

**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:**

- No GST on supply of goods by dealer through its UK based principal directly to vessel at Singapore : Enmarol Petroleum India (P.) Ltd. (AAR)
- Competent Authority can't invoke bank guarantee till assessee exhausts its statutory remedy : Safa Mill Stores Vs. Assistant State Tax Officer (Kerala – HC)
- Maintenance & Repair services of commercial & industrial machinery taxable at rate of 18% GST : Sandvik Asia (P.) Ltd., (AAR)
- GST is applicable on long term lease : Goa Tourism Development Corporation Ltd., (AAR)
- Amount retained by hospital from fees charged by contractual doctors not taxable as fee for support services : SIR GANGA RAM HOSPITAL Vs. CCE (CESTAT)
- No credit of Krishi Kalyan Cess allowed under GST : KANSAI NEROLAC PAINTS Ltd. (AAR)
- Consideration received on revenue sharing basis does not fall under category of Business Auxiliary Service : TIMES INTERNET Ltd. Vs. CCE (CESTAT)
- 3hearings must be given before deciding a case : WIZCRAFT INTERNATIONAL ENTERTAINMENT (P.) Ltd. Vs. CST (CESTAT)

### **Enmarol Petroleum India (P.) Ltd. [2018] 100 taxmann.com 124 (AAR - MAHARASHTRA)**

- Applicant engaged in the business of the trading in marine fuel additives is an authorized dealer of UK company Innospec selling the marine fuel additive chemicals of Innospec to shipping lines in and outside India.
- An Indian Shipping Company 'AZA Shipping', placed a purchase order on the applicant for fuel additive for vessel M T CHAFA and was to be delivered at Singapore Port.
- The applicant placed purchase order on the Innospec UK which delivered the goods through its Singapore Logistics Partner to the vessel MT Chafa at Singapore Port.
- The applicant has sought an advance ruling, that whether the supply of goods to a customer located outside India to a customer within India without physically bringing the good to India is liable to pay GST and whether the out & out supplies in the present case will be considered as export supplies or exempted supplies.
- It's held that the applicant would not be liable to pay GST on supply of goods located outside India to customers within India without physically bringing goods to India.
- Further, the 'out & out' supplies would be "non-taxable supply" which means a supply of goods or services or both which is not leviable to tax under CGST or IGST Act.

### **Safa Mill Stores Vs. Assistant State Tax Officer, Karukutty [2018] 99 taxmann.com 308 (Kerala – HC)**

- The petitioner, a partnership firm, transported certain goods ostensibly from Bombay to Perumbavoor.
- But when the petitioner tried to unload the goods at Malamury, Perumbavoor, the authorities checked the documents carried along with the goods and found that they did not correctly reflect the destination point.
- Suspecting tax evasion, the authorities detained the goods and demanded penalty as well as tax.
- Further the assessee had furnished bank guarantee for tax and penalty imposed and had goods released
- The High Court held that, where Competent Authority had detained goods of assessee under transport and demanded tax as well as penalty and assessee furnished bank guarantee for tax and penalty imposed and had goods released, Competent Authority was restrained from invoking bank guarantee till assessee exhausted statutory remedy.

### **Sandvik Asia (P.) Ltd., [2018] 100 taxmann.com 14 (AAR- RAJASTHAN)**

- The applicant is a private limited company and is a multi-product, multi-division entity engaged in the manufacturing, distribution and sales agency activities of various industrial products which include metal cutting tools, mining/construction equipment's, etc.
- Further, the applicant is also engaged into business of after sale support for the mining equipment manufactured by its overseas group entities which are imported by the customers into India.
- The applicant has sought an advance ruling, that whether the maintenance services rendered under comprehensive maintenance services and supply of spare parts should be classified as 'composite supply' or 'mixed supply' and the tax that need to be charged.
- It was held that, applicant engaged into business of after sales support for mining equipment manufactured by its overseas group entities which are imported by customers into India, i.e., activities performed under the 'Comprehensive Maintenance Contract' are to be treated as a composite supply of services
- And the activities performed under 'Equipment Parts Supply and Services Agreement' are to be treated as Mixed Supply.
- Maintenance & Repair services of commercial & industrial machinery taxable at rate of 18% GST

### **Goa Tourism Development Corporation Ltd., [2018] 100 taxmann.com 128 (AAR - GOA)**

- The applicant is a Government and has executed Concession Agreement for Renovation/Development of their Anjuna property through Private Investment Mode, with Myrayash Hotels Pvt. Ltd, given the exclusive right, license and authority to construct, operate and maintain the project for a period of 30 years extendable by further period of 30 years totaling 60 years.
- The applicant has collected the amount in the name of onetime upfront Concession Fees for a term of 60 years.
- The applicant has sought an advance ruling, claiming exemption under entry 41 (Entry 41 – defining upfront amount ) under Notification No. 12/2017-Central Tax (Rate), as amended by the Notification No. 32/2017-Central Tax (Rate).
- It was held that no such Notification declaring the area consisting of plot leased out by the applicant, as industrial/financial business area, is on record. Therefore, the area cannot be treated as industrial or financial business area.
- Hence, the applicant is not entitled for the benefits of the said notification and the activity of long term lease is liable for levy of GST.

### **SIR GANGA RAM HOSPITAL Vs. CCE (2018) 95 Taxmann.com 226 (New Delhi – CESTAT)**

- The assessee, a hospital, had engaged doctors on contractual basis and has provided space to the doctors in the hospital with required facilities to attend patients.
- The professional fee was paid to doctors in terms of contracts, was computed on the basis of amount received by the assessee from the patients
- The department held that the collections charges / facilitation fees retained by the assessee was liable to service tax under the category of 'Support Service' on the ground that such fees were retained due to infrastructural support provided.
- The tribunal held that the share of clinical establishments was not liable to service tax under the category of 'support service' on the mere fact that they had supported the commerce or business of doctors by providing infrastructural support.

### **KANSAI NEROLAC PAINTS Ltd. (2018) 93 Taxmann.com 58 (AAR - Maharashtra)**

- In the Pre-GST regime, the assessee was registered as Input Service Distributor (ISD) for its Head office to distribute eligible credit to its respective manufacturing units.
- The assessee wanted to carry forward the accumulated credit of Krishi Kalyan Cess (KKC) appeared in the service tax return on June 30, 2017 to the electronic credit ledger under the GST Act.
- In the post GST regime, neither there is specific restriction in law regarding admissibility of KKC nor there is any specific provision regarding admissibility of KKC as input tax credit.
- The assessee filed the application for Advance Ruling regarding admissibility of KKC as input tax credit under GST Act.
- The Authority for Advance Ruling held that the taxable person is allowed to carry forward the credit to the extent of admissible Input Tax Credit under GST but the definition of Input Tax Credit does not include any Cess.
- Further, the KKC credit could be utilized only with KKC liability but there was no levy of KKC under GST.
- Therefore, KKC credit will not be considered as admissible Input Tax Credit and Hence, the ITC of KKC could not be carried forward under GST.

### **TIMES INTERNET Ltd. Vs. CCE (2017) 82 Taxmann.com 439 (New Delhi – CESTAT)**

- The assessee, a company, entered into agreement with various telecom companies for developing and supplying contents like news, cricket score, etc., on revenue sharing basis.
- The department held that these value added services were to be considered under the taxable category of business auxiliary service.
- The Tribunal held that such arrangement between assessee and telecom companies was on principal to principal basis.
- Therefore, the **consideration received on revenue sharing basis could not fall under category of Business Auxiliary Service.**

### **WIZCRAFT INTERNATIONAL ENTERTAINMENT (P.) Ltd. Vs. CST (2017) 82 Taxmann.com 156 (Mumbai – CESTAT)**

- The assessee was engaged in providing Event Management Services and it was collecting additional amount from clients on account of various expenses in name of reimbursement and claimed said reimbursement as not liable to service tax.
- The department alleged that the appellant was collecting additional amount on account of various expenses in the name of reimbursement and claimed such reimbursements as not liable to service tax.
- The assessee filed an appeal before the tribunal on the ground that only one hearing was granted for which they sought for an adjournment
- The Tribunal held that as per statutory provisions, notice must be given for three hearing before deciding a case.
- Therefore, the matter was remanded to department for passing a fresh order after giving sufficient opportunities of personal hearing to 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.

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](http://www.daa-india.com)