



**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:**

- ITC of GST paid on freight for transportation of non-taxable goods to another unit not available : Indian Oil Corporation Ltd., (AAR – West Bengal)
- Exporters to import without payment of IGST to extent of advance authorization license : NARENDRA PLASTIC (P.) LTD. Vs. UNION OF INDIA (HC – Delhi)
- Commission received from container liners for providing service taxable as business auxiliary service : CCE & C Vs. RE SHIPPING ((CESTAT – Hyd)
- Support services provided as a commission agent would be taxable under category of business auxiliary service : HINDUSTAN UNILEVER LTD. Vs. CCE & ST (CESTAT - Chennai)
- Conveyance details in Part-B of the E-way bill not required : SBGC Logistics Vs. State Of UP (HC – Allahabad)
- Taxability on recovery of food expenses from employees for the canteen services provided by the company : Caltech Polymers Pvt. Ltd. ( A.A.R. – GST )
- Assessee entitled to rebate of duty paid on export of capital good by reversing ITC : Union Of India Vs. Sterling Industries (I) Ltd. (H.C - Bom.)
- Service tax on commission received from foreign supplier for procuring orders from Indian buyers : CCE Vs. National Engineering Industries Ltd. (H.C - Raj.)

### **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.

### **NARENDRA PLASTIC (P.) LTD. Vs. UNION OF INDIA (2017) 85 TAXMANN.COM 153**

- The assessee-company was engaged in the business of manufacturing and exporting plastic products and the assessee had paid IGST out of its sources for import causing a working capital blockage.
- The assessee had filed a writ petition seeking to avail the credit outstanding in respect of advance authorization issued.
- The high court held that under foreign trade policy, the advance authorization license was issued to a manufacturer-exporter or merchant exporter having past export dealings in at least two preceding financial years.
- Therefore HC allows exporters to import without payment of IGST to extent of advance authorization license.

#### **CCE & C Vs. RE SHIPPING (2018) 93 TAXMANN.COM 319**

- 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'.

#### **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'.

### **SBGC LOGISTICS Vs. STATE OF UP 2018 TIOL 106 (HC – Allahabad)**

- The assessee is engaged in the business of transportation of goods.
- For the purpose of transportation, the consignor, after duly filing in the requisite information, had downloaded the e-way bill. However, in the absence of vehicle details, part B of the e-way bill was not filed.
- The goods were first transported from the place of business of the consignor to the godown of the assessee whose distance is less than 50km.
- The vehicle was intercepted and the goods were detained on the ground that the goods were not accompanied with Part B of the E-way bill.
- The court held that the seizure proceedings carried out was illegal and carried out without jurisdiction.
- Therefore, both the seized goods and vehicle were directed to be released as goods were transported within the state upto a distance of 50km.

### **CALTECH POLYMERS PVT. LTD. 2018 (12) G.S.T.L. 350 ( A.A.R. – GST )**

- The applicant is a Private Limited Company engaged in the manufacture and sale of footwear and they are providing canteen services exclusively for their employee's.
- They are incurring the canteen running services and are recovering the same from its employees without any profit margin.
- An application was filed for advance ruling on whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and is taxable under Goods & Service Tax Act.
- The AAR held that, as there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" and since the applicant recovers the cost, there is consideration too.
- Therefore it is hereby clarified that recovery of food expenses from the employees falls under the definition of 'outward supply' and taxable as a supply of service under GST

**UNION OF INDIA Vs. STERLING INDUSTRIES (I) Ltd. (2017) 87 Taxmann.com 201 (H.C - Bom.)**

- The assessee imported used aluminum casting machines as capital goods.
- It availed credit of duty on those capital goods that were exported on payment of duty by reversing the input tax credit availed.
- Subsequently, the assessee claimed rebate of duty paid on export of capital goods.
- The department rejected the rebate claim of the assessee.
- The High Court held that the duty paid by debiting the credit entry, rebate claim was allowable and it was not open to the department authorities to argue to the contrary.
- Therefore, the assessee was entitled to rebate of duty paid on export of capital goods by reversing the input tax credit

**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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