



**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:**

- Refund claims cannot be denied on mere technical grounds : Poornam Info Vision Vs. CCE (CESTAT – Bangalore)
- Support services provided as a commission agent would be taxable under category of business auxiliary service : Hindustan Unilever Ltd. Vs. CCE & ST, Chennai (Chennai – CESTAT)
- Goods supplied from head office to branch in other states are supplies made between distinct persons- GKB Lens Pvt Ltd: 2018 (17) GSTL 698 (AAR-GST)
- GST applicable on services provided by corporate office to its unit in other state : Columbia Asia Hospitals Pvt Ltd., (AAR - Karnataka)
- Value of certain reimbursable activities included as a part of service : Union Of India Vs. Intercontinental Consultants And Technocrafts Pvt. Ltd (S.C.)
- Corporate guarantee commission paid by parent co. was taxable as business auxiliary service : Olam Agro India Ltd. Vs. CCE (2018) 96 Taxmann.com 549 (CESTAT – New Delhi )
- Reverse Charge and Double Taxation: Transpek Silox Industries Pvt Ltd Vs CCE Vadodara-I: (CESTAT.- Ahmd.)
- Import of Software is liable to ST and not Customs : J.B And Brothers Pvt Ltd Vs Union Of India (Gujarat – HC)

### **Poornam Info Vision Vs. CCE: 2019 (365) ELT 592**

- Appellants are an EOU and rendering Business Auxiliary Services and Business Support Service and availed CENVAT Credit on Input Services used for providing Output Services and also filed refund claims for refund of CENVAT Credit.
- The refund claims was sanctioned by the Adjudicating Authority and department appealed before Appellate Authority on the ground that Appellants did not produce original invoice copies. The Commissioner set aside the order of Adjudicating Authority against which Appellants are on appeals before the Tribunal.
- The Tribunal held that there exists no dispute regarding the nature of input services and Service Tax paid. The Appellants had submitted a CA Certificate to show that services covered by invoices was used to provide export of services. Further Appellants also submitted consolidated statement of invoices certified by the CA.
- Thus the refund claims were held to be eligible on the basis of submission of documents and certification by a CA. There is also no requirement of signature on computer generated invoices.

### **HINDUSTAN UNILEVER LTD. Vs. CCE & ST, Chennai (2018) 96 Taxmann.com 384**

- 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'.

### **GKB Lens Pvt Ltd: 2018 (17) GSTL 698 (App. AAR-GST)**

- Appellants are a leading re seller and importer of sun glasses and optical lenses with its head office at West Bengal. Appellants transferred spectacles, spectacle frames and optical lenses from its head office to branches in other states.
- Appellants sought a ruling as to whether transfer of goods from head office to branches in other states could be done at cost price and whether ITC eligibility exists.
- The mute question that needs to be answered is whether stock transfer from head office to branches at zero value is eligible for claiming Input Tax Credit.
- The Authority relied on Section 16 of CGST Act, 2017 that ITC can be claimed only on Tax Invoice issued by Supplier to Recipient. Supplies from head office to branches are treated as supplies between related/distinct persons and if value declared in the invoice is zero then Input Tax Credit cannot be availed.

### **COLUMBIA ASIA HOSPITALS PVT LTD., ADVANCE RULING NO. KAR ADRG 15/2018**

- Appellants filed application before AAR Karnataka on the issue of 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 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.
- 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.

**UNION OF INDIA Vs. INTERCONTINENTAL CONSULTANTS AND TECHNOCRAFTS PVT. LTD 2018  
(10) G.S.T.L. 401 (S.C.)**

- The assesses are rendering services like, consulting engineering services, Share transfer agency services, Customs house agent services covered under the head "clearing and forwarding agent" and site formation, clearances, excavation, earthmoving and demolition services and service tax is been paid on the same.
- While rendering the aforesaid services they are also been getting reimbursement on certain services rendered by them which are not included in 'Gross Value' and service tax is not paid on the same.
- The department alleged that the value of the said reimbursable activities is also to be included as a part of service provided.
- The tribunal dismissed the appeal under the fact that all expenditure or cost incurred by the service provider in the course of providing the taxable services shall be treated as consideration for the taxable services and shall be included in the value for the purpose of charging service tax

**OLAM AGRO INDIA LTD. Vs. CCE (2018) 96 Taxmann.com 549**

- 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.
- Merely because the name of the guarantee had been changed from 'Bank' to 'Corporate', it cannot be said that it would not fall under the category of 'Business Auxiliary Service'.

### **Transpek Silox Industries Pvt Ltd Vs CCE Vadodara-I: 2018 (17) GSTL 434**

- Appellants availed the services of manpower recruitment agency and as per Notification No. 30/2012 they were required to pay 75% of Service Tax and the supplier was required to pay 25% of Service Tax.
- In one case both the Appellants and Suppliers did not pay tax and on being pointed out by the department supplier alone paid at 100% of the value instead of 25% on the second invoice, however Appellant paid tax on the first invoice.
- The Appellants contended that since supplier paid whole of ST they weren't required to pay tax as the department recovered whole tax amount for nonpayment of Service Tax and that double taxation could not be demanded.
- The Tribunal held that though Appellant was required to pay 75% of Service Tax on man power recruitment agency service on being pointed out by the department paid 100% of Service Tax on the first invoice. On the other invoice, supplier paid Service Tax at 100% instead of 25% hence Appellant need not pay tax on the same which would amount to double taxation not permissible under law.

### **J.B AND BROTHERS PVT LTD VS UNION OF INDIA 2017(5) G.S.T.L.364**

- The petitioner is in the business of diamond polishing.
- They imported scanning machine along with software system for operating such machinery from Israel.
- The Customs authority holds a belief that such software would form part of the imported goods and therefore, would invite customs duty along with the hardware
- It was held that the imported software providing IT software service is liable to pay service tax not customs duty



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