Allahabad – CESTAT)**
- **Standard input output norms couldn't be applied to determine physical process of goods (Mumbai – CESTAT)**
- **HC allows exporters to import without payment of IGST to extent of Advance Authorization license (Delhi – HC)**
- **Sufficient opportunity should be given for supporting their claim instead of issuing a deficiency memo (Chennai-CESTAT)**
- **Question of opting provisional assessment during the impugned period does not arise (Delhi - CESTAT)**

IN RE : UTILITY POWERTECH LTD., (2018) 95 TAXMANN.COM 88 (AAR – Chhattisgarh)

- The assessee is registered in the state of Chhattisgarh and received a contract for supply of manpower from NTPC BHEL Power Project Pvt. Ltd. (NBPPL), Andhra Pradesh.
- It procured and deputed the manpower in the state of Andhra Pradesh
- It filed an application for Advance ruling on the issue whether it is required to charge IGST or CGST and SGST and if IGST is charged, will the credit of IGST be available to NBPPL against output tax liability.
- The Authority for advance ruling, Chhattisgarh is not the proper authority to pronounce the ruling regarding the availability of ITC to a firm outside the state of Chhattisgarh.
- Therefore, it is held that the determination of place of supply has been kept out of the purview of AAR.

INDO ALUSYS INDUSTRIES Ltd. Vs. CCE (2018) 94 Taxmann.com 273 (New Delhi – CESTAT)

- The assessee, a manufacturer, had sold the goods and paid duty on the value of such goods.
- Subsequently, it raised the supplementary invoice due to price variation and paid the duty and it did not pay interest on delayed payment of duty on account of supplementary invoice.
- The department held that the assessee was liable to pay interest on delayed payment of duty on account of supplementary invoice.
- The assessee filed an appeal in the tribunal
- The Tribunal held that both the parties were not aware of escalated price at the time of removal of goods.
- Therefore, the supplementary invoice couldn't be a ground to charge interest on delayed payment of duty.

IN RE : UNITED BREWERIES LTD., 2018 (14) G.S.T.L. 546 (AAR – GST)

- The assessee entered into an arrangement with contract bottling units (CBU) for using its brand name on the bottles.
- The CBU manufactures the beer using the brand name of assessee and supplies it to the market.
- The assessee filed an appeal for Advance Ruling on the issue whether the sale of beer by CBU under its invoicing would be considered as supply of service and whether GST is payable by the brand owner on the surplus profit transferred by the CBU to the assessee out of such manufacturing activity.
- The AAR held that the CBU is not engaged in supply of service to the assessee.
- Further, the GST would be payable by the assessee i.e., brand owner on surplus profit transferred by the CBU.

NORTHERN COAL FIELD Ltd., Vs. CCE (2018) 92 Taxmann.com 219 (All. – CESTAT)

- The assessee engaged several transporters for transport of coal from coal face to coal stock-yards.
- The transporters had not generated the consignment notes and payments were made only on the basis of particulars generated during weighment.
- The department held that the said services received by the assessee would fall under the category of 'Goods transport agency services'.
- The tribunal held that the definition of 'GTA' clearly specifies the person who provides the service in relation to transport of goods and issues a consignment note.
- Therefore, such services could not be classified as 'Goods transport agency' service as no consignment notes were issued by the transporters to the assessee.

DINESH MOHAN BHARDWAJ Vs. VRANDAVANESHWREE AUTOMOTIVE (P.) Ltd. (2018) 92 taxmann.com 360 (NAA)

- The assessee entered into a contract for supply of Honda Car through an authorized dealer of M/s. Honda Car India Ltd for Rs. 9,13,300, such amount included the excise duty @35%, CST @2% and UP VAT @14% i.e., 51%
- The assessee has taken delivery of the car in the GST regime by paying Rs. 8,98,750.
- The assessee alleged that the dealer had not passed the benefit of reduced rate of tax which amounted to profiteering.
- The Director General of Safeguard found that the total pre-GST tax incidence was 31.254% instead of 51%.
- The National Anti-profiteering Authority held that the benefit of Rs.10,550 on account of reduction of tax by 2% (i.e., 31.254% to 29%) has already passed on to the assessee.
- Therefore, no additional benefit on account of ITC was required to be paid by the car dealer and thus the appeal was rejected.

MOHAN GOLDWATER BREWERIES Ltd. Vs. CCE & ST (2017) 83 Taxmann.com 132 (CESTAT)

- The assessee had entered into an agreement with UBL for providing its facility of plant and machinery infrastructure, etc., on payment of lease rent for manufacture of finished goods.
- It was without leasing out land and building.
- The department held that service tax was leviable on lease rent received by assessee under the category of 'Renting of Immovable Property'
- The tribunal held that there was no renting out of land and building along with its fixtures.
- The assessee had only let out plant and machinery and the appellant is engaged in the manufacture of iron and steel and clearing the same for construction purpose on payment of duty.
- The appellant has found that they have paid excess duty due to variation in price and therefore filed a refund claim with supporting documents.e manufacturing facility would not qualify under the definition of 'Renting of Immovable Property service'.

JAKAP METIND (P.) Ltd. Vs. CC & CE (2017) 83 Taxmann.com 153 (Mumbai – CESTAT)

- The assessee is an EOU and was engaged in manufacture of brass parts of machine.
- It sent brass scrap to job worker and after its conversion job worker returned the brass rod to assessee.
- As per Standard Input Output Norms(SION), permissible burning loss was 5%-7.5% as per SION but the average burning loss during conversion was 15%.
- The department confirmed duty on difference of burning loss of 15% and permissible burning loss was 7.5% as per SION
- The tribunal held that when the physical process was carried out, the SION could not always be the same as actual.
- The actual burning loss was based on various factors therefore, it varied from one manufacturer to other manufacturer.

NARENDRA PLASTIC (P.) Ltd. Vs. UNION OF INDIA (2017)

- Assessee company was engaged in the business of manufacturing and exporting plastic products.
- Under current GST regime, assessee had no option but to pay IGST out of its sources for imports causing a working capital blockage.
- The assessee filed writ before the High Court seeking to avail of the credit outstanding in respect of advance authorizations issued prior to 1st July 2017.
- The High Court held that Under Foreign Trade Policy, the Advance Authorization license was issued to a manufacturer-exporter or merchant exporter having past export dealings in at least two preceding financial years.
- In the instant case, Advance Authorizations were issued to the assessee prior to 1st July 2017, which was valid as on date.
- Therefore, assessee was allowed to make imports under the Advance Authorization licenses issued prior to 1st July, 2017 in terms of their quantity and value subject to certain terms and condition.

**SRI VASAVI GOLD & BULLION (P) LTD Vs C.C. (AIRPORT & AIRCARGO), CHENNAI 2018
(359) E.L.T. 588 (Tri. – Chennai)**

- The Appellant has filed claim for refund of Special Additional Duty (SAD) in respect of Bills of entry in Chennai Sea Customs whereas the goods were cleared through Chennai Air Customs.
- The department alleged that the claim was filed before the wrong jurisdictional authority and due to which time limit has been expired.
- It was held that the Appellant would be given sufficient opportunity for supporting their claim, as the Sea Customs Commissionerate instead of issuing a deficiency memo, processed the same and issued a memo seeking for further documents.
- Therefore it is proper to set aside the impugned order and remand the matter back to the concerned original authority.

**JINDAL STEEL & POWER LTD Vs. COMMISSIONER OF CENTRAL EXCISE, RAIPUR 2018
(359) E.L.T. 610 (Tri. – Del.)**

- The appellant is engaged in the manufacture of iron and steel and clearing the same for construction purpose on payment of duty.
- The appellant has found that they have paid excess duty due to variation in price and therefore filed a refund claim with supporting documents.
- The department rejected the refund claim on the ground that the appellant has not opted for provisional assessment during the impugned order.
- The appellant has been discharged the burden of unjust enrichment and therefore they are entitled for refund claim.
- As the appellant has approached the jurisdictional Asstt. Commissioner and the same has been rejected, the question of opting provisional assessment during the impugned period does not arise.

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 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 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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