

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:

- Supply of medicines, consumables and implants used for providing health care services is composite supply eligible for exemption under health care services- M/s. Rajagiri Health Care(AAR)
- E Commerce sites to pass on reduction in rates to consumers- Rishi Gupta Vs. Flipkart Internet Pvt Ltd: 2018 (17) GSTL 623 (NAPA)
- Goods supplied from head office to branch in other states are supplies made between distinct persons- GKB Lens Pvt Ltd: 2018 (17) GSTL 698 (App. AAR-GST)
- No remission on destroyed goods if prescribed procedure isn't adhered to- Sun Pharma Industries Ltd Vs. CCE & ST: [2017] 78 taxmann.com 166 (Guj HC)
- Canteen run at clients place is outdoor catering service- L&T Grahak Sahakari Sanasthan Maryadit Vs.CST: [2017] 78 taxmann.com 34 (Mumbai-CESTAT)
- Leasing of earthmoving equipment liable to VAT and not Service Tax- GIMMCO Ltd Vs. CCE & ST: [2017] 78 taxmann.com 30 (Mumbai-CESTAT)
- Credit available on input services even when depreciation is also claimed on it- Shree Pandurang SSK Ltd Vs. CCE: [2017] 78 taxmann.com 102 (Mumbai-CESTAT)
- ISD can distribute credit even before obtaining registration- Ballarpur Industries Ltd Vs. CCE: [2017] 78 taxmann.com 35 (Mumbai-CESTAT)

M/s. Rajagiri Health Care (AAR)

- Appellants are running a multi specialty hospital and also provide health care services for In and Out Patients.
- The Hospitals central store procures medicines, implants , consumables etc. from various suppliers and distribute the same to its outlets such as In Patient Pharmacy, Out Patient Pharmacy, Operation Theatre Pharmacy etc. The Medicines, Implants , Consumables etc. used in providing medical services to In and Out Patients are naturally bundled in the ordinary course of business.
- Appellant's contention is that the medicines, implants, consumables etc. used in the course of providing treatment or diagnosis is a composite supply of health care services. Provision of room, medicines, consumables, dietary food etc are naturally bundled services in the ordinary course of providing health care services to In Patients.
- Notification No. 12/2017-CT exempted health care services provided by authorized clinical establishment and Appellants claimed exemption under this Notification. Appellants also relied on a similar AAR Ruling that supplies of medicines and allied items are a composite supply not separately taxable. However pharmacy run by hospital dispensing medicines to Out Patients is an individual supply of medicine which is liable to GST.

Rishi Gupta Vs. Flipkart Internet Pvt Ltd 2018 (17) GSTL 623 (NAPA)

- Appellants had ordered for a product in flipkart and paid an amount of Rs. 14,852/- for them based on tax invoice issued on his name. Another invoice was subsequently issued for Rs. 14,152/- and thus filed a complaint before Standing committee on Anti Profiteering which was later referred to Director General Anti Profiteering for refund of excess amount. Appellants allegation was that the company resorted to profiteering contravening Section 171 of the CGST Act, 2017.
- The Authority held that on the gross amount of the product a discount was given to the Appellant when GST was fixed at 28%. Subsequently when GST rate reduced the final price of the product including GST rate reduced drastically.
- Excess amount of GST was to be refunded back to the Appellant and there was no case for profiteering by the ecommerce platform which was later refunded to the Appellant. However no discount was offered on the base price of the product post reduction of GST rate to 18%. Mere withdrawal of discount from suppliers margin is not profiteering.
- E Commerce operators are not a supplier or manufacturer of goods and only an agent who offers his platform to sell goods, hence not liable for any contravention.

GKB Lens Pvt Ltd 2018 (17) GSTL 698 (App. AAR-GST)

- Appellants are a leading re seller and importer of sun glasses and optical lenses with its head office at West Bengal. Appellants transferred spectacles, spectacle frames and optical lenses from its head office to branches in other states.
- Appellants sought a ruling as to whether transfer of goods from head office to branches in other states could be done at cost price and whether ITC eligibility exists.
- The mute question that needs to be answered is whether stock transfer from head office to branches at zero value is eligible for claiming Input Tax Credit.
- The Authority relied on Section 16 of CGST Act, 2017 that ITC can be claimed only on Tax Invoice issued by Supplier to Recipient. Supplies from head office to branches are treated as supplies between related/distinct persons and if value declared in the invoice is zero then Input Tax Credit cannot be availed.

Sun Pharma Industries Ltd Vs. CCE & ST [2017] 78 taxmann.com 166 (Guj HC)

- Appellants are manufacture of drugs and submitted an application before the Commissioner contending that some of their drugs have crossed expiry dates and became unfit for consumption.
- Appellants requested for permission to be granted to remove finished goods from bonded warehouse for destruction and consequently asked for duty remission on such goods. Even after 2 months from date of application permission was not granted for duty remission.
- Appellant's applicants was dismissed by Appellate Authority and Tribunal. Appellants filed appeals before High court which held that Appellants had to comply with procedure required under Central Excise Manual and seek approval of concerned officer.

L&T Grahak Sahakari Sanasthan Maryadit Vs.CST [2017] 78 taxmann.com 34 (Mumbai-CESTAT)

- Appellants operated a canteen at the premises of L&T as a cooperative society with directors, employees etc. being members of the society. Both Adjudicating and Appellate Authority demanded Service Tax on outdoor catering services.
- On Appeals before Tribunal they held that Appellants operated as a canteen operator and rendered services to the company. The Appellants were a cooperative society as per Factories Act, 1948.
- Appellants operated canteen on behalf of the company and providing free of cost food or subsidized food was part of labour employer negotiations. Canteen services was provided only with the concurrence of the company and was an obligation to the company employees by the Appellant.

GIMMCO Ltd Vs. CCE & ST [2017] 78 taxmann.com 30 (Mumbai-CESTAT)

- Appellants rented earthmoving equipments to various customers and did not discharge Service Tax on the same. The Adjudicating and Appellate Authority took a stand that renting of such equipments is liable to Service Tax under supply of tangible goods service.
- Appellants filed appeals before Tribunal who went through the agreement between the Appellant and their customers and concluded that it was an agreement for transfer of right to use goods which was deemed sale under Maharashtra VAT Act.
- Thus hiring of equipments do not fall under supply of tangible goods services.

Shree Pandurang SSK Ltd Vs. CCE [2017] 78 taxmann.com 102 (Mumbai-CESTAT)

- Appellants availed credit in respect of input services relating to erection, installation of capital goods.
- The services on which credit was taken was capitalized and depreciation was claimed. Adjudicating and Appellate Authority denied credit on the ground that value of services including service tax was capitalized.
- On Appeals before Tribunal it held that restriction to avail credit if depreciation is availed is only in respect of capital goods and not services as per the provisions of Rule 4(4) of CCR, 2004.
- In this dispute credit was availed on ST paid on services though related to erection and installation of capital goods. Also there is no provision in cenvat law to restrict availing credit on input services when depreciation was claimed on the same.

Ballarpur Industries Ltd Vs. CCE [2017] 78 taxmann.com 35 (Mumbai-CESTAT)

- Appellants availed credit in respect of distribution of credit by head office as an ISD. Head office distributed credit even before obtaining registration. This credit was denied by the Adjudicating and Appellate Authority and Appellants filed appeals before Tribunal.
- The Tribunal held that there is no restriction under Cenvat Credit Rules, 2004 that credit should not be distributed by an ISD without taking any registration, hence credit was held to be eligible.

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