

TAX ALERT



24th SEPTEMBER 2018

This alert summaries 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:

- **Penalty is imposed on builder for not passing on benefit of ITC to buyers & for issuing incorrect invoices (NAA) - [NATIONAL ANTI-PROFITEERING AUTHORITY Sukhbir Rohilla Vs. Pyramid Infratech \(P.\) Ltd.](#)**
- **ITC of GST paid on freight for transportation of non-taxable goods to another unit not available (AAR – West Bengal) - [Indian Oil Corporation Ltd., In re AAR WEST BENGAL \[2018\] 97 taxmann.com 384](#)**
- **Commission received from container liners for providing service taxable as business auxiliary service (CESTAT – Hyd) - [CCE & C Vs. RE SHIPPING \(2018\) 93 TAXMANN.COM 319](#)**
- **No ST on clearing charges for transactions done on behalf of clients by NCDEX member (CESTAT – New Delhi) - [SUYASH EXIM \(P\) Ltd. Vs. CCE \(2018\) 96 TAXMANN.COM 341](#)**
- **Booking of air ticket using software chargeable to ST as business auxiliary service (CESTAT – Chennai) - [TAANYA TOUR TRAVELS & FREIGHT DORWARDERS \(P.\) LTD. Vs. CST \(2018\) TAXMANN.COM 314](#)**
- **Ocean freight to be included in transaction value of imported goods for payment of IGST (AAR-Rajasthan) - [CHAMBAL FERTILISERS & CHEMICALS LTD., IN RE: AAR, RAJASTHAN](#)**
- **Insurance premiums paid for family members of employee's deductible if those were paid as per service agreement (CESTAT – Delhi) - [LOESCHE INDIA \(P.\) LTD.VS. ADDITIONAL COMMISSIONER OF INCOME-TAX, NEW DELHI](#)**
- **Taxpayers can file refund application for multiple tax period - [Statutory changes](#)**

NATIONAL ANTI-PROFITEERING AUTHORITY Sukhbir Rohilla Vs. Pyramid Infratech (P.) Ltd.

- Assessee filed an applications alleging that the benefit of Input Tax Credit (ITC) had not been passed on to the Applicants in respect of the construction service supplied by the Respondent.
- Excise Duty and Value Added Tax (VAT) were being collected from the applicant as Service Tax was exempted.
- 12% GST was levied on the construction service in place of Excise Duty and VAT w.e.f. 01.07.2017.
- The respondent had realized more price from them than he was entitled to collect and had also compelled them to pay more GST than that they were required to pay by issuing incorrect tax invoices.
- Since, the sub-contractors are also eligible for ITC which was not available to them earlier and on account of rationalization of tax rates many of the inputs were now available at the reduced rates
- Hence, the respondent had committed an offence under section 122 (1) (i) of the CGST Act, 2017 and therefore would be liable for imposition of penalty.

Indian Oil Corporation Ltd., In re AAR WEST BENGAL [2018] 97 taxmann.com 384

- Applicant exports High Speed Diesel (HSD), Aviation Turbine Fuel (ATF) and other refined petroleum products to Nepal under terms and conditions laid down in an agreement between Indian Oil Corporation and Nepal Oil Corporation.
- It has been paying GST on input service of Railway Freight for above transportation.
- It is seeking advance ruling on whether GST paid on railway freight for transportation of goods from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit under GST Act.
- It is observed that transfer of ATF and other non-taxable supplies from Refinery to Depot are not export of as per IGST Act, but exempted supplies from West Bengal Unit to Bihar Unit of applicant, who are distinct persons in terms of GST Act.
- Therefore, not applicable and, thus, applicant cannot claim credit of GST paid on input services like railway freight on ATF and other non-taxable supplies from West Bengal to his Bihar Unit.

CCE & C Vs. RE SHIPPING (2018) 93 TAXMANN.COM 319

- The assessee received commission from container liners for providing services to them.
- The Commissioner (Appeals) held that the services provided by the assessee would fall under the definition of 'Steamer Agent'.
- The Tribunal held that the container lines were different from shipping lines which run the ships.
- As per the Finance Act, definition of 'Steamer Agent' the services rendered to container lines could not be covered under this definition.
- Therefore, such service could be classified under the category of 'Business Auxiliary Service'.

SUYASH EXIM (P) Ltd. Vs. CCE (2018) 96 TAXMANN.COM 341

- The assessee was a member of National Commodity and Derivative Exchange (NCDEX).
- It recovered the commission from their clients on whose behalf transactions were being put through by them under NCDEX and ST was discharged from such commission charges
- It had also collected the transaction charges and clearing charges from their clients on basis of transactions but ST was not discharged from such charges.
- The department held that transaction as well as clearing charges were to be included in value.
- The Tribunal held that the charges had been periodically paid by assessee to NCDEX.
- Therefore, such charges could not be included in transaction value of securities and shares.

TAANYA TOUR TRAVELS & FREIGHT DORWARDERS (P.) LTD. Vs. CST (2018) TAXMANN.COM 314

- The assessee received incentive for use of AMADEUS software for booking air tickets.
- The department held that the said income was leviable to service tax under the category of 'Business Auxiliary Service'.
- The Tribunal held that the consideration was the consideration was the incentive for use of AMADEUS software.
- The said income was liable to service tax under the category of 'Business Auxiliary Service'.

CHAMBAL FERTILISERS & CHEMICALS LTD., IN RE: AAR , RAJASTHAN

- The applicant is engaged in trading business of goods like DAP, MOP.
- The said goods are purchased from a country outside India and imported into India and the said goods are imported whether on CIF or FOB Basis.
- The applicant has sought an Advance Ruling on the applicability of Ocean Freight Charges and system of double taxation with respect to import.
- It is held that the applicant is liable to pay IGST on transportation of goods by vessel under RCM under Notification No. 10/2017 and Ocean freight to be included in transaction value of imported goods for payment of IGST.

LOESCHE INDIA (P.) LTD.VS. ADDITIONAL COMMISSIONER OF INCOME-TAX, NEW DELHI

- Assessee had paid insurance premiums of employees' family members in terms of employment Rules framed by assessee company.
- The department held that, though it is incurred in terms of contractual obligations with the employees, it cannot be stated to have been incurred wholly and exclusively for the purposes of business of the assessee.
- The Tribunal held that it is not necessary all the payments/expenditure incurred by the assessee should have direct bearing on earning of income, but some payments are also made under certain business expediency.
- Therefore, where assessee had paid insurance premiums of employees' family members in terms of employment rules framed by assessee company then it can be treated as business expenditure.

Statutory Changes

Taxpayers can file refund application for multiple tax period

- The refund application in FORM GST RFD-01A for multiple tax period is available only for export of goods & services without payment of tax and supplies made to SEZ unit/ SEZ Developer without payment of tax.
- The selection of multiple tax period should be within financial year.
- If refund application is not to be filed for any tax period, a declaration of 'No Refund Application is to be provided'.
- After validating the data from system, the taxpayer would be able to file refund application.
- After filing of refund application by taxpayer, the refund application Form GST RFD – 01A along with the statement and documents uploaded shall be available to tax officer for review and processing of refund.

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 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.

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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:

**Lakshmi Nivas , 1st Floor,
No. 46/3, 6th 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,
3rdFloor, above Durian Furniture
ThadagamRoad,R.S.Puram,
Coimbatore – 641002**