

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:

- Supply of medicines & allied items to in-patients by hospital is composite supply; not separately taxable – [ERNAKULAM MEDICAL CENTRE \(P.\) LTD., IN RE \[2018\] 98 Taxmann.com 161 \(AAR-KERALA\)](#)
- Computers used for providing output service don't qualify as inputs for availing of transitional ITC – [Geojith Financial Services Ltd., In re \[2018\] 98 taxmann.com 160 \(AAR-KERALA\)](#)
- Supply of works contracts awarded by Govt. attracts 12% GST – [MARY MATHA CONSTRUCTION COMPANY, IN RE \[2018\] 98 Taxmann.com 164 \(AAR-KERALA\)](#)
- Commission received on ticket sales exempted from Service Tax - [ARAFATH TRAVELS \(P.\) Ltd. Vs. CST \(2017\) 88 Taxmann.com 207 \(Chennai – CESTAT\)](#)
- Service tax on commission received from foreign supplier for procuring orders from Indian buyers - [CCE Vs. NATIONAL ENGINEERING INDUSTRIES Ltd. \(2018\) 93 Taxmann.com 342 \(H.C - Raj.\)](#)
- Ancillary services related to transportation of goods - [DIAMOND SHIPPING AGENCIES \(P.\) Ltd. Vs. CCE \(2017\) 87 taxmann.com 177 \(Chennai – CESTAT\)](#)
- Taxability on recovery of food expenses from employees for the canteen services provided by the company - [IN RE : CALTECH POLYMERS PVT. LTD. 2018 \(12\) G.S.T.L. 350 \(A.A.R. – GST \)](#)
- Charges collected for activities other than CHA are not liable under Service Tax - [BAX GLOBAL INDIA LTD. Vs. COMMISSIONER OF SERVICE TAX \(Bangalore - CESTAT\)](#)
- Assessee entitled to rebate of duty paid on export of capital good by reversing ITC - [UNION OF INDIA Vs. STERLING INDUSTRIES \(I\) Ltd. \(2017\) 87 Taxmann.com 201 \(H.C - Bom.\)](#)
- Kerala taxpayers face another blow of 'Reversal of Input Tax Credit' on goods destroyed in Floods - [Clarifications](#)

ERNAKULAM MEDICAL CENTRE (P.) LTD., IN RE [2018] 98 Taxmann.com 161 (AAR-KERALA)

- The assessee is rendering medical services with professionals like doctors, nursing staff, lab technicians etc., in the present GST scenario health care services by a medical establishment have been exempted.
- Hence the assessee sought for an advance ruling on the liability of hospital under GST Act on the supply of medicines and allied items through the pharmacy.
- The goods supplied to inpatients are indispensable items and it is a composite supply to facilitate health care services.
- Therefore, the supply of medicines and allied items provided by the hospital through the pharmacy to the inpatients is part of composite supply of health care treatment and hence not separately taxable.
- But the supplied of medicines and allied items provided by the hospital through the pharmacy to the outpatients is taxable.

Geojith Financial Services Ltd., In re [2018] 98 taxmann.com 160 (AAR-KERALA)

- The assessee is engaged in providing various retail financial services like stock broking, share broking, marketing of initial public offering of companies and mutual funds, corporate advisory services etc., which were not taxable under VAT law.
- The assessee filed an application for Advance Ruling regarding whether computers used by the applicant for providing output services would qualify as inputs for the purpose of availing transitional ITC and if the goods are physically available as closing stock as on 30th June,2017, can ITC be availed for the VAT paid.
- The Authority of Advance Ruling held that the applicant being a service provider is not eligible to avail input tax credit on computers and laptops held during the transition period and hence the transitional credit claim of the assessee in respect of capital goods is not acceptable.
- Therefore, the computer, laptops, etc., used by the applicant for providing output services would not qualify as inputs for the purpose of availing transitional ITC.
- Similarly the goods physically available as closing stock as on 30th June 2017, ITC is not eligible for the VAT paid.

MARY MATHA CONSTRUCTION COMPANY, IN RE [2018] 98 Taxmann.com 164 (AAR-KERALA)

- The assessee is a contractor of government projects and many of the works are undertaken by way of sub contracts.
- For supply of works contract awarded by Government, tax rate applicable is 12 per cent GST.
- The work awarded by government is subsequently given as sub contracts, by the principal contractor and if any such contracts awarded will also attract 12 per cent GST.
- But supply of work contract awarded by a company (i.e., commercial venture) for construction of Biotech lab and administrative block at Life Science Park attracts 18 per cent GST

ARAFATH TRAVELS (P.) Ltd. Vs. CST (2017) 88 Taxmann.com 207 (Chennai – CESTAT)

- The assessee is a general sales agent (GSA) for Saudi Arabian Airline and was registered under the category of 'Air Travel Agent Service'.
- In terms of the agreement made between the assessee and Airline, the assessee was entitled to receive overriding commission at a fixed percentage.
- The department held that the overriding commission received by the assessee was liable to service tax .
- The tribunal held that the service rendered by the assessee to Saudi Arabian Airline was 'export of business auxiliary services'.
- Therefore such service is exempt from service tax.

CCE Vs. NATIONAL ENGINEERING INDUSTRIES Ltd. (2018) 93 Taxmann.com 342 (HC - Raj.)

- The assessee entered into a combined agreement for procuring orders from Indian buyers and was not paying the service tax on commission received in foreign currency for services rendered in India.
- The department held that the assessee was liable to pay service tax on the ground that the office of a subsidiary company in India would amount to an office of a holding company and not to be treated as export of services
- The revenue filed an appeal in the High Court
- The high court held that the branch of subsidiary company in India would not be treated as branch of the company.
- Hence, such services would be treated as export of services as service recipient was located outside India.

DIAMOND SHIPPING AGENCIES (P.) Ltd. Vs. CCE (2017) 87 taxmann.com 177 (Chennai – CESTAT)

- The assessee is registered under customs house agent services and was engaged in transporting break-bulk cargo from one port to another.
- The department held that the assessee was providing cargo handling service as it was involved in transportation, storage, security, loading and unloading at yard.
- The tribunal held that the essential character of activity carried out by assessee was only transportation of goods.
- Mere fact that it also performed ancillary activities of loading, unloading goods etc., same would not be classified under category of 'cargo handling service'.

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.
- An application was filed for advance ruling on 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.
- The AAR held that, as 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.

BAX GLOBAL INDIA LTD. Vs. COMMISSIONER OF SERVICE TAX

- The assessee is a customs house agent and discharged service tax liability on the same.
- The assessee had also undertaken work as freight forwarders and other activities related thereto and collected charges for that, viz., air freight, cartage revenue, MSIL/JWG charges, due carrier, documentation charges, etc. In all these cases, services were rendered by third party and assessee initially made payment for these activities on behalf of clients and later collected amount from them.
- The department demanded service tax on all such charges collected by the assessee.
- Since charges collected by assessee for activities undertaken by it were not related to activity of CHA, therefore assessee was not liable to pay service tax

UNION OF INDIA Vs. STERLING INDUSTRIES (I) Ltd. (2017) 87 Taxmann.com 201 (H.C - Bom.)

- The assessee imported used aluminum casting machines as capital goods.
- It availed credit of duty on those capital goods that were exported on payment of duty by reversing the input tax credit availed.
- Subsequently, the assessee claimed rebate of duty paid on export of capital goods.
- The department rejected the rebate claim of the assessee.
- The High Court held that the duty paid by debiting the credit entry, rebate claim was allowable and it was not open to the department authorities to argue to the contrary.
- Therefore, the assessee was entitled to rebate of duty paid on export of capital goods by reversing the input tax credit

Kerala taxpayers faces another blow of 'Reversal of Input Tax Credit' on goods destroyed in Floods

- The Goods and Services Tax Act allows a registered person to take credit of input tax charged on supply of goods or services if they are used in the course or furtherance of his business.
- Similarly there is a negative list of goods or services under section 17(5) of the CGST Act in respect of which ITC can't be allowed.
- The Input tax credit is allowed to a taxpayer on the assumption that the underlying goods or services have been used for furtherance of business. If goods can't be used for business, the Input tax credit is not allowed
- Due to the recent devastating the business entities have lost goods in this natural calamity. As these goods have never been used for the business purposes, the input tax credit shall not available in respect of such goods.
- In other words, if goods are lost or destroyed due to any reason including a natural calamity, then ITC can't be allowed and if ITC has already been availed, then it should be reversed.
- In case the input tax credit has not been reversed, the proper officer can issue a show cause notice and asks the taxpayer to pay the amount specified in notice along with interest at the rate of 18% and penalty.

ABOUT DAA

DAA Consulting is a management consulting entity founded in the year 2010 by D Arvind who earlier worked in Big Four Firms as partner and Tax & Legal head in a large MNC prior to Big Four.

DAA specialises in GST, Customs, Foreign Trade Policy, SVB, Corporate Governance & Corporate Financial Advisory services including FEMA.

We operate out of Mumbai, Chennai, Bangalore, Coimbatore, Hyderabad, Nasik, Delhi and Pune.

To provide one stop solution, we have JVs / Collaboration with:

- ▶ **Vispi T Patel Associates**, a leading firm in Direct Tax, International Taxation & Transfer Pricing operating out of Mumbai to offer both Direct & Indirect Tax solutions under one roof. Vispi T Patel earlier worked as a Partner in big four.
- ▶ **Fynamics Techno Solutions Pvt. Ltd.**, a pioneer in providing technology solutions, for providing comprehensive technology solutions for addressing the ASP as well as E-Way Bill Requirements of the clients. Spearhead is the exclusive technology partner of DAA who will provide customized ASP/EWB Solutions based on the clients' requirement.
- ▶ **DAA RiverForest Services Pvt. Ltd.** is our JV which is a global management consulting arm through which we handle inbound and outbound investments in to / from India. With a presence in the US and Canada, DAA RiverForest can support in the area of Global Market Entry, Financial Advisory, HR Solutions, Governance and promoter Organization.
- ▶ **Anoma Legal**, is a specialized Legal Consultancy firm that supports us on legal advisory & Due Diligence services to various niche sectors like Financial Services, Infra Structure, Shipping & Logistics, Real Estate, Hospitality, Energy and Natural Resources etc.
- ▶ **U.S.Gandhi & Co**, is a multi-disciplinary professional services firm, which has been helping clients build their businesses for more than 3 decades. USG is our associate firm which specializes in Managing audits, providing forensic audit services and dealing with complex tax matters of both domestic & multi-national operations is the core of our business.



To View our Testimonials, visit
<http://daa-india.com/testimonials/>

DAA | CHENNAI

#13/L, 3rd Floor, Bhagawathi Palace, J Block,
3rd Avenue, Anna Nagar (East),
Chennai 600 102

DAA | BANGALORE

#46/3, Lakshmi Nivas, 1st Floor, 6th Main Road,
Opp. Adhyatma Prakasha Karyalaya, Tata Silk Farm,
Bangalore 560 028

DAA | HYDERABAD

#311, H.No 1-7-79/A & B, Legend Crystal,
Above Indian Overseas Bank, Paradise,
Secunderabad 500 003

DAA | NASIK

Flat No.1, Rajkamal Residency, Plot No.83,
Opp. Burkule Lawns, Shravan Sector D, CIDCO
Nasik, MH 422 009

DAA | MUMBAI

#306-308, Bonanza, Sahar Plaza,
Next to Kohinoor Hotel, J.B. Nagar, Andheri (E),
Mumbai 400 059

DAA | COIMBATORE

#466, CPC Corporate Hub, 3rd Floor,
Thadagam Road, RS Puram,
Coimbatore 641 001

DAA | PUNE

#91 Spring Board, Sky Loft, Creaticity,
Opp. Golf Course, Off Airport Road, Shastrinagar,
Yerwada, Pune, MH 411 006

DAA | DELHI

#16, Nehru Apartment, Outer Ring Road, Kalkaji,
New Delhi, 110 019

+91 98407 95565 / +91 80561 02618



www.daa-india.com