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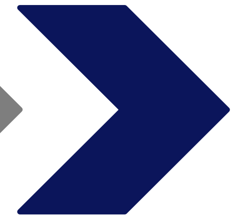

Case Laws of The Week *24th December 2018*

This alert summaries the AAR Rulings under the GST Regime, rulings of courts and tribunals under the erstwhile Indirect Tax Regime:

- Re-packing & re-labelling of spare parts tantamount to manufacture : Piaggio Vehicles (P.) Ltd. Vs. Commissioner of Central Excise (CESTAT – Mumbai)
- GST would be applicable on cheque bouncing charges : Bajaj Finance Ltd. (AAR – Maharashtra)
- Services of transporting, booking & dispatching of goods by port trust classifiable as business auxiliary service : Paradeep Port Trust Vs. Commissioner of Central Excise, Customs & Service Tax (CESTAT – Kolkata)
- Renting of workwear with other support services for a single consideration treated as mixed supply : Lindstrom Services India (P.) Ltd. (AAR – Maharashtra)
- Supply of goods to Duty Free Shop at international airport in India not exempt from GST : Vasu Clothing (P.) Ltd. Vs. Union of India (HC – Madhya Pradesh)
- Technical know-how obtained for product manufacturer-foreign co. taxable as franchise service : Timken India Ltd. Vs. Commissioner of Central Excise, Jamshedpur (CESTAT – Kolkata)
- Service Tax on salary of staff reimbursed to distributors under Business Auxiliary Services : IPCA Laboratories Ltd. Vs. CCE & ST (CESTAT - Mum.)
- Hotel accommodation services to employees & guests of SEZ units, outside SEZ are taxable as 'Inter-State' services : Gogte Infrastructure Development Corporation Ltd. (AAR – Karnataka)

Piaggio Vehicles (P.) Ltd. Vs. Commissioner of Central Excise, Pune-III [2018] 100 taxmann.com 276 (Mumbai - CESTAT)

- The assessee was engaged in the manufacture of Three Wheeler Motor Vehicle.
- It procured spare parts falling under Heading Nos. 3208, 8536 and 8539 of the Central Excise Tariff Act from various vendors and after repacking them into unit containers and re-labelling of containers cleared the containers to various dealers/customers, etc. under its brand name.
- The Adjudicating Authority held that the activity of repacking/re-labelling of the spare parts amounted to manufacture in terms of section 2(f)(iii) of the Central Excise Act, which specified that repacking/re-labelling of the goods specified in the Third Schedule of the Act to make them marketable amounted to manufacture. Therefore, the activity carried out by the assessee was of manufacture and excise duty on the basis of MRP
- The Tribunal held that where assessee procured spare parts falling under Heading Nos. 3208, 8536 and 8539 of Central Excise Tariff Act, i.e., covered under Third Schedule of Central Excise Act from vendors and after repacking them into unit containers and re-labelling of unit containers cleared unit containers to dealers, activity of repacking/re-labelling amounted to manufacture

Bajaj Finance Ltd., [2018] 100 taxmann.com 396 (AAR - MAHARASHTRA)

- The applicant, a non-banking financial company was providing various types of loan to its customers and charged interest on such loans disbursed, for which the applicant entered into agreements with customers.
- The agreements provided for repayment of the loan in the form of Equated Monthly Installments (EMI) vide cheque/Electronic Clearing System (ECS), etc and in case of dishonour of cheque/ECS/NACH or any other electronic or clearing mandate by the customers, the applicant collected bounce charges, which was in line with the agreed terms and conditions of the agreement.
- The applicant filed an Advance Ruling to determine whether such bonus charges are taxable under GST.
- The Tribunal held that the exemption for financial transactions under GST laws is only in respect of the interest/discount earned or paid for loans, deposits or advances.
- Therefore, Bounce charges collected by applicant, non-banking financial company, for dishonour of EMI cheques for repayment of loans by its customers would be treated as 'supply' and hence taxable.

Paradeep Port Trust Vs. Commissioner of Central Excise, Customs & Service Tax, BBSR-1 [2018] 100 taxmann.com 240 (Kolkata - CESTAT)

- The assessee, a body corporate constituted under the Major Port Trusts Act, 1963, entered an agreement with the erstwhile South Eastern Railway, presently East Coast Railways, to provide the services of receiving and delivering, transporting, booking and dispatching the goods originating in the vessels in the port and intended for carrying by the neighbouring railways or vice versa.
- For providing such services, the assessee received from the railways lumpsum amounts known as 'terminal charges'.
- The Adjudicating Authority held that the assessee was liable to payment of service tax on the 'terminal charges' under the category of 'Port services'.
- The Tribunal held that where assessee, entered into an agreement with erstwhile South Eastern Railway to provide services of receiving and delivering, transporting, booking and dispatching goods originating in vessels in port and intended for carrying by neighbouring railways or vice versa, activity undertaken by assessee would be classifiable under head 'Business auxiliary service'

Lindstrom Services India (P.) Ltd. [2018] 100 taxmann.com 449 (AAR - MAHARASHTRA)

- The applicant company was primarily engaged in the business of renting of workwear to its customers, along with providing the workwear on rent, it also provided other ancillary services such as weekly washing, cleaning, maintenance and repair(s) and replacement of workwear due to normal wear and tear and it was charging a single consideration (i.e. weekly rental) for these activities.
- The applicant had sought advance ruling on whether renting of workware qualified as 'transfer of right to use' of goods by the applicant to its customers and does this supply qualify as 'composite supply' or as 'mixed supply'.
- The authority of advance ruling held that the Activities/transactions of renting of workwear to customers by applicant qualified as 'transfer of right to use' of goods and said supply of renting of workwear along with other ancillary services such as transportation, weekly washing etc. for a single consideration was a mixed supply.

Vasu Clothing (P.) Ltd. Vs. Union of India [2018] 100 taxmann.com 451 (Madhya Pradesh)

- The petitioner is a manufacturer and exporter of garments in India and specializes in manufacturing of high quality products for children with customer base in Middle East, South Africa and USA and intends to supply goods to Duty Free Shops (DFSs) situated in the duty free area at international airports.
- The petitioner is aggrieved by the fact that the benefit available to him under the erstwhile central excise regime of removing goods from his factory to DFS located in the international airports without payment of duty is not available to him under the GST regime.
- The High Court held that, in light of the definition, a Duty Free Shop situated at the airport cannot be treated as territory out of India, as the petitioner is not exporting the goods out of India, he is selling to a supplier who is within India and the point of sale is also at Indore as the petitioner is receiving price of goods at Indore.
- Therefore, No GST exemption on goods and service supply to Duty Free Shops (DFSs) at international Airports in India.

Timken India Ltd. Vs. Commissioner of Central Excise, Jamshedpur [2018] 100 taxmann.com 306 (Kolkata - CESTAT)

- The assessee had entered into a Technology License and Technical Assistance Agreement with one 'T', a foreign company located in USA, to avail proprietary technical information, know-how, etc. for manufacture of products and for service of the main products. Under the agreement, the assessee was also required to represent 'T' to his customers in such a way that it would be known only by the identity of 'T'.
- The assessee claimed that the services received by it from 'T' would be taxable under the category of 'intellectual property right service'.
- The Adjudicating Authority held that the services received by the assessee from 'T' would fall under the category of 'franchise service' and it was liable to pay service tax under reverse charge mechanism.
- The Tribunal held that where assessee had entered into an agreement with 'T', a foreign company located in USA, to avail proprietary technical information, know-how, etc. for manufacture of products and for service of products and it was also required to represent 'T' to his customers in such a way that it would be known only by identity of 'T', services availed by assessee from 'T' would be classifiable under 'franchise service'.
- Therefore, technical know-how obtained for product manufacturer-foreign co. taxable as franchise service

IPCA Laboratories Ltd. Vs. CCE & ST (2018) 93 Taxmann.com 338 (Mum. – CESTAT)

- The assessee had engaged distributors in various countries where the goods were exported and sold.
- These distributors appointed sales representatives for promotion of the goods and their salary was reimbursed by the assesse to those distributors on the debit note.
- The department held that the assessee was liable to pay service tax on the amount paid to the distributors under the category of "Business Auxiliary Services".
- The tribunal held that the amount was spent by the distributors for the promotion of their own products. Therefore, the service tax could not be demanded on the said service under the head of " Business Auxiliary Service"

Gogte Infrastructure Development Corporation Ltd., (2018) 93 Taxmann.com 201 (AAR – Kar.)

- The applicant provides hotel accommodation and restaurant services to the employees and guests of SEZ units and were charging GST at applicable rates.
- The SEZ units contended that the services has been supplied to SEZ and hence the rate of GST would be NIL and therefore filed an application seeking advance ruling on 'whether such services would be treated as supply of goods & services to SEZ units or not.
- The authority of Advance ruling held that the place of supply of the services by way of lodging shall be the location of immovable property and incase of restaurant and catering services shall be the location where the services are actually performed.
- Therefore the services provided to the employees and guests of SEZ units could not be treated as supply of goods and services to SEZ units.

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.

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