



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:

- HC allows exporters to import without payment of IGST to extent of advance authorization license : Narendra Plastic (P.) LTD. Vs. Union Of India (HC - Delhi)
- C ENVAT Credit couldn't be denied as capital assets were used at other premises : CCE Vs. Bharath Sanchar Nigam Ltd. (HC - Chennai)
- Commission received on ticket sales exempted from Service Tax : Arafaath Travels (P.) Ltd. Vs. CST (Chennai – CESTAT)
- No denial of benefit of abatement if credit of duty availed is reversed : CCE Vs. Indian Oil Tanking (P.) Ltd. (CESTAT – Mumbai)
- Consideration received on revenue sharing basis does not fall under category of Business Auxiliary Service : Times Internet Ltd. Vs. CCE (CESTAT - New Delhi)
- Credit of GST paid on sanitary fittings not available as it is an integral part of buildings : Bahl Paper Mills Ltd. (AAR - Uttarakhand)
- Service tax liability on hiring of dredges/vessels from the foreign company : International Seaport Dredging Ltd. Vs. Commissioner Of S.T., CHENNAI (CESTAT - Chennai)
- Officer is duty bound to pass speaking order when duty is paid under protest : Ingram Micro India (P.) Ltd. Vs. Pr. CC (HC - Chennai)

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 Vs. BHARATH SANCHAR NIGAM Ltd. (2017) 84 taxmann.com 13 (Mad.)

- The assessee is in the business of providing telephone services throughout India and it has created Secondary Switching Areas in various parts of the country.
- The capital equipment, which was received by a zone SSA was used for provisioning of telephone services by other SSA's and claimed the Cenvat Credit on such equipment.
- The department issued a notice and raised demand along with interest and penalty.
- The High Court held that the assessee could not be denied Cenvat credit as there consist nothing in rule 3(1)(i) which suggested that Cenvat Credit would be available to an output service provider only if, capital goods were used in very same premises

ARAFATH TRAVELS (P.) Ltd. Vs. CST (2017) 88 Taxmann.com 207 (Chennai – CESTAT)

- The assessee is a general sales agent (GSA) for Saudi Arabian Airline and was registered under the category of 'Air Travel Agent Service'.
- In terms of the agreement made between the assessee and Airline, the assessee was entitled to receive overriding commission at a fixed percentage.
- The department held that the overriding commission received by the assessee was liable to service tax .
- The tribunal held that the service rendered by the assessee to Saudi Arabian Airline was 'export of business auxiliary services'.
- Therefore such service is exempt from service tax.

CCE Vs. INDIAN OIL TANKING (P.) Ltd. (2017) 83 taxmann.com 391 (Mum. – CESTAT)

- The assessee provides commercial and industrial construction service and erection, commissioning or installation service to a party and engaged other service providers and procured duty paid goods.
- It used accrued Cenvat credit for discharge of duty on output service and sought to avail of the benefit of abatement subject to condition that Cenvat credit of duty paid on inputs had not been availed
- The department denied the benefit of the abatement and demanded service tax on availed abatement.
- The Tribunal held that the assessee had reversed the Cenvat Credit of duty availed and there was sufficient compliance of condition for eligibility for abatement.
- Therefore, the assessee was entitled to benefit of abatement.

TIMES INTERNET Ltd. Vs. CCE (2017) 82 Taxmann.com 439 (New Delhi – CESTAT)

- The assessee, a company, entered into agreement with various telecom companies for developing and supplying contents like news, cricket score, etc., on revenue sharing basis.
- The department held that these value added services were to be considered under the taxable category of business auxiliary service.
- The Tribunal held that such arrangement between assessee and telecom companies was on principal to principal basis.
- Therefore, the consideration received on revenue sharing basis could not fall under category of Business Auxiliary Service.

BAHL PAPER MILLS Ltd. (2018) 94 Taxmann.com 70 (AAR – Uttarakhand)

- The assessee filed an application before the Authority for Advance Ruling on the issue 'whether GST credit will be available on office fixtures & furniture, AC plant and sanitary fittings on newly constructed building for furtherance of business and accounting entry was capitalized in books of accounts.
- The AAR held that the Input Tax Credit of GST paid in relation to building or any other civil structure is not available as the sanitary fittings are integral part of building or any other civil structure.
- Therefore, the ITC of GST paid on such sanitary fittings is not available.
- However, the credit of GST is available on office fixtures & furniture, AC plant

INTERNATIONAL SEAPORT DREDGING LTD. Vs. COMMISSIONER OF S.T., CHENNAI
2018 (12) G.S.T.L. 185

- The appellant are engaged in Dredging, reclamation of seaports and allied activities.
- The department alleged that the appellant is liable to service tax on hiring of dredgers/vessels from the foreign company under the category of 'Supply of tangible goods services' on reverse charge basis and the inclusion of customs duty, entry tax on the import of material paid by the clients on actual basis.
- The impugned order is not legally sustainable and the same is set aside as there is transfer of asset along with complete right of possession and transfer of control and hence is a deemed sale not liable to Service Tax.
- Custom duty, entry tax, etc. are not consideration for actual taxable service and are hence not includible.

INGRAM MICRO INDIA (P.) Ltd. Vs. Pr. CC (2017) 83 Taxmann.com 104

- The assessee is engaged in business of import and distribution of Ethernet Switches.
- The subject goods were exempted from Basic Customs Duty (BCD) as per Notification No. -24/2005 but after amended notification, the Carrier Ethernet Switches were excluded from exemption.
- The customs authority held that Ethernet switches could not be cleared without payment of BCD and levied 10% BCD without passing any speaking order.
- The assessee paid the custom duty under protest and filed a writ petition in the High Court against the same.
- The High Court held that the assessee protested against levy of duty which was registered at time when duty was paid for clearance of goods.
- Therefore, the proper officer was duty bound to pass a speaking orders within 15days from date of assessment of bill of entries.

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