



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

- Authority to pass speaking order on the issue of inability to carry forward Cenvat Credit under TRAN-1: Sunbeam Auto Pvt Ltd Vs. Union of India
- Glitches that exist in uploading Form GST TRAN-1 to be looked into by the Nodal officer and facilitate in uploading without looking into time frame: Self Fridges Pvt Ltd Vs. GST Council, New Delhi
- Value of free supplies to be excluded from gross amount in terms of Notification No. 01/2006-ST: Era Infra Engineering Ltd Vs. UOI
- Appellant not liable to pay Service Tax when value of material in a contract cannot be vivisected prior to 01.06.2007: CCE & ST (LTU) , Delhi Vs. Xerox India Ltd
- Inter-state supplier of services where supplier is in India and recipient outside India to be treated as supply in the course of Inter-state trade- Behr Hella Thermocontrol India Pvt Ltd
- Land owner supplier of development rights and liable for registration liable to pay GST: Patrick Bernardinz D'SA
- No IGST on removal of goods from FTWZ to DTA from 01.04.2018: Bank of Nova Scotia, In Re(AAR, Tamilnadu)
- Foreign Supplier exporting goods to FTWZ and selling those to Indian Customers are not liable to be registered under GST: Sadesa Commercial Offshore De Macau Ltd(AAR Tamilnadu)

### **Sunbeam Auto Pvt Ltd Vs. Union of India: 2019 (20) GSTL 705 (P&H)**

- Appellants manufactured Die Casted Components, IC Engine Parts and Die Mould and registered under the provisions of Central Excise Act, Finance Act and Haryana VAT Act. Appellants also availed Cenvat Credit of duty paid on Inputs, Input Services and Capital Goods which was utilized towards payment of Excise Duty for the period April 2017 to June 2017.
- Appellants had an unutilized credit as on 30.06.2017 and migrated to GST which is evident from their GST certificate of September, 2017 however filed TRAN-1 with limited details by the end of December.
- Appellants had duly declared the unutilized credit in TRAN-1 and further represented the dispute on November 2018.
- The Appellants were aggrieved by the fact that there was no response from the GST department to their claim for unutilized credit to be carried forward to GST TRAN-1 and filed writ before High Court which held that the respondent should hear the Appellants and pass speaking order fortnightly after receipt of order by both the parties to this dispute.

### **Selfridges Pvt Ltd Vs. GST Council- New Delhi: 2019 (20) GSTL 706 (Ker.)**

- The Appellant was registered under the provisions of the erstwhile Kerala VAT Act and currently migrated to GST Regime.
- Appellant wanted to carry forward unutilized input tax credit into GST Tran-1 within the stipulated time period but however due to system error there was a failure in uploading the same.
- Aggrieved by this issue the Appellant filed writ before Kerala High Court which held that an IT grievance redressal mechanism has been set up to address grievances of technical glitches.
- The court further held that the Appellant should apply to the nodal officer who would look into the issue and facilitate uploading GST TRAN-1 and if glitches are beyond the control of the Appellant the authority should enable the Appellant to avail credit at the time of migration.

### **Era Infra Engineering Ltd Vs. UOI: 2019 (20) GSTL 717 (Del.)**

- The issue that needs consideration is how to tax the value of free supplies used by contractor in construction activity. Construction activity was a taxable service under the provisions of Section 65(105)(zzq) of the Finance Act, 1994.
- The government issued Notification No. 01/2006-ST in which Item No. 7 in the table annexed to notification was the disputing point. The said item talks about value of free supplies supplied by service recipient which is part of the value of goods or materials supplied by service provider of construction service.
- The department contends that construction contract includes a labour contract or construction contract that includes use of material partly or fully and Service Tax is levied on gross amount charged by service provider and the provider could avail credit of duty paid on capital goods.
- This dispute came up for hearing before Delhi HC and the court held that in cases where goods are supplied free of cost to the recipient who is a construction contractor of the service provider, value of goods supplied free should be excluded from the gross value leviable to Service Tax which was also the stand taken by courts in the case of Bhayana Builders.

### **CCE & ST (LTU), Delhi Vs. Xerox India Ltd: 2019 (20) GSTL 96 (Tri.-Chan.)**

- Xerox India Ltd are manufacturers / importers and sellers of photo copiers, printers, scanners, fax machines etc their parts and accessories. They also provide maintenance services for their products.
- Appellants provided maintenance and repair services as per full service maintenance agreements, spares and services agreements and annual maintenance contract. Service Tax was charged by Appellants on the standard percentage of labour deduction allowed under VAT laws and Appellants also provided services to their clients namely document management services/solutions agreements.
- The department sought to disallow the deductions claimed from the gross value which was allowed by the Adjudicating Authority against which department are on appeal before Tribunal. However other part of the demand along with interest was confirmed against which Appellants are on appeal before Tribunal.
- The contracts involved both material and labour and in such a case supreme court had taken a stand that it was a works contract and VAT was payable on such contracts.
- The Tribunal on a perusal of the arguments held the following printing of bills is not a Business Auxiliary Service, services provided along with materials and value of material cannot be vivisected in such cases ST not to be paid prior to June 2007 and such composite contracts are taxable only post June 2007. Thus the demands along with interest and penalties were set aside.

### **Behr Hella Thermocntrol India Pvt Ltd: 2019 (20) GSTL 124 (AAR-GST)**

- Appellants entered into service agreements with its associated entities in abroad for providing testing services in relation to prototype goods supplied by overseas entities such that the products function in accordance with the requisite standards. For providing testing services money is received in convertible foreign currency.
- Appellants filed this application for determination of the question as to whether place of supply of testing services rendered to overseas group entities is outside India.
- The authority perused Section 2(6) of IGST to find out whether all the clauses are satisfied and the Appellants have only satisfied clauses (i), (ii) , (iv) and (v) of Sec 2(6) of IGST Act. Further on a careful reading of Section 13(3) of IGST Act the prototypes were made physically available by the recipients to the Appellants in India.
- Hence the authority held that the transaction in question is liable to IGST under Sec 7(5) of IGST Act, 2017 and cannot be treated as a zero rated supply even if test reports are sent to overseas clients.

### **Patrick Bernardinz D'SA- 2019(20) GSTL 181 (AAR-GST)**

- Appellant entered into an agreement with the developer and contributed his land and in return got 50% share of the total 12 flats constructed and also 50% share of the 4000 Sq.ft of commercial construction and signed a JDA.
- The Appellant filed an application seeking a ruling as to whether he being the land owner is liable to pay GST on premises allotted to him which would be distributed amongst his family members.
- The Authority perused Notification No. 4/2018- Central Tax(Rate) which notified that the liability to pay tax on supply of services on the consideration received in the form of construction services in the form of development rights shall arise at the time when the said developer, builder etc. transfers the possession or right in the constructed complex to the person supplying development rights.
- In the wake of the 2018 Notification the Authority was of the view that the Appellant supplied taxable service by way of transfer of undivided share of land and was liable to pay CGST/SGST.

### **Bank of Nova Scotia India(AAR Tamilnadu)**

- The Appellant is a bullion banker catering to the requirements of jewelers, exporters , nominated agencies etc. The Appellant sought advance ruling as to whether IGST is payable on goods warehoused in FTWZ and supplied to a DTA unit in addition to customs duty payable and whether Circular No. 46/2017 is applicable to their case in hand.
- Appellants procured gold and silver from their branch in London and supplied the same to Indian customers. However at a later stage they altered their transaction in order to operate from a FTWZ. As per this new arrangement the gold/silver would be stored in their FTWZ unit under a contract with Brinks India Pvt Ltd for availing warehousing services.
- Appellants contended that circular would not apply to their case as they had transferred goods from their FTWZ unit to the DTA unit and already paid Import Duty and hence cannot be levied with IGST on the same transaction which would result in double taxation.
- Appellants removed the goods to their DTA unit on filing Bill of Entry for home consumption and subsequently supplied the goods to Indian customers on payment of GST.
- The Authority on hearing the Appellant held that this was a case where these were supply of warehoused goods while being deposited in a customs bonded warehouse/FTWX on or after April 2018 and hence at the time of removal of goods from FTWZ to DTA unit IGST is not required to be paid in addition to Customs Duties and Circular No. 46/2017- Cus not applicable.

### **M/s. Sadesa Commercial Offshore De Macau(AAR Tamilnadu)**

- Appellants are manufacturers and produces quality crust and finished leather for its industrial facilities. The Appellants main cliental are in the footwear and leather goods industry. The Appellant supplies leathers currently to Indian shoe manufacturers from Thailand and Argentina.
- The Appellant filed application seeking a ruling as to whether tanned bovine leather stored in a FTWZ supplied by a foreign supplier cleared to DTA in India is subject to IGST under Section 5(1) of IGST Act, 2017 and supply by the Appellant located abroad to DTA customers on goods stored in third party FTWZ unit to be registered under IGST Act.
- The Authority held that supply of goods to DTA Customers on goods stored in third party FTWZ unit was required to get registered under CGST/SGST Act, 2017 or provisions of IGST Act, 2017. If warehoused goods were supplied while being deposited in FTWZ on or after 01.04.2018 the applicant was not liable to IGST at the time of removal of goods from FTWZ to DTA.
- Post April 2018 the Appellant exports goods to their FTWZ in India which are subsequently sold to their Indian customers who cleared the same on payment of customs duties, they are not liable to be registered under CGST Act.



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