

TAX ALERT



3rd 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:

- **Glitches in filing TRAN-1 resulting in delay- Application to be taken up with Nodal officer (Ker- HC)**
- **Glitches in filing TRAN-1- Authority to open portal or entertain manual application**
- **Classification of Block Jointing Mortar - (App. AAR-GST)**
- **Applicability of GST on packing and branding (AAR)**
- **Intermediary Services under IGST is an export of service exempted from GST (AAR)**
- **Supplies made to units located in SEZ a zero rated supply (AAR)**
- **Supply of goods and on-site services to units in an SEZ is zero rated supply (AAR)**
- **Services associated with manufacturing of metal is continuous supply of service (AAR)**
- **Services provided by container liners would fall under BAS and not Steamer Agent Services.**
- **Government proposing to levy IGST on ex-factory sales.**
- **Freight difference liable to Service Tax (Contra Judgment by Tribunal)**
- **Composite Works Contracts not liable to Service Tax prior to 01.06.2007**

TRUE COUNT SYSTEMS PVT LTD VS. UOI- 2018 (15) GSTL 483 (All.)

- The last date to file GST TRAN-1 application fell on 27.12.2017 and Appellants took efforts to file the same within the due date.
- However the Appellants application was rejected despite being filed on 27.12.2017, though being the last date but was well within the due date.
- The Appellants were forced to file TRAN-1 on the last date due to glitches in the system. Against the rejection Appellants filed writ before High Court which held that Authority to reopen the portal within 2 weeks or entertain manual application.

CEE PEE MARBLE & GRANITE Vs. GST COUNCIL, DELHI- 2018 (15) GSTL 648 (Ker.)

- Appellants could not file GST TRAN-1 till the last date of filing due to the failure of the electronic system and could not avail credit due.
- Appellants filed writ petition before High Court which issued directions to nodal officer to facilitate uploading GST TRAN -1 without reference to time frame.
- Delay in uploading GST TRAN-1 forms for reasons not attributable to the petitioner, they were eligible for Input Tax Credit at the time of migration.

SIKA INDIA PVT LTD- 2018(15) GSTL 614

- Appellants manufactured Mortar and Block Jointing Mortar used for jointing masonry units like AAC Blocks, Concrete Blocks, Fly Ash, Bricks etc classified under Tariff Heading 3214 of Customs Tariff Act, 1975.
- Appellant questioned the basis of the classification and appealed before Appellate Authority for Advance Ruling for classifying the said product under Tariff Heading 3824. Appellants wanted to adopt the new classification on account of a difference of 10% which is making them un competitive and pushing them out of the market.
- The main purpose of Block Jointing Mortar is to provide strength to a building. The product is non refractory and is not used for preparation of surfaces.
- On Consideration of Appellants submissions, the classification adopted by the Appellant under GST regime was accepted and their appeals were allowed.

ADITYA BIRLA RETAIL LIMITED- 2018 (15) GSTL 742 (App. AAR- GST)

- Appellants challenged Advance Ruling judgment before Appellate Authority which held that packaged food product bearing Appellants name as manufacturer/marketer is subject to GST.
- Appellants sold goods under the brand name “More” with logo Aditya Birla Retail and customers identified the goods not only with brand name or logo but also with MORE Stores. However the Appellants proposed to change their to brand name to Aditya Birla Retails Ltd.
- Though there is a change in brand name goods would be sold in exclusive stores with packages having same style, colour and nature of packaging. The billing receipts and Appellants website would bear the name More Stores.
- Appellants taking a liberal view of exemption notification rejected and the Authority held that Appellants branding and packaging liable to GST and also usage of generic terms also amounts to use of brand name liable to GST.

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GLOBAL REACH EDUCATION SERVICES PVT TD- 2018 (15) GSTL (App. AAR-GST)

- Appellants promoted courses of foreign university , finds prospective students to undertake the courses in accordance with university requirements, recruits and assists in recruiting suitable students.
- The main roll of the Appellant was to promote courses of foreign university in India on consideration based on certain percentage of fees paid by admitted students into the university. Appellants contended that they are providing marketing and sales promotion services to foreign university.
- The Advance Ruling Authority sought to levy IGST treating the Appellant as an intermediary against which appeal was filed before the Appellate Authority.
- On Appeals before the Appellate Authority , it was held that Appellants are an intermediary under Section 2(13) of IGST Act, 2017 liable to GST and not an export of service. The Appellate Authority emphasized upon the definition of intermediary which states that they are an entity who facilitates and arranges supply of services to another entity and such services include ancillary services.

COFFEE DAY GLOBAL LTD. - [2018] 96 TAXMANN.COM 247 (AAR-Kar.)

- Appellants are engaged in supply of beverages to SEZ using coffee vending machines and contended that such supplies are Zero Rated under Section 16 of IGST Act, 2017. Appellants also argued that provisions of SEZ Act override the Rules.
- Appellants further contended that CGST Rules provisions pertaining supply of inputs for authorized operations are inconsistent with provisions of SEZ Act.
- Authority for Advance Ruling contends that meaning of SEZ in IGST Act is similar to the meaning in SEZ Act. Operations carried out in an SEZ and also units located within SEZ have to be carried out in accordance with authorization granted by the government. Rules of refund under GST Act stipulates that whatever GST has been paid and refund sought shall be necessarily for authorized operations.
- Thus supplies of beverages to units in SEZ through coffee wending machines are not zero rated supplies.

GARUDA POWER LTD- 2018 TIOL 111 AAR GST (AAR-WB)

- Appellants a dealer of Cummins India Ltd supplied diesel engine and spare parts along with services of diesel engine either on AMC basis or as and when required basis to entities which are located in SEZ.
- Section 16 of IGST Act deals with zero rated supplies which includes supplies of goods or services or both to a SEZ or a SEZ developer.
- Since Appellants supplied to SEZ units and Developers their case is covered under Section 16(1b) of IGST Act which is the provision for zero rated supplies.
- Thus the Appellants have an option to supply without payment of tax under Section 16 (3) (a) of IGST Act or make supplies on payment of tax under Section 16 (3) (b) and claim refund subsequently.

VESUVIUS INDIA LTD- 2018 TIOL 117 AAR GST (AAR- WB)

- Appellants supplied end to end solutions for controlled casting of iron and steel which includes supply of refractory components and associated services, intended to offer a new supply Contract Management System.
- Appellants would design the refractories, monitor their usage and inventory and supply the required refractory components and systems. The Appellant also round the clock monitors the flow of iron and steel.
- Appellants contend that there is no transfer of title to refractories used in the course of production process. Usage of refractories are controlled by the Appellants who are not paid for the supplies but are only paid for managing the flow of metal during iron and steel production.
- The Authority on a careful perusal of Appellants arguments held that Appellants have supplied a service associated with manufacture of metal. Provision of services involves monitoring of production of process, evaluation of refractories requirement, quality control , replacement of used refractories etc.
- Appellants activities are covered under continues supply of services under Section 2(33) of GST Act as services are provided on monthly basis and payments are received within 30 days from end of the month.

CCE VISAKHAPATNAM Vs. RE SHIPPING- [2018] 96 TAXMANN.COM 319(HYDERABAD-CESTAT)

- Appellants provided services to container lines and received commission for provision of services to them. Adjudicating Authority held that Appellants have provided Business Auxiliary Services.
- However on appeals the Appellate Authority held that Appellants have provided Steamer Agency Services as they booked, advertised and canvased for cargo on behalf of shipping lines.
- The department appealed before Tribunal which held that shipping lines own and run ships, container lines own the containers and rent them to importers/exporters. Even when a ship proceeds with its journey a container can be unloaded at another port and the container is de stuffed.
- The Tribunal further held that shipping lines are different from a steamer agent which is defined under Finance Act, 1994 which does not include container lines.
- Hence the Adjudicating Authority was correct in classifying the services rendered to container lines as Business Auxiliary Services.

PROPOSAL TO LEVY IGST ON EX-FACTORY SALES

- The government is proposing to levy IGST on ex-factory sales that happens in one state and the buying company is located in another state. GST is a destination based tax imposed in the state where goods are bought.
- Complication in the law arises when a buyer in Gujarat decides to buy from a seller's factory in Maharashtra as the question that arises for consideration is levy of GST in Maharashtra or Gujarat?
- In order to clarify the doubt the government is expected to levy IGST vide a clarification in place of supply rules.

Note: This is just a proposal and yet to be notified by the government through Notification or Circular. The 30th GST Counsel meet is scheduled to happen on 29th and 30th of September where we could expect an announcement on the same through a press note for which notification or a circular would be issued by CBIC.

M/S. DIXON CARGO CONSOLIDATORS PVT LTD Vs. CCE AHMEDABAD- 2018 TIOL 2702 (CESTAT - AHM)

- Appellants provided air cargo agent services to various airlines. The Appellants did not provide any transportation service from customer's premises to the place of lifting cargo by the airlines.
- The Appellants collected bill amount from the customers and forwarded the same to airlines after deducting their commission portion as per agreed rates.
- Both the Adjudicating and Appellate Authority confirmed the demands against the Appellant on the ground that Appellants provided a Business Auxiliary Service.
- Against the order Appellants appealed before Tribunal claiming benefit of Notification No. 13/2003 which is an exemption notification applying only to a commission agent involved in purchase and sale of goods which is not connected to facts of the case.
- CESTAT held that Appellants provided services to airlines and blank airway bills supplied by airways were issued on behalf of airlines to customers.
- Thus it is clear that Appellants received payment on behalf of airlines and acted as an agent of airlines. Appellants deducted their commission, PCS Charges, Due Agent Charges, Airway Bill Charges etc. transferred the balance amount to the airlines.
- Hence demand to that extent was upheld. However due to protracted litigations and DGST clarifications during the period July 2003 to September 2004 demand for extended period alone was set aside.

M/S. SHAKTI ENTERPRISES VS. CCE & ST- 2018 TIOL 2701 CESTAT DEL

- Appellants executed, managed, maintained and repaired traffic signal poles or lights and installation or commissioning of surveillance cameras which was carried out on behalf of State Government as a turnkey contract in connection with provision of traffic signals across the Rajasthan state.
- Service Tax was demanded on erection, commissioning or installation services and also under works contract services by the Adjudicating Authority.
- The Appellate Authority however confirmed the demand only on erection, commissioning and installation services for the period October 2005 to May 2007 but extended benefit of works contract composition scheme to the Appellant.
- When the dispute came up before tribunal on appeals filed by the Appellant and the department the tribunal held that composite works contract was liable to Service Tax only after 01.06.2007 and prior to June 2007 Service Tax cannot be levied under any category of services.
- When the question of application of Rule 3(3) of composition rules came up before Tribunal, the Tribunal held that requirement of exercising an option is procedural and when complied with cannot come in the way of extending a benefit. Hence appeals of the revenue were dismissed.

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.

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