

# TAX ALERT



**10<sup>th</sup> SEPTEMBER 2018**

This alert summarizes the AAR Rulings under the GST Regime, rulings of courts and tribunals under the erstwhile Indirect Tax Regime along with an expected amendment in IGST law:

- **AAR Ruling on valuation of goods supplied to branch (AAR – West Bengal)**
- **Whether supply of goods with transportation services is naturally bundled and treated as composite supply (AAR – West Bengal)**
- **Competent authority not to invoke bank guarantee as assessee has 3 months' time to appeal against order (Kerala – HC)**
- **Value of certain reimbursable activities included as a part of service (S.C)**
- **Import of Software is liable to ST and not Customs (Gujarat – HC)**
- **Appellant would be given sufficient opportunity to be heard as the officer processed in spite of issuing defect memo (Tri – Chennai)**
- **Services provided to the employees and guests of SEZ units could not be treated as supply of goods and services to SEZ units (AAR – Karnataka)**
- **Recovery of food expenses from the employees falls under the definition of 'outward supply' (AAR)**
- **Notional surplus earned from purchase and sale of space does not fall under the category of 'Business auxiliary services' (CESTAT – Chennai)**

### **GKB Lens (P.) Ltd., In Re (2018) 93 Taxmann.com 477 (AAR – WEST BENGAL)**

- The assessee is a re-seller and importer of sun glasses, frames, lenses etc., having head office in West Bengal.
- It transferred such goods from the head office to its branch in other states.
- It filed an application before Authority for Advance Ruling (AAR) seeking whether goods supplied to the branch officers can be valued at cost price under the second proviso to Rule 28 of the CGST Rules 2017, instead of at 90% of MRP as per the first proviso.
- The AAR held that the assessee had the option of valuing the goods supplied to its branch offices at 90% of MRP.
- The assessee was **eligible to value goods supplied to branch officers at market price** by applying the second proviso to Rule 28.

### **IAC ELECTRICALS (P.) Ltd., In Re (2018) 93 Taxmann.com 476 (AAR – West Bengal)**

- The assessee had entered into two separate contracts with M/s Power Grid Corporation Of India.
- The first contract was for supply of materials and the second was for supply of allied services like transportation, insurance, loading or unloading etc., for delivery of materials at the contractee's site.
- The assessee filed an application for AAR regarding the taxability of these services supplied.
- The AAR held that the supply of goods and transportations to the contractee's site were not separately enforceable. Therefore, the supplies of goods and services of transportation **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 principal supply.**

### **BERGER PAINTS INDIA LTD Vs. STO (2018) 96 Taxmann.com 196**

- The competent authority had seized the goods of the assessee under transport as well as the vehicle and it demanded bank guarantee and security bond for release of the same.
- The goods and the vehicle were provisionally released after providing the bank guarantee and security bond by the assessee.
- The assessee filed a writ petition in the High Court stating that the competent authority was threatening to invoke the bank guarantee before it could invoke the appellate remedy.
- The High Court held that the assessee had 3 months from the date of impugned order to file an appeal before the Appellate Authority.
- Therefore, the competent Authority could not invoke the bank guarantee before the assessee could exhaust his appeal remedy.

**UNION OF INDIA Vs. INTERCONTINENTAL CONSULTANTS AND TECHNOCRAFTS PVT. LTD 2018 (10) G.S.T.L. 401 (S.C.)**

- The assesses are rendering services like, consulting engineering services, Share transfer agency services, Customs house agent services covered under the head "clearing and forwarding agent" and site formation, clearances, excavation, earthmoving and demolition services and service tax is been paid on the same.
- While rendering the aforesaid services they are also been getting reimbursement on certain services rendered by them which are not included in 'Gross Value' and service tax is not paid on the same.
- The department alleged that the value of the said reimbursable activities is also to be included as a part of service provided.
- The Supreme Court dismissed the appeal of the department under the fact that all expenditure or cost incurred by the service provider in the course of providing the taxable services shall not be treated as consideration for the taxable services.
- Therefore, it shall not be included in the value for the purpose of charging service tax.

**J.B AND BROTHERS PVT LTD VS UNION OF INDIA 2017(5) G.S.T.L.364**

- The petitioner is in the business of diamond polishing.
- They imported scanning machine along with software system for operating such machinery from Israel.
- The Customs authority holds a belief that such software would form part of the imported goods and therefore, would invite customs duty along with the hardware
- It was held that the imported software providing IT software service is liable to service tax and not customs duty

**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.

**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 applicant filed an application contending that the services has been supplied to SEZ and hence the rate of GST would be NIL.
- 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.

**IN RE : CALTECH POLYMERS PVT. LTD. 2018 (12) G.S.T.L. 350 ( A.A.R. – GST )**

- The applicant is a Private Limited Company engaged in the manufacture and sale of footwear and they are providing canteen services exclusively for their employee's.
- They are incurring the canteen running services and are recovering the same from its employees without any profit margin.
- Whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and is taxable under Goods & Service Tax Act.
- Though there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" and since the applicant recovers the cost, there is consideration too.
- Therefore it is hereby clarified that recovery of food expenses from the employees falls under the definition of 'outward supply' and taxable as a supply of service under GST

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

- The assessee is 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 does not fall under the category of 'Business auxiliary services' as they do not act on behalf of the client. Hence, the impugned order is set aside.

## 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 top provides 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 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.

### **DAA | MUMBAI:**

**BONANZA, Sahar Plaza,  
Next to Kohinoor Hotel,  
J.B. Nagar, Andheri (E),  
Mumbai – 400059**

### **DAA|CHENNAI:**

**#13, 3<sup>rd</sup> Floor, Bhagawathi Palace,  
J Block, 3<sup>rd</sup> Avenue,  
Anna Nagar (East),  
Chennai – 600102**

### **DAA | BANGALORE:**

**Lakshmi Nivas , 1<sup>st</sup> Floor,  
No. 46/3, 6<sup>th</sup> main road,  
Opp. Adhyatma Prakasha Karyalaya,  
Tata Silk Farm, Bengaluru- 560 028**

### **DAA | HYDERABAD :**

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

### **DAA | COIMBATORE**

**466, CPC Corporate Hub,  
3<sup>rd</sup>Floor, above Durian Furniture  
ThadagamRoad,R.S.Puram,  
Coimbatore – 641002**