



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:

- Transportation services without consignment notes not to be considered as GTA services : Northern coal field ltd. Vs. CCE (CESTAT)
- Supply to Indian Naval Ships and Indian Coast Guard Ships to be treated as exports : Fairmacs Shipstores (P.) Ltd. (AAR)
- Service tax on commission received from foreign supplier for procuring orders from Indian buyers : CCE Vs. National Engineering Industries Ltd. (HC)
- Reimbursement of toll charges not excluded from value of supply attracts GST : Premier Vigilance & Security (P.) Ltd. (AAR)
- Computers used for providing output service don't qualify as inputs for availing of transitional ITC - Geojith Financial Services Ltd., (AAR-KERALA)
- Corporate guarantee commission paid by parent co. was taxable as business auxiliary service : OLAM AGRO INDIA LTD. Vs. CCE (New Delhi – CESTAT)
- Support services provided as a commission agent would be taxable under category of business auxiliary service : HINDUSTAN UNILEVER LTD. Vs. CCE & ST, Chennai (Chennai – CESTAT)
- ITC of GST paid on freight for transportation of non-taxable goods to another unit not available Indian Oil Corporation Ltd., (AAR – West Bengal)

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.

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'.

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.

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.

Geojith Financial Services Ltd. [2018] 98 taxmann.com 160 (AAR-KERALA)

- The assessee is engaged in providing various retail financial services like stock broking, share broking, marketing of initial public offering of companies and mutual funds, corporate advisory services etc., which were not taxable under VAT law.
- The assessee filed an application for Advance Ruling regarding whether computers used by the applicant for providing output services would qualify as inputs for the purpose of availing transitional ITC and if the goods are physically available as closing stock as on 30th June,2017, can ITC be availed for the VAT paid.
- The Authority of Advance Ruling held that the applicant being a service provider is not eligible to avail input tax credit on computers and laptops held during the transition period and hence the transitional credit claim of the assessee in respect of capital goods is not acceptable.
- Therefore, the computer, laptops, etc., used by the applicant for providing output services would not qualify as inputs for the purpose of availing transitional ITC.
- Similarly the goods physically available as closing stock as on 30th June 2017, ITC is not eligible for the VAT paid.

OLAM AGRO INDIA LTD. Vs. CCE (2018) 96 Taxmann.com 549 (New Delhi – CESTAT)

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

HINDUSTAN UNILEVER LTD. Vs. CCE & ST, Chennai (2018) 96 Taxmann.com 384 (Chennai – CESTAT)

- The assessee had provided its 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' and 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 brought within the meaning of 'Clearing and forwarding agent service'. The said service would be classified as a 'commission agent' under 'Business Auxiliary Service'.

Indian Oil Corporation Ltd., [2018] 97 taxmann.com 384 (AAR WEST BENGAL)

- Applicant exports High Speed Diesel (HSD), Aviation Turbine Fuel (ATF) and other refined petroleum products to Nepal under terms and conditions laid down in an agreement between Indian Oil Corporation and Nepal Oil Corporation.
- It has been paying GST on input service of Railway Freight for above transportation.
- It is seeking advance ruling on whether GST paid on railway freight for transportation of goods from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit under GST Act.
- It is observed that transfer of ATF and other non-taxable supplies from Refinery to Depot are not export of as per IGST Act, but exempted supplies from West Bengal Unit to Bihar Unit of applicant, who are distinct persons in terms of GST Act.
- Therefore, not applicable and, thus, applicant cannot claim credit of GST paid on input services like railway freight on ATF and other non-taxable supplies from West Bengal to his Bihar Unit.

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