

TAX ALERT

DAA
Chartered Accountants

20th 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:

- **Failure to file Part-B of E-Way bill would attract penalty on transporter (M.P–HC)**
- **Discount withdrawn by supplier through another invoice didn't amount to profiteering (NAA)**
- **Goods can't be detained merely because of infraction of procedural rules under GST (Kerala – HC)**
- **Seized goods & vehicle could be released if assessee filed an appeal before appellate authority (All. – HC)**
- **Manufacturer entitled to credit of ST paid on outward transportation from factory to customer's premises (SC) (Period Prior to April 01, 2008)**
- **Notice demanding ST was invalid if department failed to give breakup of amount taxable under different heads (All. – CESTAT)**
- **Goods manufactured by job worker liable to excise duty unless exempted by Government (Mumbai – CESTAT)**
- **Claim of ITC couldn't be denied merely on ground that sale invoices did not pertain to same tax period (Karnataka – HC)**
- **Assessee entitled to deduction of all trade discounts for computing taxable turnover (SC)**
- **Ancillary services related to transportation of goods were taxable under 'cargo handling service' (Chennai – CESTAT)**

GATI KINTETSU EXPRESS (P.) Ltd. Vs. C, CT (2018) 95 Taxmann.com 254

- The assessee, a transporter-company who transported the goods from Maharashtra to other places.
- But the assessee had not uploaded the same in Part-B of E-way bill, i.e., the details of conveyance in the e-way bill.
- The competent authority initiated the proceedings and has imposed penalty.
- The assessee filed writ petition in the High Court on the ground that Part-B of the e-way bill could not be updated due to technical error and contended that the minor penalty of Rs. 5000 to be levied.
- The High Court held that no grievance had been raised by the assessee with regard to technical error so, it could not be treated as a technical error when there was an option of raising a grievance on the GST portal.
- In the present case, the liability was more than lakh of rupees, therefore the minor penalty could not be imposed and thus, the department had rightly imposed the penalty.

RISHI GUPTA Vs. FLIPKART INTERNET (P.) Ltd. (2018) 95 Taxmann.com 221

- The assessee had ordered Godrej Almirah and a tax invoice was issued to him for an amount of Rs. 14852/- and at the time of delivery, another invoice was issued by the supplier for an amount of Rs. 14152/-
- The assessee alleged that the excess amount paid was not refunded and therefore, the flipkart was restoring to profiteering which amounted to the contravention of the anti-profiteering provision.
- The National Anti-profiteering Authority held that the difference in price was due to different rates in GST at the time of placing the order and at the time of supply and directed the flipkart to refund the excess amount.
- Hence, the allegation of violations of anti-profiteering provisions was not established.
- Further, the issue of denial of discount at the time of supply also did not amount to profiteering, as the discount was offered from profit margin of supplier and did not form part of basic pay.

INDUS TOWERS Ltd. Vs. Asstt. STO (2018) 90 Taxmann.com 417

- Assessee was a public limited company engaged in the establishment and maintenance of towers for telecom service providers and the assessee procured the batteries required for their various tower location.
- The goods transported were intercepted by Department and ordered that goods would be released only after payment of penalty of a sum towards CGST & SGST and equal amount towards penalty.
- The Honorable High Court held that mere infraction of the procedural Rules cannot result in detention of goods.
- Therefore, detention of goods merely for infraction of the procedural Rules in transactions is without jurisdiction.

AIR TRANSPORT CORPORATION (Assam) (P.) Ltd. Vs. STATE OF U.P. (2018) 94 Taxmann.com

- The competent authority seized goods of assessee under transport as well as vehicle and passed an order directing the assessee to deposit penalty in excess of 50% of value of goods.
- The assessee had a statutory alternative remedy of filing an appeal before Appellate Authority of the Uttar Pradesh GST Act, 2017.
- The High Court dismissed writ petition with the direction that assessee shall file an appeal before Appellate Authority against the order within the next one week.
- However, the vehicle on which the goods were found could be released without demanding any security from the assessee.

COMMISSIONER OF CUS., C. EX. & S.T., GUNTUR Vs. ANDHRA SUGARS LTD. 2018 (10) G.S.T.L. 12 (SC)

- The assessee was engaged in the manufacture of sugar and molasses at its factory.
- It availed Cenvat Credit of service tax paid on outward transportation from its factory to the customer premises.
- The department held that the assessee was not entitled to avail Cenvat Credit of Service tax paid on outwards transportation on the ground that the premises of customer was not recognized as a place of removal.
- The supreme court held that the place of removal was the factory premises of the assessee and outward transportation from the said place would amount to input service.
- Therefore, the Cenvat Credit could be utilized and hence the appeal filed by the revenue was to be dismissed.

[*This judgment was pronounced by Supreme Court on the basis of the definition “input service” which pertained to the period prior to April 1, 2008.

*The **Ultratech Cement Ltd** Judgement is for the period post 1-04-2008 and it shall hold good for the period post 01-04-2008]

DHARAMBIR SINGH AND COMPANY Vs. CC,CE&ST (2018) 90 Taxmann.com 417

- The assessee provided services under different heads, namely, ‘site formation & clearance services’ and ‘supply of tangible goods services’ without getting registered under the service tax law.
- The Department issued a Show Cause Notice on the assessee demanding service tax on the amount of gross receipts without giving any breakup of amount taxable under the different heads.
- The assessee had filed an appeal before the tribunal.
- The Tribunal held that the Show Cause Notice was vague and unsustainable as it failed to give the breakup under the different heads of service.
- Therefore, the impugned order was to be set aside.

THERMAX BABCOCK & WILCOX Ltd. Vs. CCE (2018) 90 Taxmann.com 60

- The assessee manufactured the intermediate goods on job work basis for principal manufacturer and supplied such goods to him.
- The principal manufacturer cleared the final product without payment of duty availing exemption under a Notification No. 214/86 CE
- The department held that the job worker was liable to pay excise duty on intermediate goods manufactured by it.
- The Tribunal held that the principal manufacturer had neither cleared the said goods on payment of duty nor used such goods in the manufacture of dutiable final products.
- Therefore, the assessee being manufacturer of excisable goods was liable to pay on the intermediate goods manufactured by him on job work basis.

KIRLOSKAR ELECTRIC CO. Ltd. Vs. STATE OF KARNATAKA (2018) 90 Taxmann.com 157

- The assessee purchased certain materials on payment of input tax and claimed the input tax credit of the tax paid on such purchases.
- The department denied the input tax credit on the ground that the claim of input tax credit could be allowed only in respect of sale invoices pertaining to same tax period.
- The High Court held that the claim of input tax credit could not be denied on the ground that the sale invoices did not pertain to same tax period or such claim was not made immediately in the following month of purchase.
- Therefore, the impugned order passed by the department for denying the claim of input tax credit to the assessee was unsustainable.

MAYA APPLIANCES (P.) Ltd. Vs. Addl. CCT (2018) 90 Taxmann.com 317

- The assessee had allowed quarterly discount to its dealers on the basis of his sales turnover in every quarter of the financial year.
- It gave the discount to the dealer in the sales invoice raised in the subsequent quarter and claimed the deduction of discount from the total turnover for calculating the taxable turnover.
- The department disallowed the quarterly discount given by the assessee to its dealer on the ground that the discount was not relatable to the sales effected by the relevant tax invoices.
- The Supreme Court held that the discount could be claimed as deduction when such discounts were made in the regular trade practice.
- Therefore, all trade discounts were permissible deductions.

DIAMOND SHIPPING AGENCIES (P.) Ltd. Vs. CCE (2017) 87 Taxmann.com 177

- The assessee was registered under customs house agency service and was engaged to transport break-bulk cargo from one port to another.
- In course of assessment, 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.
- 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'.

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**