

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:

- Seizure order was illegal as goods were accompanied with all requisite documents including e-way bill : Harley Foods Products (P.) Ltd. Vs. State of U.P. (HC)
- Supply to Indian Naval Ships and Indian Coast Guard Ships to be treated as exports : Fairmacs Shipstores (P.) Ltd. (AAR)
- Reimbursement of toll charges not excluded from value of supply attracts GST : Premier Vigilance & Security (P.) Ltd. (AAR)
- Corporate guarantee commission paid by parent company taxable as business auxiliary service : Olam Agro India Ltd. Vs. CCE (New Delhi – CESTAT)
- AAR has no jurisdiction to decide whether a supply is inter-state or intra-state : Fichtner Consulting Engineers (India) (P.) Ltd.
- Support services provided as a commission agent would be taxable under category of business auxiliary services : Hindustan Unilever Ltd. Vs. CCE&ST (CESTAT)
- Transportation services without consignment notes not to be considered as GTA services : Northern coal field ltd. Vs. CCE (CESTAT)
- Service tax on commission received from foreign supplier for procuring orders from Indian buyers : CCE Vs. National Engineering Industries Ltd. (HC)

Harley Foods Products (P.) Ltd. Vs. State of U.P. (2018) 99 Taxmann.com 24 Allahabad HC

- The Competent Authority vide order dated 24-3-2018 had seized the goods of the assessee under transport from Ahmedabad to Meerut on the ground that at the time of interception E-Way Bill-01 had not been produced along with other documents.
- The authority held that there was a presumption that the goods were transported inside the State of U.P. with intention to evade payment of tax and further asked the assessee to deposit the proposed amount of tax and also issued a notice.
- In the instant case, goods were moving from Ahmedabad and are to be delivered at Meerut, both the parties situated at Ahmedabad and Meerut are registered with their respective Assessing Authority. Goods were accompanied with all the requisite documents including Gujarat E-Way Bill dated 21-3-2018.
- Therefore, there was no ground to hold that the goods were coming in contravention of the provision of GST Act/Rule and the intention of the assessee was to evade the payment of tax and the order of seizure is wholly illegal.

Fairmacs Shipstores (P.) Ltd., (2018) 99 Txmann.com 108 (AAR – Andhra Pradesh)

- The applicant holds a special warehouse license, duty free ship store supplier through special warehouse and the applicant was importing cosmetics, toiletries food products like confectioneries and cigarettes etc.,. The goods so imported would be kept in special warehousing without collecting duties.
- The applicant was permitted to export the above goods which were kept in special warehouse as duty free to the ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships.
- The applicant had sought an advance ruling, that whether it was exempted from tax under GST on such outward supplies made by it. The advance ruling authority held that the applicant was not exempted from tax under GST on these outward supplies.
- The applicant had now raised a new issue that whether the transaction entered into with ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships were export (zero rated) or not.
- Further as per the circular, the Government of India, decided to treat Indian Naval vessels, as 'foreign going vessels'.
- As per section 88(A) of Customs Act,1962, the goods supplied to merchant ships on foreign run will be treated as export. As per section 16 of IGST Act'2017, the exports will be treated as 'zero' rated supplies.
- Therefore the outward supplies made by the applicant to ocean going merchant ships which are in foreign run, Indian Navy ships and Indian Coast guard ships, will be treated as 'exports'.

Premier Vigilance & Security (P.) Ltd., [2018] 99 taxmann.com 79 (AAR-WEST BENGAL)

- Applicant provides security services to banks. It also transports cash / coins / bullion's in specially built vehicles or customized cash vans.
- The applicant had sought an advance ruling, whether such charges could be included in the value of supply.
- In course of such transportation, vehicles move along National and State Highways and applicant pays toll charges to both NHAI and State Authority, which is reimbursed by client banks.
- Expenses so incurred are cost of services provided to banks and reimbursement of such cost is no disbursement, but, merely recovery of a portion of value of supply made to banks.
- Therefore, applicant is not acting in capacity of a 'pure agent' of bank while paying toll charges, and thus, same is to be excluded from value of supply.
- Hence, GST is to be paid on entire value of supply, including toll charges paid.

Olam Agro India Ltd. Vs. CCE (2018) 96 Taxmann.com 549 (New Delhi – CESTAT)

- The assessee, a major exporter of rice, obtained the corporate guarantee in favour of banks in India from its parent company suited in Singapore.
- It paid the commission at the rate of 1% of the value of such corporate guarantee to the parent company.
- The department held that the corporate guarantee commission paid by the assessee to the parent company was liable for service tax under the category of "Business Auxiliary Service".
- The tribunal held that the definition of 'Business Auxiliary Service' covered all the activities which promote the business of clients.
- Merely because the name of the guarantee has been changed from 'Bank' to 'Corporate', it cannot be said that it would not fall under

Fichtner Consulting Engineers (India) (P.) Ltd. (2018) 97 Taxmann.com 153 (AAR-Tamil Nadu)

- The assessee provides engineering consultancy services to a recipient in Tamil Nadu in relation to an immovable property located in Jharkhand.
- It contended that the service was in relation to immovable property, the place of supply is Jharkhand and hence it is an inter-state supply.
- It filed an application seeking advance ruling on issue whether transaction is an inter-state supply or intra-state supply.
- The Advance Ruling Authority can only decide the issue which are mentioned in the section 97(2) of the CGST Act,2017.
- Therefore, the application is rejected without going into the merits of the case, due to lack of jurisdiction.

Hindustan Unilever Ltd. Vs. CCE&ST Chennai (2018) 96 Taxmann.com 381 (CESTAT-Chennai)

- The assessee provides support services for the sale and distribution of Vanaspati Gee of 'B'. in India as per commission agency agreement with 'B'.
- It also agreed to act and operate as a commission agent for and on behalf of 'B'.
- It claimed that the said services would fall within the scope of 'commission agent' under 'Business Auxiliary Service'.
- The department held that the activities of the assessee would fall within the scope of 'clearing and forwarding agent service'.
- The tribunal held that the activities of the assessee could not be bought within the meaning of 'clearing and forwarding agent service'.
- Therefore, the said services would be classified as a 'commission agent' under 'Business Auxiliary Service'.

Northern coal field ltd. Vs. CCE (2018) 92 Taxmann.com 219 (CESTAT – All.)

- The assessee is engaged in several transporters for transport of coal from coal face to coal stock yards.
- The transporters had not generated the consignment notes and payments were made only on the basis of particulars were made only on the basis of particulars generated during weighment.
- The department held that the said services received by the assessee would fall under the category of ‘Goods transport agency services’.
- The tribunal held that the definition of ‘Goods transport agency services’ clearly specifies the person who provides the service in relation to transport of goods and issues a consignment note.
- Therefore, such services could not be classified as ‘Goods transport agency services’ as no consignment notes were issued by the transporters to the assessee.

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.

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