



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:

- Corporate guarantee commission paid by parent co. was taxable as business auxiliary service : OLAM AGRO INDIA LTD. Vs. CCE (CESTAT – New Delhi)
- Discount withdrawn by supplier through another invoice doesn't amount to profiteering : RISHI GUPTA Vs. FLIPKART INTERNET (P.) Ltd. (NAA)
- Commission received from container liners for providing service taxable as business auxiliary service : CCE & C Vs. RE SHIPPING (CESTAT – Hyd)
- Supply of medicines & allied items to in-patients by hospital is composite supply; not separately taxable : ERNAKULAM MEDICAL CENTRE (P.) LTD (AAR)
- GST applicable on services provided by corporate office to its unit in other state : COLUMBIA ASIA HOSPITALS PVT LTD., (AAR - KARNATAKA)
- Support services provided as a commission agent would be taxable under category of business auxiliary service : HINDUSTAN UNILEVER LTD. Vs. CCE & ST (CESTAT – Chennai)
- Freight to be included in transaction value of imported goods for payment of IGST : Chambal Fertilisers & Chemicals Ltd., (AAR – RAJASTHAN)
- High Court judgments binding on a subordinate court : TVS Srichakra Ltd Vs. CCE Madurai (HC)

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.
- Mere change in name from 'Bank' to 'Corporate', cannot be said that it would not fall under the category of 'Business Auxiliary Service'..

RISHI GUPTA Vs. FLIPKART INTERNET (P.) Ltd. (2018) 95 Taxmann.com 221 (NAA)

- The assessee had ordered Godrej Almirah and a tax invoice was issued to him for an amount of Rs. 14852/- and at the time of delivery, another invoice was issued by the supplier for an amount of Rs. 14152/-
- The assessee alleged that the excess amount paid was not refunded and therefore, the flipkart was restoring to profiteering which amounted to the contravention of the anti-profiteering provision.
- The National Anti-profiteering Authority held that the difference in price was due to different rates in GST at the time of placing the order and at the time of supply and directed the flipkart to refund the excess amount.
- Hence, the allegation of violations of anti-profiteering provisions was not established.
- Further, the issue of denial of discount at the time of supply also did not amount to profiteering, as the discount was offered from profit margin of supplier and did not form part of basic pay.

CCE & C Vs. RE SHIPPING (2018) 93 TAXMANN.COM 319 (CESTAT – Hyd)

- The assessee received commission from container liners for providing services to them.
- The Commissioner (Appeals) held that the services provided by the assessee would fall under the definition of 'Steamer Agent'.
- The Tribunal held that the container lines were different from shipping lines which run the ships.
- As per the Finance Act, definition of 'Steamer Agent' the services rendered to container lines could not be covered under this definition.
- Therefore, such service could be classified under the category of 'Business Auxiliary Service'.

ERNAKULAM MEDICAL CENTRE (P.) LTD., IN RE [2018] 98 Taxmann.com 161 (AAR-KERALA)

- The assessee is rendering medical services with professionals like doctors, nursing staff, lab technicians etc., in the present GST scenario health care services by a medical establishment have been exempted.
- Hence the assessee sought for an advance ruling on the liability of hospital under GST Act on the supply of medicines and allied items through the pharmacy.
- The goods supplied to inpatients are indispensable items and it is a composite supply to facilitate health care services.
- Therefore, the supply of medicines and allied items provided by the hospital through the pharmacy to the inpatients is part of composite supply of health care treatment and hence not separately taxable.
- But the supplied of medicines and allied items provided by the hospital through the pharmacy to the outpatients is taxable.

COLUMBIA ASIA HOSPITALS PVT LTD., [2018] 96 taxmann.com 245 (AAR - KARNATAKA)

- The applicant is a private limited company and is an international healthcare group operating a chain of modern hospitals across Asia and the company is currently operating across six different states, having eleven hospitals out of which six units are in the state of Karnataka
- Appellants performed accounting, administrative and IT System maintenance for its units located in other states i.e. distinct persons from their Management Office. The Management Office also utilized certain services such as rental services on which they had paid GST and availed Input Tax Credit.
- The Management Office raised invoices on other units for an amount determined on the basis of turnover of respective unit to the total turnover of all units and then GST is discharged on the same.
- The issue is whether activities performed by employees at their corporate office in the course of or in relation to employment for their units located in other states would be treated as a Schedule I Supply under CGST Act, 2017. Also allocation of expenses to other registered units in various states amounts to a supply of service.
- Appellants contended that activities carried out at Management Office are supply of services within distinct persons without consideration hence not a supply vide a specific relaxation provided in Schedule II.
- The Authority held that the activities performed in corporate office for their units located in other states are nothing but activities made between related persons are treated as supplies under Schedule I of CGST Act..

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 Ghee 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'.

CHAMBAL FERTILISERS & CHEMICALS LTD., (AAR – RAJASTHAN)

- The applicant is engaged in trading business of goods like DAP, MOP.
- The said goods are purchased from a country outside India and imported into India and the said goods are imported whether on CIF or FOB Basis.
- The applicant has sought an Advance Ruling on the applicability of Ocean Freight Charges and system of double taxation with respect to import.
- It is held that the applicant is liable to pay IGST on transportation of goods by vessel under RCM under Notification No. 10/2017 and Ocean freight to be included in transaction value of imported goods for payment of IGST.

TVS Srichakra Ltd Vs. CCE Madurai 2018(15) GSTL 182 Madurai (HC)

- Appellants sold capital goods in the form of plant and machinery to OPC Asset Solutions Pvt Ltd. Later on these goods were leased back to the petitioner. These goods were sold to OPC Assets Solutions Pvt Ltd for financial accommodation and in view of contemporaneous leasing back through rental agreement there exists no removal of capital goods from the factory.
- Department however made a case for deemed removal/delivery of capital goods and hence liable to reverse the credit proportionate to the actual credit taken to the extent of usage of pay duty on transaction value.
- Show Cause Notice was issued demanding duty along with interest and penalty confirmed by Adjudicating, Appellate Authority and Tribunal.
- On Appeals before High Court the court held that Rule 3(5) of Cenvat Credit Rules, 2004 cannot be invoked when there is no removal of goods under cover of invoice as per Rule 9. This view was affirmed by division bench of the same high court which was binding on a subordinate court.
- If lower authority ignores the law then their proceedings would be invalid without jurisdiction and thus there exists a convincing case for the Appellant.

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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