

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:

- Transition provisions post implementation of GST and ongoing litigations- M/s. Indus Integrated Information Management Ltd Vs. Principal Commr. of CGST: 2018 (12) GSTL 492 (Cal. HC)
- Impact of divergent rulings by AARs on solar power industry
- Reversal of Cenvat Credit in connections with common inputs used in manufacture of dutiable and exempted goods- 2018 (17) GSTL 181 (Guj.)
- Constitutionality of Rule 5A(2) of Service Tax Rules- Infinity BNKE Infocity Pvt Ltd Vs. UOI: 2018 (17) GSTL 21 (Cal.)
- Place of supply of works contract service is location of immovable property- Jaimin Engineering Pvt Ltd: 2018 (17) GSTL 33 (AAR.-GST)
- Supply of ElectroInks along with consumables is a mixed and continuous supply- HP India Sales (P.) Ltd: 2018 (98) taxmann.com 330 (AAR-Maharashtra)
- Exemption Notification No. 01/2006 availment for provision of Commercial or Industrial Construction Services:- M/s. SMP Constructions Pvt Ltd Vs CCE & ST Vadodara: 2018 TIOL 2937 CESTAT AHM
- Extended period cannot be invoked in cases where penalty is not imposable- Commr. of ST Vs M/s Rochem Seperation Systems (I) Pvt Ltd: 2018 TIOL 2015 HC MUM ST
- Reimbursable expenses and Freight differences not liable to Service Tax- M/s. Pi Shipping and Logistics Ltd Vs CCE & ST, Chennai: 2018 TIOL 3112 CESTAT MAD
- Tax on sale of villas post completion and obtaining approvals from competent authority- M/s. Quattroporte Luxury Homes LLP-AAR

M/s. Indus Integrated Information Management Ltd Vs. Principal Commr. of CGST: 2018 (12) GSTL 492 (Cal. HC)

- Appellants filed a petition before the High Court on the short question as to whether the GST transition provisions had an impact on erstwhile regime litigations and recovery provisions.
- The court held that Section 174 of CGST Act grants protection to Appellants migrating to GST regime under the repeal and saving clause. Also officers appointed under Central Excise Law are also deemed to be officers under CGST Act, 2017. However departments have powers to issue corrigendum in cases where jurisdiction is transferred to some other officer under CGST Act.
- Under Clause 174(c) of CGST Act, 2017 no rights, obligation etc acquired or accrued under repealed or amended acts shall be effect. However right to recovery would be carried under the erstwhile provisions of Central Excise Act.
- The court also held that demands and recovery proceedings covering the period before introduction of GST would be governed by Excise Laws and for demand post introduction of GST then provisions of CGST Act could be invoked.

Impact of divergent rulings by AARs on solar power industry

- The Solar Power Industry is facing problems of plenty. Two State Appellate Authority have given divergent rulings impacting the industry. Karnataka and Maharashtra Authorities have kept GST Rates at 5% and 18% respectively.
- Karnataka authorities have held that supply of components and parts and supply of services in connection with solar power plant are a composite supply and naturally bundled. However Maharashtra Authorities are treating supply of solar generating system as a composite works contract.
- Industrial players are also confused and taking divergent stands. Some treat this as a works contract liable to 18% GST and others have taken a stand that renewable energy devices and parts for manufacturing solar power plants are taxable at 5% GST. There are also other industry players who are levying 5% on components and 18% on services.
- The government should clarify the GST rate with regards to taxability of solar power projects to avoid unwarranted litigations and interpretational issues in the wake of divergent AARs.

Commr of C.Ex. & Cus. Vadodara- II Vs Unimed Technologies Ltd. 2018 (17) GSTL 181 (Guj.)

- The short question that arose for consideration before the Gujarat HC was whether Appellants had to pay an amount equal to 8% of the total price of exempted goods as per Rule 6(3)(b) of Cenvat Credit, 2004 and whether CESTAT was right in allowing the Appellants for subsequent reversal of credit taken.
- The Tribunal had relied on the judgment of Nicholas Piramal which was subsequently reversed and set aside and hence on this count the tribunal order could not be sustained.
- The Tribunal passed its order on the basis of Finance Act 2010 and provisions of the 2002 Cenvat Credit Rules. Rule 6 of Cenvat Credit Rules was amended retrospectively w.e.f from 01.03.2002. Within 6 months from the date of finance act 2010 the department should have approached the appropriate authority but instead went to court relying on a judgment of the High Court in departments favour.
- The court held that if Appellants make an application within a period of one month with supporting documents for availing benefits of amended Rule 6 of Cenvat Credit Rules, 2002 the same would considered and on this count alone the Appeals was partly allowed in Appellants favour.

Infinity BNKE Infocity Pvt. Ltd Vs UOI 2018 (17) GSTL 21 (Cal.)

- Appellants filed Appeals before Kolkata High Court seeking a declaration that sub-rule (2) of Rule 5A of Service Tax Rules, 1994 is arbitrary and ultra vires the provisions of Section 72A of the Finance Act, 1994. Appellants also contended that Section 94(2) of Finance Act, 1994 grants department an uncontrolled power of delegation.
- This issue was considered by Delhi High Court who held the provisions to be ultra vires which was appealed by the department and was pending before the Supreme Court.
- The Kolkata High Court relying on the judgment of the Delhi High Court granted an interim stay of the proceedings till 30th November 2018.

Jaimin Engineering Pvt Ltd 2018 (17) GSTL 33 (AAR.-GST)

- Appellants are an engineering company engaged in construction of cold storage facilities in various parts of India. The Appellants are located within the State of Gujarat but are doing construction work in the State of Rajasthan.
- Appellants place of business in Gujarat but charges IGST on their Rajasthan activities as the place of supply is in Rajasthan.
- Section 2(119) of CGST Act, 2018 defines works contract as a supply of service and thus there exists a clear demarcation of a works contract. Also Section 2(15) of IGST Act, 2017 was analyzed in detail by the court which talks about the term location of supplier of services. On a perusal of the IGST Provisions location of works contractor remains in the state where principal place of business is registered.
- In the wake of the following the Authority ruled that Supplier has to register at the place from where he makes a supply of goods or services if his turnover exceeds 25 lakhs. Also Appellants have a registered office in Gujarat and Place of Business in Rajasthan from where he provides services, then he has to get himself registered even in Rajasthan.

HP India Sales (P.) Ltd, 2018 (98) taxmann.com 330 (AAR-Maharashtra)

- Appellants provided printing supplies to be used in HP's Indigo Press Machines supplied to customers. Appellants imported ElectroInk along with consumables from its overseas suppliers and once goods arrived in Mumbai port the goods were cleared after payment of Customs Duty and IGST.
- Appellants contracted with a taxable person to be its authorized reseller and distributor of goods to customers across India and based upon this contract ElectroInk and consumables were moved to the premises of the reseller.
- The question that arose for consideration was with regards to classification of ElectroInk supplied along with consumables under GST and determination of time and value of supply as per the contract.
- The Authority held that such supplies was a mixed and a continuous supply and time of supply is the earliest date between date of invoice or date of receipt of payment whichever was earlier. Valuation of ElectroInk and consumables would be as per transaction value provisions.

M/s. SMP Constructions Pvt Ltd Vs CCE & ST Vadodara 2018 TIOL 2937 CESTAT AHM

- Appellants were a construction company that provided Commercial or Industrial Construction Services. For some of the contracts they paid Service Tax on 100% of the gross value without availing abatement under Notification No. 01/2006-ST. On payment of Service Tax in full they had also availed Cenvat Credit.
- However for certain contracts, Appellants paid duty on 33% of the gross value and availed an abatement of 67% which was disputed by the department on the ground that for certain contracts tax was paid in full and credit was availed.
- This dispute came up before the Ahmedabad Tribunal which held that Commercial or Industrial Construction Services enjoyed exemption under Notification No. 01/2006 but the notification does not apply to cases where credit was availed on Inputs, Input Services and Capital Goods used for providing a service.
- Merely because for certain contracts the Appellants paid tax fully and availed credit cannot be a ground for denying benefit of Notification No. 01/2006-ST as credit was not availed on inputs used to provide taxable services.

Commr. Of ST Vs M/s Rochem Separation Systems (I) Pvt Ltd 2018 TIOL 2015 HC MUM ST

- The issue as to whether services provided by Appellant are covered under Intellectual Property Right Service was a matter not discussed by the Tribunal. The Tribunal decided to decide the dispute only on the grounds of invocation of extended period of limitation.
- The Show Cause Notice for the period 2007-08 was issued on 1st February 2010 seeking to recover Service Tax. The Tribunal held that in such a scenario when demand was barred by limitation there was no requirement for going into the merits of the case which was held in catena of Supreme Court judgments.
- There existed pending litigations in various courts and tribunals regarding Service Tax on RCM basis for the royalty paid penalty was waived by the Commissioner Appeals. Moreover during the year 2013 there was utter confusion prevailing regarding taxation of royalties under RCM.
- Hence when penalty was not leviable under Section 78 of the Finance Act, 1994 as non-payment of tax cannot be attributed to suppression or willful miss statement then extended period cannot be invoked in such a scenari

M/s. Pi Shipping and Logistics Ltd Vs CCE & ST, Chennai 2018 TIOL 3112 CESTAT MAD

- Appellants provide support to international steamer agents. During the course of audit the department alleged that there was a difference between total receipts and the amounts on which Service Tax was paid for the entire disputed period.
- Appellants contended that receipts on which Service Tax was not paid are reimbursements by customers for activities carried out on customers behalf by the Appellants which are CFS Charges, CHA Charges, Fumigation Charges, obtaining the services abroad, clearance from the port and transportation to customer premises etc.
- These reimbursable expenses are incurred at actual and cannot be levied to Service Tax as the Supreme Court judgment in the case of intercontinental technocrats is applicable to Appellants case.
- Appellants also book cargo space with a shipping line for transportation of goods to a place outside India for which they paid shipping lines and recovered the same from their exporter during the course of which they made a margin.
- The Tribunal held that activities carried out beyond the territorial waters of India cannot be subject to Service Tax and even discounts earned by the Appellant in payment of Freight Charges also not liable to tax.

M/s. Quattroporte Luxury Homes LLP: AAR Goa

- Appellants built villas for sale in the state of Goa. They had borrowed money owing to financial difficulty from one of their customer and also the same customer paid them advance towards sale of flat on which GST was paid. Also GST was paid on borrowings from the customer.
- Appellants contest that they had inadvertently paid GST on borrowings. As per GST Act supply of services involving transport of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land.
- Construction of a complex, building, civil structure or a part thereof including a complex or building intended for sale to a buyer wholly or partly is liable to GST.
- Appellants had taken an advance from his customer and claimed the same as a borrowing and later due to financial difficulty decided to sell the villa. No supporting document was adduced to prove that he has borrowed money and moreover the amount was accounted as loans and advances in the books of accounts.
- Thus the advance received is towards sale of villas received before issuance of occupancy certificate liable to GST at 12% which is nothing but a construction service.

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