

# TAX ALERT



**29<sup>th</sup> AUGUST 2018**

**This alert summary the AAR Rulings under the GST Regime, rulings of courts and tribunals under the erstwhile Indirect Tax Regime.**

- ✓ Supplies to SEZ units taxable as zero rated supplies-AAR
- ✓ Supply of UPS along with battery is mixed supply-AAR
- ✓ GST applicable on services provided by corporate office to its unit in other state-AAR
- ✓ Order passed by consent cannot be challenged by the party giving such consent
- ✓ In a case involving contrary decisions of courts and tribunals extended period cannot be invoked.
- ✓ Refund claims and unjust enrichment clause.
- ✓ Reimbursement of expenses incurred by liaison office in India on behalf of its foreign head office not subject to GST-AAR
- ✓ GST returns due date for an ISD deferred- Statutory Change
- ✓ Major relief expected for freight forwarders
- ✓ No GST on processes done on goods temporarily imported into India and which are exported.

**GARUDA POWER (P) LTD., [2018] 96 TAXMANN.COM 42 (AAR-  
WEST BENGAL)**

- Appellants supplied diesel engines and on-site services to units in SEZ. Appellants filed an application before Advance Ruling Authority as to whether GST was chargeable on supplies made to a SEZ unit or developer.
- Authority held that supplies to SEZ are zero rated which also includes supplies to a SEZ Unit or Developer and as per Section 16(3) of IGST Act, Appellants could supply under a Bond or a LUT or pay IGST and claim refund subsequently.

**SWITCHING AVO ELECTRO POWER LTD., [2018] TAXMANN.COM  
106 (AAR- WEST BENGAL)**

- The short question that needs to be answered by the Advance Ruling Authority is whether supply of UPS along with Battery is a mixed supply as they are supplied under a single contract for a single price.
- Battery is an integral part of UPS necessary for its functioning hence it is naturally bundled supply and should be construed as composite supply as per Appellants contention.
- The Authority held after perusal of Appellants plea that UPS and Battery are supplied under a single contract for a combined single price and hence a mixed supply.

**COLUMBIA ASIA HOSPITALS PRIVATE LTD., ADVANCE RULING  
NO. KAR ADRG 15/2018 (AAR KARNATAKA)**

- Appellants filed application before AAR Karnataka on the issue of whether activities performed by employees at their corporate office in the course of or in relation to employment for their units located in other states would be treated as a Schedule I Supply under CGST Act, 2017. Also allocation of expenses to other registered units in various states amounts to a supply of service?
- Appellants performed accounting, administrative and IT System maintenance for its units located in other states i.e. distinct persons as per Section 25(4) of CGST Act, 2017 from their Management Office. The Management Office also utilized certain services such as rental services on which they had paid GST and availed Input Tax Credit.
- The Management Office raised invoices on other units for an amount determined on the basis of turnover of respective unit to the total turnover of all units and then GST is discharged on the same.
- Appellants contended that activities carried out at Management Office are supply of services within distinct persons without consideration hence not a supply vide a specific relaxation provided in Schedule II.
- The Authority on a careful perusal of Appellants plea held that activities performed in corporate office for their units located in other states are nothing but activities made between related persons are treated as supplies under Schedule I of CGST Act.

## **RAIPUR POWER AND STEEL LTD., VS.CCE- CHATTISGARH HIGH COURT**

- The short question that needed to be answered was whether credit was admissible on angles, plates, HR coils, beams, joist, sheets etc used in erection of rolling mills. The Tribunal had remanded the matter for verification of invoices and pass an order on merits by the Adjudicating Authority which was agreed upon by the Commissioner.
- However, to the utter shock of the Appellant, the department challenged the remand order before the High Court who dismissed the department appeal and held that the remand order was passed by consent and department representative who also requested for remand cannot after giving his consent challenge the matter at the high court.

## **SKS ISPAT AND POWER LTD., VS. CCE- CHATTISGARH HIGH COURT**

- The Tribunal decided on the question of eligibility of credit in Appellants favour following the Vandana Global judgment. The Tribunal also held that eligibility of credit involved a lot of contra judgments, hence malafide cannot be attributed to the Appellant and extended period cannot be invoked this dispute on limitation was referred to Tribunal larger bench.
- The department filed an appeal before the High Court which was dismissed and the tribunal order was upheld.
- Thus in a case involving eligibility of credit where there is contra case laws then extended period cannot be invoked.

**CHAMBAL FEARTILIZERS AND CHEMICALS LTD., VS. CCE-MADHYA PRADESH HIGH COURT.**

- The tribunal held that Section 11B does not bar claiming refund of Service Tax paid by recipient to its provider if tax incidence has not been passed on to any other person. Refund claimed could be filed before recipient's jurisdictional authority or before the provider's jurisdictional authority.
- Service Recipient claimed refund of Service Tax paid, tax incidence not passed on to any other person and service provider deposited Service Tax to the credit of government and not sought refund of the same.
- The limitation period for filing refund claims on account of price revision by way of credit note is calculated from the date of issue of credit notes.
- The Appellate Authority appealed before the High Court who raised the question of whether costs and tax incidence was passed on to buyer and whether refund claims were eligible as there was no unjust enrichment as held by the Tribunal. The High Court stayed the operation of the CESTAT Order till the matter was disposed of by the court.

**HABUFA MEUBELEN BV., ADVANCE RULING NO. RAJ/AAR/2018-19/05 (RAJASTHAN AAR)**

- Appellants function as a liaison office in Jaipur with prior permission of RBI and perform liaison work on behalf of their Netherlands head office. The Appellants do not render any consultancy services nor undertake any commercial activity. Any activity other than liaison work requires RBI permission.
- The Appellants filed an application before AAR seeking clarification as to whether salary and other expenses incurred and reimbursed by

Netherlands head office is a supply as no consideration for any service is charged/paid and if such reimbursable expenses are liable to GST then what would be the place of supply.

- Appellants contend that they do not provide any service or receive any consideration nor do they have any clients of their own. The Appellants merely liaison with the suppliers of Netherlands Company for quality control and hence they are not a separate person.
- The Authority after hearing Appellants contentions held that they are a mere liaison office who does not provide any services for a consideration. The office does not have any commitment powers, they just liaison with clients of Head Office and incur reimbursable expenses which are not subject to GST and also liaison office is not required to be registered under GST.

## **About us**

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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 Issus 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 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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