



**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:**

- Multimodal Transport Operator Services couldn't be classified as 'Business Auxiliary Services' : Swift Shipping (Madras) Pvt Ltd. Vs. Commissioner of Service Tax (CESTAT – Chennai)
- No service tax on remuneration paid to directors if they were employees of the company : Allied Blenders And Distillers (P.) Ltd. Vs. Commissioner of Central Excise & Service Tax ( )
- No reversal of Cenvat credit if output service was taxed before receipt of completion certificate : Alembic Ltd. Vs. Commissioner of Central Excise & Service Tax (CESTAT – Ahmedabad)
- No service tax to be charged on payment made to lead generator on commission : Commissioner of Service Tax, Mumbai-VI Vs. Reliance Life Insurance Co. (CESTAT-Mumbai)
- Goods detained on ground of non-updation of Part-B of E-way bill to be released on payment of GST liability : Preethi Kitchen Appliances (P.) Ltd. Vs. State Tax Officer (High Court- Madras)
- Supply to Indian Naval Ships and Indian Coast Guard Ships to be treated as exports : Fairmacs Shipstores (P.) Ltd. (AAR – Andhra Pradesh)
- Reimbursement of toll charges not excluded from value of supply and attracts GST : Premier Vigilance & Security (P.) Ltd. (AAR – West Bengal)
- Sale and purchase of DFIA licenses attracts GST as it is different from duty credit scrips : Spaceage Syntax (P.) Ltd (AAR – Maharashtra)

### **Swift Shipping (Madras) Pvt Ltd. Vs. Commissioner of Service Tax (2019) 101 Taxmann.com 459**

- The assessee provides Multimodal transport operator services and is registered with the Directorate of General of Shipping.
- Pursuant to investigation, it was found that the assessee had availed services of an overseas agent for destuffing the cargo at Hub port and reshipped to the intended destination, the freight and other charges is paid by the assessee i.e the assessee remits the freight payable to the party acting as their agent at the Hub port at a mutually agreed or a pre-fixed rate.
- The main business is consolidation of cargo and on such cargo even bill of lading is prepared showing M/s. Swift as consignor. On their export container loads, they are reimbursed 2% brokerage by liner agent on the freight.
- The department alleged that the main activity of appellant is promoting services of various shipping lines and also managing distribution and logistics and that the services performed by appellants would be liable to classify under "Business Auxiliary Service" (BAS) under the category of services in relation to promotion and marketing of services.
- The Tribunal held that the 'Multimodal Transport Operator Services' provided by assessee, during period 1-7-2003 to 30-4-2006, would not fall under category of 'Business auxiliary service'.

### **Allied Blenders And Distillers (P.) Ltd. Vs. Commissioner of Central Excise & Service Tax, [2019] 101 Taxmann.com 462**

- The assessee-company had paid remuneration to its four whole time Directors during the period July, 2012 to March, 2015.
- The assessee contended that the remuneration paid by it to the Directors was in the nature of salary on day-to-day affairs of company and made necessary deductions on account of Provident Fund, Professional Tax and TDS as applicable
- And also contended that since relation between assessee and four Directors was in nature of employer and employee, no service tax was payable by it on remuneration paid to Directors which was nothing but 'salary' being paid to an employee
- The Department alleged that the assessee was required to discharge service tax, under reverse charge mechanism, on the remuneration paid to the Director.
- The Tribunal held that Where assessee-company paid remuneration to its four whole time Directors for managing day-to-day affairs of company and made necessary deductions on account of Provident fund, Professional Tax and TDS as applicable and declared these Directors to all statutory authorities as employees of company, remuneration paid to Directors was nothing but salary and assessee was not required to discharge service tax on remuneration paid to Directors

**Alembic Ltd. Vs. Commissioner of Central Excise & Service Tax, Vadodara-I [2019] 101 Taxmann.com 461**

- The assessee was engaged in development of real estate projects and availed CENVAT Credit of service tax paid on various input services used to construct residential complex under the category of works contract service for the residential units sold to various customers.
- The assessee had obtained completion certificate on 24-02-2014 and on such date approximately 35% property was unsold and no booking was made on such. They had given due intimation to the competent authority that it shall be availing only proportionate credit of Service Tax on input services received after date of obtaining completion certificate.
- Meanwhile, CERA auditors audited and asked to reverse CENVAT Credit / pay a certain amount towards proportionate CENVAT Credit availed by it during period 2010-11 till date of obtaining Completion Certificate.
- The department has issued a SCN stating that no service tax was paid by the assessee, on the ground that it had availed cenvat credit and provided taxable as well as exempt services and had not maintained separate accounts.
- The Tribunal held that the assessee is not liable to pay since service became exempt after receipt of completion certificate and since the CENVAT Credit has been availed only proportionately by maintain separate books.
- Therefore the assessee is not required to reverse cenvat credit availed during the period when output service was wholly taxable before receipt of Completion Certificate and is eligible to seek refund of amount paid under protest.

**Commissioner of Service Tax, Mumbai-VI Vs. Reliance Life Insurance Co. [2019] 101 taxmann.com 408 (Mumbai - CESTAT)**

- The assessee (recipient of service) had paid a certain amount as commission to the 'lead generators' for marketing of its product and excluded the said amount from the assessable value during the period October, 2008 to March, 2011.
- The department alleged for recovery of the amount paid to these allegedly unlicensed 'insurance agents'.
- The Tribunal held that where assessee paid commission to 'lead generators' for marketing of its product, service rendered by 'lead generator' was not that of an 'insurance agent'.
- Therefore, said commission was not liable to be included in assessable value of assessee for discharge of service tax liability

### **Preethi Kitchen Appliances (P.) Ltd. Vs. State Tax Officer [2019] 101 taxmann.com 485 (High Court-Madras)**

- The Competent Authority had detained the goods of the assessee under transport on the ground that Part-B of the E-way bill was not updated.
- According to the petitioner, the Part-B of the E-Way bill was properly filled up and also updated and therefore, the consignment could not be intercepted.
- The assessee filed a writ petition contending that it would pay one time tax under the CGST Act and the Tamil Nadu GST Act for the purpose of releasing the goods and agitate the matter before the appropriate authority by way of filing revision.
- The High court held that the detained goods shall be released on paying one time tax liability under the CGST Act and the Tamil Nadu GST Act before the Deputy Commissioner within a period of four days.

### **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 a special warehouse 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'.

### **Premier Vigilance & Security (P.) Ltd., [2018] 99 taxmann.com 79**

- Applicant provides security services to banks. It also transports cash / coins / bullions in specially built vehicles or customized cash vans.
- The applicant had sought an advance ruling, whether certain 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

### **Spaceage Syntex (P.) Ltd (2018) 99 Taxmann.com 234 (AAR-Maharashtra)**

- The applicant was engaged in trading of Export Entitlement licenses.
- The applicant had submitted that DFIA's are paper authorizations that allow duty free import of inputs and are similar to duty free scrips.
- Further, the applicant filed an Advance Ruling to determine whether GST is applicable on sale of DFIA ( Duty Free Import Authorization ) licences.
- The authority observed that DFIA could not be considered as Duty Credit Script, also the Foreign Trade Policy itself had segregated both duty credit scrips and DFIA's into two different schemes.
- Therefore, Duty Free Import Authorization licence, issued to allow duty free import of inputs would be covered under HSN Code 4907 and would attract GST at applicable rate.

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