

TAX ALERT



1st October 2018

This alert summarizes the AAR Rulings under the GST Regime, rulings of courts and tribunals under the erstwhile Indirect Tax Regime:

- Remand proceedings and directions - [Maha Metal Industries Vs. CCE Aurangabad \(Bom. HC\)](#)
- Penalty not imposable when duty paid prior to issuance of Show Cause Notice - [Sitalakshmi Mills Ltd Vs. CESTAT Chennai](#)
- High Court judgments binding on a subordinate court - [TVS Srichakra Ltd Vs. CCE Madurai](#)
- Binding nature and judicial discipline - [Welcure Drugs and Pharmaceuticals Ltd Vs. CCE Jaipur](#)
- Principals of natural justice violated - [Ocean Gate Container Terminal P. Ltd Vs. CCE Raigad](#)
- GST on outdoor catering services provided to various companies - [M/s. Goodwill Industrial Canteen](#)
- Jurisdiction of AAR - [Fichtner Consulting Engineers Ltd](#)
- Detention proceedings not to be initiated for minor mistakes in Eway Bills - [Circular No. 64/34/2018 dated 14.09.2018](#)
- Disposing applications for transitional credit availment filing TRAN-1 - [EAP Infra P. Ltd Vs. Commr. of GST](#)

Maha Metal Industries Ltd Vs. CCE Aurangabad 2018 (361) ELT 645 (Bom.)

- Appellant's contention is that they would be liable to pay interest consequent to passing orders by Adjudicating Authority pursuant to remand orders and not from date when Order in Original was passed. This issue came up for consideration before Mumbai High Court.
- Department's contention was that Adjudicating Authority did not set aside the order in original but just remitted the matter to ascertain procedural requirement. Tribunal on consideration of remand order held that duty was payable from date of first Order in Original.
- The Tribunal remanded matter to Adjudicating Authority post which Appellant paid duty along with interest and penalty. The Appellants filed appeals before High Court which held that non recording the words set aside in an order does not mean that the original order was intact.
- Consequent upon remand orders passed by CESTAT, Adjudicating Authority passed second Order in Original in which Cenvat Credit was allowed and in the original order credit was disallowed. Hence Appeals were allowed partly in Appellants favour.

Sitalakshmi Mills Ltd Vs. CESTAT, Chennai 2018 (361) ELT 647 (Mad.)

- Appellants manufactured cotton yarn and polyester cone yarn and collected amount towards additional conversion charges through debit notes. This was disputed by Excise Authorities who sought to demand duty on such amount under Section 11A(1) of Act through a Show Cause Notice. Appellants did not remit interest portion under Section 11AB of the Act.
- Adjudicating and Appellate Authority confirmed the demands along with interest under Section 11AB however Appellate Authority set aside penalty under Section 11AC of the Act which was reversed by the Tribunal.
- Appellants filed appeal before Madras High Court against CESTAT order and contended that they had remitted duty prior to issuance of Show Cause Notice and thus Penalty under Section 11AC cannot be levied.
- Section 11AC of the Act could be invoked only in cases of fraud, collusion, willful misstatement and suppression of facts or contravention of statutory provisions with intent to evade duty payment.
- Thus when duty has been remitted prior to issuance of SCN then penalty cannot be levied.

TVS Srichakra Ltd Vs. CCE Madurai 2018(15) GSTL 182 (Mad.)

- Appellants sold capital goods in the form of plant and machinery to OPC Asset Solutions Pvt Ltd. Later on these goods were leased back to the petitioner. These goods were sold to OPC Assets Solutions Pvt Ltd for financial accommodation and in view of contemporaneous leasing back through rental agreement there exists no removal of capital goods from the factory.
- Department however made a case for deemed removal/delivery of capital goods and hence liable to reverse the credit proportionate to the actual credit taken to the extent of usage of pay duty on transaction value.
- Show Cause Notice was issued demanding duty along with interest and penalty confirmed by Adjudicating, Appellate Authority and Tribunal.
- On Appeals before High Court the court held that Rule 3(5) of Cenvat Credit Rules, 2004 cannot be invoked when there is no removal of goods under cover of invoice as per Rule 9. This view was affirmed by division bench of the same high court which was binding on a subordinate court.
- If lower authority ignores the law then their proceedings would be invalid without jurisdiction and thus there exists a convincing case for the Appellant.

Welcure Drugs and Pharmaceuticals Ltd Vs. CCE Jaipur 2018 (15) GSTL 257 (Raj.)

- Appellants manufactured Odoxin and paid 4% Excise Duty. However on local inputs utilized in manufacture of Odoxin suffered duty of 10% and on imported inputs duty was 14%. There was thus a wide gap between credit availed and duty paid.
- Appellants had unutilized credit despite paying duty on final product. The Appellants thus closed their factory and applied for refund which was rejected by Adjudicating, Appellate Authority and Tribunal.
- It is pertinent to note that the very same bench of the Rajasthan tribunal allowed refund of unutilized credit on closure of factory and the order had attained finality. Thus the present bench of Rajasthan Tribunal should have invoked principal of estoppel to allow refund claims.

Ocean Gate Container Terminal P. Ltd Vs. CCE Raigad 2018 (14) GSTL 253 (Tri.-Mumbai)

- Appellants were served recovery notice and challenging the dispute before Tribunal on the liability fastened on them. Till recovery proceedings was initiated on them they were unaware of the proceedings against them commencing with issuance of notice. They did not receive any hearing notice and subsequently Order in Original was not within their knowledge.
- Appellants took steps to obtain the Order and later filed appeals before Commissioner Appeals who dismissed the appeals on the grounds of limitation.
- It is thus clear that Order in Original was issued confirming demand without any opportunity for personal hearing thus resulting in an exparte order which is a clear violations of natural justice and thus the dispute should be heard afresh.

M/s. Goodwill Industrial Canteen- 2018 TIOL 160 AAR GST

- Appellant render catering services to companies where food is prepared and supplied to companies. Companies provide rent free space to distribute food to company employees. They do not take any payments from company employees.
- Appellants case is that they provide catering services covered under Serial No. 7(i) of Notification No. 11/2017 and raised invoices at the rate of 18% on supplies to commercial/industrial entities.
- Appellants supply food in the business premises and receive payments from the companies on a monthly basis and are not paid by those who consume the meals within the industrial unit.
- Advance ruling was sought for applicability of Notification No. 46/2017 and Notification No. 11/2017. It has been held by catena of judgments that Appellants providing food in a rent free premises of a industrial unit is nothing but provision of outdoor catering service under Notification No. 11/2017-CT(Rate).
- As per Serial No. 7(i) of 2017 Notification which came into effect from July 2018 outdoor catering services was subject to 5% GST provided ITC was not availed. Thus it is clear that prior to July 2018 outdoor catering services was taxable at 18% and post July 2018 such services was taxed at 5%.

Fictner Consulting Engineers (India) (P.) Ltd. [2018] 97 taxmann.com 153 (AAR-Tamil Nadu)

- Appellants provided consultancy engineering services to recipients in related to immovable property and place of supply was in Jharkhand, hence an interstate supply. Appellants sought advance ruling as to whether services pertaining to immovable property is inter state or intra state supply.
- On a consideration of Appellants contentions it was held that AAR can decided only on issues specified in Section 97(2) of CGST Act, 2017 and thus rejected the present application due to lack of jurisdiction.

Circular No. 64/34/2018 dated 14.09.2018

- CBIC has clarified that proceedings of detention of goods could not be initiated under Section 129 of CGST Act for minor mistakes in generation of away bill such as mistakes in spellings, name of consignor or consignee, pin code , error in address of consignee, error in one or two digits of document number, or error in digits pertaining to vehicle number. For these small errors a token penalty of Rs. 1000 would be levied.

EAP Infra P. Ltd Vs. Principal Chief Commr. of GST [2018] taxmann.com 578 (Madras)

- Appellants could not avail ITC due to lack of clarity in GST transition provisions and filed a writ petition before High Court allowing them to file TRAN-1.
- The court held that Appellants should bring out all facts on record including their attempt at uploading TRAN-1 and shall submit these within 2 weeks to the jurisdictional GST officer which would be forwarded to the nodal officer within one weeks period.
- The Nodal officer in turn consults GSTN and forwards the Appellants grievance to grievance committee which takes a decision for expediting the Appellants issues quickly.

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 to provide 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 a unique position to see Complex tax Issues from Business & Solutions perspective.

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