

TAX ALERT

DAA
Chartered Accountants

06th AUGUST 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:

- **E-way bill mandatory for non-taxable supplies through delivery challan (Kerala-HC)**
- **NO GST on salary remitted by HO to liaison office in India for normal functioning of liaison office (Raj. – AAR)**
- **Design provided by customer having no market value could be included in Assessable value (New Delhi – CESTAT)**
- **Allahabad HC allows manual filing of TRAN-1 in special cases if electronic system doesn't respond. (All. - HC)**
- **No Service tax on commission received from foreign supplier for procuring orders from Indian buyers. (Raj. – HC)**
- **Goods couldn't be seized merely on basis that details of second vehicle were not mentioned in e-way bill (All. – HC)**
- **Transportation of goods after loading into trucks couldn't be classified as 'Cargo Handling Services' (Ahd. – CESTAT)**
- **Supply of UPS & battery if supplied under single contract at combined price is Mixed supply (West Bengal – AAR)**
- **Hotel accommodation services to employees & guests of SEZ units, outside SEZ are taxable as 'Inter-State' services (Karnataka – AAR)**
- **Booking space for cargo transportation in airlines or ships not classifiable as 'Business Auxiliary Service' (Chennai – CESTAT)**

ASSTT. STO Vs. INDUS TOWERS LTD. (2018) 95 Taxmann.com 160 (Kerala)

- The assessee transported the goods procured by it for own use to site and issued the delivery challan for the same but no E-way bill was generated before the transportation.
- The department officer has detained the goods and levied the tax and penalty as per CGST Act.
- The assessee filed a writ petition in the High Court on the grounds that the transaction was not for consideration (i.e., would not fall within the scope of Schedule I). Further, the transaction would not fall within the scope of a taxable supply.
- The High Court held that the assessee would be entitled to adjudication, but it would have to prove that the declaration was made.
- If they do prove the aspect, then they would be absolved of the liability otherwise, they would be required to pay tax & penalty.

IN RE : HABUFA MEUBELEN B.V. (2018) 95 Taxmann.com 120 (AAR)

- The assessee is the Indian liaison office of a company incorporated at Netherlands and it shall not undertake any activity of a trading, commercial or industrial nature, except activities required for normal functioning of office.
- The salaries of the employees are remitted by HO to liaison office and it also reimburses the other expenses incurred by liaison office for their operation.
- The assessee filed an application for Advance Ruling on the issue 'Whether the reimbursement of expenses and salary is liable to GST and whether it is required to get registered under GST'
- The Authority for Advance Ruling held that the liaison office in India does not render any consultancy or other services directly or indirectly therefore, the reimbursement of expenses and salary is not liable to GST
- Further, no taxable supplies are made by the liaison office so they are not required to get registered under GST.

S.R. ENTERPRISES Vs. CCE (2018) 91 Taxmann.com 369 (New Delhi – CESTAT)

- The assessee was engaged in the manufacture of casting items as per the design supplied by the customer.
- The assessee contended that the value of design provided by customer was not includible in the value of goods as it had no value as per the certificate of chartered engineer.
- The Department held that the Central Excise valuation rules will have to be applied on the free supply of the design.
- The tribunal held that the value of the design will have to be added to the value of the goods as per the valuation rules.
- In the instant case, the value of design supplied by customer to the manufacturer had no market value therefore, the 'nil' value need not be added to the Assessable Value.

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.

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.

TORQUE PHARMACEUTICALS (P.) Ltd. Vs. STATE OF U.P. (2018) 93 Taxmann.com 277

- The assessee had dispatched the goods from one state to another meanwhile, the goods were unloaded and were loaded back in another vehicle for onwards journey.
- The assessee has downloaded the e-way bill mentioning the details of one vehicle as the portal was not permitting to mention details of two transport vehicle
- The department seized the goods under transport as well as the vehicle on the ground that the details of the second transport vehicle been mentioned by hand.
- The High Court held that the assessee had no option except to mention the details of second vehicle in the e-way bill by hand.
- Therefore goods couldn't be seized merely on basis that details of second vehicle were not mentioned.

SWAYAM SHIPPING SERVICES (P.) Ltd. Vs. CCE & ST (2018) 93 taxmann.com 259 (Ahd. – CESTAT)

- The assessee was involved in loading and unloading of timber logs into the truck and transporting the same to the location of the importer.
- It was issuing consignment note for transportation and discharged its duty under the category of 'Goods transport agency service'.
- The department held that the services provided by the assessee would fall under the category of 'Cargo handling service'.
- The tribunal held that the ancillary activity undertaken with main contract of the transportation would not change the activity of the service provider.
- Therefore, the services provided by the assessee would not fall under the category of 'Cargo handling service'.

SWITCHING AVO ELECTRO POWER LTD., In Re (2018) 92 Taxmann.com 223 (AAR-WEST BENGAL)

- The assessee supplies UPS along with the battery
- The assessee filed an application for Advance Ruling on the classification of the supply when it supplies UPS along with the battery.
- The assessee supplies UPS along with the battery.
- The authority for advance ruling held that the supply of UPS and battery is to be considered as Mixed Supply as they are two different and independent items which are supplied under a single contract at a combined single price i.e., not naturally bundled.

GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LTD., In Re (2018) 93 Taxmann.com 201 (AAR – Kar.)

- The applicant provides hotel accommodation and restaurant services to the employees and guests of SEZ units and were charging GST at applicable rates.
- The SEZ units contended that the services has been supplied to SEZ and hence the rate of GST would be NIL and therefore filed an application seeking advance ruling on ‘whether such services would be treated as supply of goods & services to SEZ units or not.
- The authority of Advance ruling held that the place of supply of the services by way of lodging shall be the location of immovable property and incase of restaurant and catering services shall be the location where the services are actually performed.
- Therefore the services provided to the employees and guests of SEZ units could not be treated as supply of goods and services to SEZ units.

INTERFREIGHT SERVICES (P.) LTD. Vs. CST (2018) 93 Taxmann.com 197 (CHENNAI – CESTAT)

- The assessee, a customhouse agent, engaged in booking the space for cargo transportation in airlines or ships and pays the charges for booking the space to the airlines/agents and therefore collects the same from the customers by charging freight.
- The department held that the activities undertaken by the assessee would fall under the category of ‘Business auxiliary services’.
- The tribunal held that the notional surplus earned from purchase and sale of space and not by acting on behalf of client who had space/slot in the vessel.
- Therefore, it does not fall under the category of ‘Business auxiliary services’ as they do not act on behalf of the client.

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, Coimbatore & Hyderabad 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 | HYDERABAD :

**NO.311, H.NO 1-7-79/A & B,
Legend crystal, above Indian Overseas Bank
Paradise, Secunderabad - 500003**

DAA | COIMBATORE

**No. 466, CPC Corporate Hub,
3rd Floor, above Durian Furniture
Thadagam Road, R.S.Puram,
Coimbatore - 641002
Tel +919677136300**