

# TAX ALERT



**17<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:

- **Refund can be claimed for unutilized input service tax credit (CESTAT – Bangalore).**
- **Rebate of Service Tax allowed which was paid by the appellant as commission agent (CESTAT – Mumbai).**
- **Conveyance details in Part-B of the E-way bill not required. (HC – Allahabad).**
- **Exporters to import without payment of IGST to extent of advance authorization license (HC – Delhi).**
- **Valuations rules shall apply to the free supply of design (CESTAT – New Delhi).**
- **Refund claim to be filed within one year from the receipt of convertible foreign exchange (CESTAT – Mumbai).**
- **Mere loading and unloading does not confirm the activity to fall under the category of 'cargo handling service'. (CESTAT – Ahmedabad).**
- **No input tax credit for Krishi cess in GST Regime (AAR - Maharashtra).**
- **18% GST payable on composite supply, including materials, freight, erection, commissioning etc (AAR – Kolkata).**

### **NISHA DESIGNS Vs. Commissioner of Customs 2010TMI 76054 (Cestat – Bangalore)**

- Assessee, a 100% EOU, engaged in manufacture and export of readymade garments.
- The assessee filed a refund claim for unutilized Cenvat Credit of Service tax paid for the period 2005-06
- The refund claim was rejected by adjudicating authority on ground that refund of service tax paid on input service was admissible only from 14.3.2006 and not for period prior to it.
- The tribunal held that for utilization of input credit and where such input service credit or input credit cannot be utilized, the same can be given as refund and just because notification has not been issued at that time one cannot deny benefit provided.

### **KSH INTERNATIONAL Pvt Ltd Vs. COMMISSIONER OF CENTRAL EXCISE, BELAPUR 2010 TMI 75974 (CESTAT – Mumbai)**

- The appellant had procured purchase orders in India for suppliers of goods located abroad and transmitted the same by courier or electronic means to the said suppliers and directly collected payments.
- The supplier paid commission to the appellant upon receipt of price of goods in convertible foreign exchange and service tax was paid on these and subsequently, the appellant claimed rebate of the service tax.
- Adjudicating Authority refused on ground that the services provided by the appellant to the foreign suppliers had been delivered outside India and used Outside India.
- These purchase orders were, admittedly, received abroad and were acted upon by the foreign companies abroad. In other words, the benefit of the service provided by the appellant accrued to the foreign companies outside India.
- Therefore the appellant is entitled to claim the rebate of service tax paid

### **SBGC LOGISTICS Vs. STATE OF UP 2018 TIOL 106 (HC – Allahabad)**

- The assessee is engaged in the business of transportation of goods.
- For the purpose of transportation, the consignor, after duly filing in the requisite information, had downloaded the e-way bill. However, in the absence of vehicle details, part B of the e-way bill was not filed.
- The goods were first transported from the place of business of the consignor to the godown of the assessee whose distance is less than 50km.
- The vehicle was intercepted and the goods were detained on the ground that the goods were not accompanied with Part B of the E-way bill.
- The court held that the seizure proceedings carried out was illegal and carried out without jurisdiction.
- Therefore, both the seized goods and vehicle were directed to be released as goods were transported within the state upto a distance of 50km.

### **NARENDRA PLASTIC (P.) LTD. Vs. UNION OF INDIA (2017) 85 TAXMANN.COM 153**

- The assessee-company was engaged in the business of manufacturing and exporting plastic products and the assessee had paid IGST out of its sources for import causing a working capital blockage.
- The assessee had filed a writ petition seeking to avail the credit outstanding in respect of advance authorization issued.
- The high court held that under foreign trade policy, the advance authorization license was issued to a manufacturer-exporter or merchant exporter having past export dealings in at least two preceding financial years.
- Therefore HC allows exporters to import without payment of IGST to extent of advance authorization license

### **S.R. ENTERPRISES Vs. CCE (2018) 91 TAXMANN.COM 369**

- The assessee is engaged in the manufactured of casting items as per the design supplied by the customer.
- The design provided by customer was not included in the value of goods on the ground that it had no value.
- The department held that the valuations rules shall apply to the free supply of 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 will be added to the assessable value and hence the impugned order is set aside.

### **COMMISSIONER OF GST, CENTRAL Vs. EVERSTONE CAPITAL ADVISORS PVT. LTD. 2018 (12) G.S.T.L. 328**

- The respondent is engaged in providing export of services and has filed a refund claim within a period of one year.
- The issue is regarding whether the period of one year of filing the refund should be taken from the date of receipt of foreign exchange date or from the date of invoice and the remittance received against the export in Indian rupees will be considered as receipt of convertible foreign exchange for qualifying the supply as export.
- In case of export of services, the same qualifies as export only when convertible foreign exchange is received.
- The appellant has admittedly filed the refund claim within one year from the receipt of convertible foreign exchange.
- Therefore, the relevant date is the date of FIRC and not the date of service and regarding the receipt of remittance in Indian rupees, the Indian rupees received through foreign bank is considered as the payment in convertible foreign exchange.

**SWAYAM SHIPPING SERVICES (P.) LTD. Vs. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, RAJKOT 2018 TMI 1040**

- The assessee is involved in loading/unloading of timber logs into the truck and transport of the same to the nearby location of the importer.
- It was issuing consignment note for these transportations and discharging duty liability under the category of 'goods transport agency services'.
- The Adjudicating Authority held that the services provided by the assessee would fall under the category of 'cargo handling service'.
- The appeal is allowed as mere loading and unloading of timber logs at the port or at the premises of the importer does not confirm the activity undertaken by them into cargo handling activity.

**KANSAI NEROLAC PAINTS LTD. IN RE (2018) 93 TAXMANN.COM 58**

- The assessee is registered as input service distributor for its Head office to distribute eligible credit to its respective manufacturing unit and the assessee wanted to carry forward the accumulated credit of Krishi Kalyan Cess.
- The assessee has filed an application for advance ruling regarding whether accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) on June 30, 2017 will be considered as admissible input tax-credit
- The definition of Input tax under GST does not include any cess and KKC is to be utilized for payment of KKC only
- Therefore, the accumulated credit by way of Krishi Kalyan Cess (KKC) which is carried forward in the electronic credit ledger maintained by the company under **CGST Act 2017**, will not be considered as admissible input tax-credit.

**EMC Ltd., In Re : West Bengal Authority for Advance Ruling (2018)**

- The applicant is engaged in supplying materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called the Tower Package.
- The Applicant contracts for supply of Tower Packages split up into two separate sets of contracts.
- One contract for supply of materials at ex-factory price and the other for supply of allied services which also includes inland/local transportation, in-transit insurance, loading/unloading of materials and storage, and a separate freight bills is raised on the contractee. The applicant wants a Ruling on whether he is liable to pay tax on such freight bills.
- The First Contract includes ex-works supply of all equipment and materials and the Second Contract includes all other activities required to be performed for complete execution of the tower package.
- It is apparent that the first Contract cannot be executed independent of the second Contract and there cannot be any 'supply of goods' without a place of supply.
- Therefore the applicant supplying works contract service, of which freight and transportation is merely a component and not a separate and independent identity
- GST is to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc.

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