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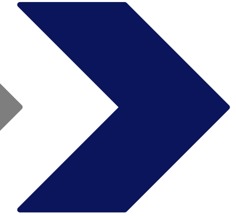

Case Laws of The Week

10th December 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:

- Packing, storage & transportation of cargo not classifiable as cargo handling service : Coromandel Shipping Agencies (P.) Ltd. Vs. C.C., C.E. and ST (CESTAT – Hyd)
- GST paid under wrong head by mistake can be adjusted with another : Saji S. Vs. Commissioner, State GST Department Tax Tower (HC)
- Job work service to foreign customer would attract 18% GST : **Synthite Industries (AAR – AP)**
- Foundations and sheds to be treated as Civil Structures and GST credit not allowed : **Maruti Ispat & Energy (P.) Ltd., (AAR-AP)**
- Reverse Charge and Double Taxation : Transpek Silox Industries Pvt Ltd Vs CCE Vadodara-I
- Reimbursable expenses and Freight Difference not liable to Service Tax: PI Shipping and Logistics Ltd Vs. CCE & ST
- Designing charges reimbursed from customers were to be included in sale price (HC-Bombay)
- Complete sealing of business premises on account of non-production of books of account was illegal : Napin Impex (P.) Ltd. Vs. Commissioner of DGST

Coromandel Shipping Agencies (P.) Ltd. Vs. Commissioner of Customs, Central Excise And Service Tax, Visakhapatnam-II [2018] 100 taxmann.com 35 (Hyderabad - CESTAT)

- The appellant a custom house agent, was engaged in providing services of handling of chemicals such as packing and palletization of chemical storage, transportation and obtaining permission from the Port and Customs authorities for entry of cargo into deep water port by use of its clients in offshore operations of oil exploration,
- And handling of import and export cargo, unloading of cargo from vessel into barges and unloading of barges and loading the cargo into trucks/rail rakes and dispatching to different destinations, etc.
- The Adjudicating Authority held that the services provided by the assessee were classifiable as 'cargo handling service' for the period 16-8-2002 to 30-6-2003 and as 'port service' from 1-7-2003.
- The services rendered by the assessee during the course of custom house agency services in the form of handling of cargo, etc. do not form a separate taxable service falling under 'cargo handling services' or 'port services'. It is a composite service rendered by the custom house agent.
- Therefore, amounts charged by the assessee from its clients do not get included in the value of taxable services rendered to the extent that they are reimbursable expenses and this is a fact to be verified from the invoices and accounts.
- Therefore, the matter required to be remanded back to the Original Authority for the sole purpose of computing the duty liability after deducting the value of reimbursable expenses from the invoices.

Saji S. Vs. Commissioner, State GST Department Tax Tower. (2018) 99 Taxmann.com 218 (Ker.)

- The assessee, a registered dealer, purchased goods from the consignor in Chennai and while those goods were in transit, goods were detained and consignor paid the tax and penalty and it remitted the amount under the head 'SGST' instead of 'IGST'.
- The authorities refused to release the goods on the grounds that the remittance has to be paid under the head 'IGST'.
- The assessee submitted that if the remittance was treated as a mistake on the consignor's part, the statute empowered the authorities to transfer the deposit from one head to another. However, the authorities submitted that the petitioner had to pay the amount under 'IGST' and then claim a refund from the head 'SGST'.
- It was held that, if the amount of refund would be completely adjusted against any outstanding demand under the act, an order giving details of the adjustment to be made in part A of form GST RFD-07.
- Therefore, Hight Court directed that the concerned officials must allow the adjustment and get amount transferred from the head 'SGST' to 'IGST'.

Synthite Industries (2018) 99 Taxmann.com 99 (AAR – AP)

- The applicant was providing job work service of removing 'caffeine' from Tea powder imported from foreign company (Principal) and exporting de-caffeinated tea to principal.
- The process was performed in the premises of the applicant as per the specifications of the recipient of services.
- The Authority for Advance Ruling decided that in the case of applicant, the place of supply for this transaction would be the location of the service where it was actually performed
- That is, the business premises of the applicant, which was located in the state of Andhra Pradesh.
- Hence, these job work service would attract 18% GST

Maruti Ispat & Energy (P.) Ltd., (2018) 99 Taxmann.com 103 (AAR – AP)

- The applicant was manufacturer of steel and engaged in generation of power, submitted that they had direct reduced iron (DRI) i.e., sponge iron unit and were involved in generation of power.
- The applicant stated that the nature of industry and product required buying of large plant and machinery and for installation and protection of that plant & machinery, they required to lay foundations and also needed to construct the sheds.
- The applicant applied for advance ruling to determine whether there would be no restriction to claim input with respect to items related to plant & machinery.
- The authority observed that the argument of the applicant to treat civil structures as structural supports for plant & machinery was not tenable as the civil structures under consideration would fall under other civil structures.
- Hence, the claim of applicant was not justifiable and the applicant would not be entitled to claim the input tax credit.

Transpek Silox Industries Pvt Ltd Vs CCE Vadodara-I: 2018 (17) GSTL 434 (Tri.-Ahmd.)

- Appellants availed the services of manpower recruitment agency and as per Notification No. 30/2012 they were required to pay 75% of Service Tax and the supplier was required to pay 25% of Service Tax.
- In one case both the Appellants and Suppliers did not pay tax and on being pointed out by the department supplier alone paid at 100% of the value instead of 25% on the second invoice, however Appellant paid tax on the first invoice.
- The Appellants contended that since supplier paid whole of ST they weren't required to pay tax as the department recovered whole tax amount for nonpayment of Service Tax and that double taxation could not be demanded.
- The Tribunal held that though Appellant was required to pay 75% of Service Tax on man power recruitment agency service on being pointed out by the department paid 100% of Service Tax on the first invoice. On the other invoice, supplier paid Service Tax at 100% instead of 25% hence Appellant need not pay tax on the same which would amount to double taxation not permissible under law.

Service Bureau Vs. CC 2018-TIOL-2732-CESTAT-Del

- Appellants are a customs broker and filed bills of entry for clearance of goods imported under DFIA Scheme.
- Customs Authority filed a case of under invoicing of goods against the Appellants. Notices was issued which culminated into Adjudicating and Appellate Authority orders.
- Tribunal heard this dispute and remanded the matter for denovo adjudication by the Appellate Authority. During this proceedings the Customs Broker License was revoked and whole amount of security deposit paid was forfeited.
- The Tribunal though made a case for failure to obtain proper authorization from their importer, facilitated highly undervalued importation of goods intending to fraudulently avail DFIA Benefits and even levied penalty. Hence revocation of courier license was held to be unnecessary.

TATA JOHNSON CONTROLS AUTOMOTIVE Ltd. Vs. STATE OF MAHARASHTRA (2017) 84 Taxmann.com 237 (Bom.)

- The assessee, a manufacturer of automotive seating systems, received designing charges and tooling cost from the purchasers by way of partial reimbursement of designing and tooling cost.
- The department held that the designing charges and tooling cost reimbursed to the assessee by the customers formed part of sale price.
- By considering the definition of the 'sale price' the designing and tooling cost incurred by the buyer for the manufacture of seating system would be a part of the 'sale price' of the seating system.
- The High Court held that the 'sale price' means the amount of valuable consideration paid or payable to a dealer for any sale made.

Napin Impex (P.) Ltd. Vs. Commissioner of DGST (2018) 98 Taxmann.com 462 (HC – Delhi)

- The competent Authority of the Delhi goods and service tax department visited the business premises of the assessee and directed production of account books and other documents.
- The assessee was not in possession of books and accounting records.
- The authority ordered temporary sealing of the premises but the premises was completely sealed.
- The Honorable Delhi High Court observed that authority was authorized to search the premises and if resistance was offered, had power to break open the lock or any other almirah, electric device, etc., containing books and documents.
- Therefore, the complete sealing of the premises was illegal and it was directed to remove the seal and handover the premises to the assessee

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.

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