

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:

- **No credit of Krishi Kalyan Cess allowed under GST (Maharashtra – AAR)**
- **Goods supplied to branch offices can be valued at market price under GST (West Bengal – AAR)**
- **Supply of goods with transportation services are naturally bundled; treated as composite supply (West Bengal – AAR)**
- **Material handling & shifting couldn't be taxable as 'Manpower recruitment & supply agency service' (New Delhi – CESTAT)**
- **Heavy commercial vehicles for transport of goods could be classified as 'Tipper Truck' (New Delhi – CESTAT)**
- **Seized goods could be released on furnishing security equal to invoice value, other than cash or bank guarantee (All. – HC)**
- **Brokerage received from shipping Co. in lieu of freight payment on behalf of client's not liable to ST (All. – CESTAT)**
- **Providing games and movies content to Telecom Co. wasn't taxable under business auxiliary service (New Delhi – CESTAT)**
- **Designing charges reimbursed from customers were to be included in sale price (Bombay – HC)**
- **Warehousing charges paid under protest couldn't be refunded (Delhi – HC)**

IN RE : KANSAI NEROLAC PAINTS Ltd. (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 (KKC) appeared in the service tax return on June 30, 2017 to the electronic credit ledger under the GST Act.
- In the post GST regime, neither there is specific restriction in law regarding admissibility of KKC nor there is any specific provision regarding admissibility of KKC as input tax credit.
- The assessee filed the application for Advance Ruling regarding admissibility of KKC as input tax credit under GST Act.
- The Authority for Advance Ruling held that the taxable person is allowed to carry forward the credit to the extent of admissible Input Tax Credit under GST but the definition of Input Tax Credit 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.

IN RE : GKB LENS (P.) Ltd. (2018) 93 Taxmann.com 477 (West Bengal)

- The assessee is a re-seller and importer of sun glasses, frames, lenses etc., having head office and it transferred such goods from its head office to its branch offices in other states.
- It filed an application before Authority for Advance Ruling whether goods supplied to the branch officers can be valued at the cost price under the second proviso to Rule 28 of CGST Rules, instead of at 90% of MRP.
- The authority for Advance Ruling held that the assessee had the option of not valuing the goods supplied to its branch offices at 90% of MRP.
- The assessee was eligible to value the goods supplied to branch office at market price by applying the second proviso to Rule 28 of the GST Act.

IN RE : IAC ELECTRICALS (P.) Ltd., (2018) 93 Taxmann.com 476 (AAR-West Bengal)

- The assessee had entered into two separate contracts with the contractee, the first contract was to supply of materials and the second was for supply of allied services like transportation, insurance, loading or unloading etc., for delivery of materials at contractee's site.
- The assessee filed the application for Advance Ruling regarding the taxability of these services supplied to them
- The Authority for Advance Ruling held that the supply of the goods and their transportation to the contractee's site were not separately enforceable.
- The supplies of goods with services of transportation, etc., were naturally bundled.
- Hence, such supply would be treated as composite supply and the applicable tax rate on the entire transaction would be the tax rate applicable on principle supply.

SHAILU TRADERS Vs. CCE, INDORE (2018) 92 Taxmann.com 381 (New Delhi)

- The assessee had entered into agreement with a client for undertaking the activities of material handling and shifting within the premises of such client.
- The department held that the services provided by the assessee would fall under the category of 'Manpower recruitment or supply agency service'
- The tribunal held that the employees deployed for executing the assigned task were under the control and supervision of the assessee.
- The assessee was not connected with any recruitment or supply of manpower to the client, therefore such service would not fall under the category of 'Manpower recruitment or Supply agency service'.

MAN TRUCKS INDIA (P.)Ltd. Vs. CCE (2018) 92 Taxmann.com 344 (New Delhi)

- The assessee was engaged in the manufacture of heavy commercial vehicles for transportation of goods and the said vehicles were used for transportation of goods to the construction sites.
- It contended that such vehicles were classified as 'Tipper Trucks' under Heading No. 8704 23 90
- The department held that the heavy commercial vehicles were classified under heading no. 8704 10 as 'dumpers' designed for off highway use.
- The tribunal held that such vehicles were used to carry the loads but the same were not machines exclusively meant for off-road use.
- Therefore, the motor vehicles manufactured by the assessee would fall under Heading No. 8704 23 90 as tipper trucks.

AKASH TRADERS Vs. STATE OF U.P. (2018) 94 Taxmann.com 309 (All.)

- The assessee was carrying 440 quintals of poplar woods in a vehicle.
- The Competent Authority seized the goods as well as vehicle on grounds that the size of wood planks was unequal.
- The assessee filed an appeal in the High Court against the same
- The High Court directed the competent Authority to release goods and vehicle of assessee on furnishing security equal to value of goods shown in invoice, other than cash or bank guarantee

KANPUR CARGO MOVERS Vs. CCE & ST (2018) 89 Taxmann.com 14 (All. – CESTAT)

- The assessee was engaged in providing Cargo Handling Services to its client and it receives services of Shipping Lines and Forwarder Companies to provide services to the customers.
- It received some brokerage from shipping Lines and forwarder Companies in lieu of payment of ocean freight on behalf of the clients.
- The department held that brokerage received by assessee was liable to service tax under the category of 'business auxiliary service' and raised tax demand upon the assessee.
- The tribunal held that the notional surplus earned by assessee was from purchase and sale of space and not by acting for a client who had space on a vessel.
- Therefore, the brokerage received by assessee was not liable to service tax under category of 'business auxiliary service'.

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 scores, jokes, 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.

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 purchasers 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.
- By considering the definition of the 'sale price' 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.
- The High Court held that the 'sale price' means the amount of valuable consideration paid or payable to a dealer for any sale made.

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

- The department seized the goods of assessee, an importer and kept such goods in warehouse of Central Warehousing Corporation.
- 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.
- 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.

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.

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