



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:

- Maintenance & Repair services of commercial & industrial machinery taxable at rate of 18% GST : Sandvik Asia (P.) Ltd., (AAR)
- No GST on supply of goods by dealer through its UK based principal directly to vessel at Singapore : Enmarol Petroleum India (P.) Ltd. (AAR)
- Renovation of structures & pipelines couldn't be classified as 'Management, maintenance or repair services' : Bavikara Constructions (P.) Ltd. Vs. CCE & ST (Mumbai – CESTAT)
- No Service Tax to be levied on amount received as reimbursable expenses from clients : Text Hundred India (P.) Ltd. Vs. CST (New Delhi – CESTAT)
- GST is chargeable on surplus profit transferred by manufacturer to brand owner : United Breweries Ltd. (Karnataka – AAR)
- No CENVAT Credit of ST paid on medical insurance premium of employees : Hindustan Petroleum Corporation Vs. CCE (Mumbai – CESTAT)
- State Govt.'s decision not to act upon tenders due to implementation of GST wasn't illegal or arbitrary : Nirmal Constructions Vs. State of Madhya Pradesh (Madhya Pradesh – HC)
- Assistant Commissioner of GST & Excise couldn't issue SCN in a Service Tax matter : Mascot Entrade (P.) Ltd. Vs. Union of India (Gujarat – HC)

Sandvik Asia (P.) Ltd., [2018] 100 taxmann.com 14 (AAR- RAJASTHAN)

- The applicant is a private limited company and is a multi-product, multi-division entity engaged in the manufacturing, distribution and sales agency activities of various industrial products which include metal cutting tools, mining/construction equipment's, etc.
- Further, the applicant is also engaged into business of after sale support for the mining equipment manufactured by its overseas group entities which are imported by the customers into India.
- The applicant has sought an advance ruling, that whether the maintenance services rendered under comprehensive maintenance services and supply of spare parts should be classified as 'composite supply' or 'mixed supply' and the tax that need to be charged.
- It was held that, applicant engaged into business of after sales support for mining equipment manufactured by its overseas group entities which are imported by customers into India, i.e., activities performed under the 'Comprehensive Maintenance Contract' are to be treated as a composite supply of services
- And the activities performed under 'Equipment Parts Supply and Services Agreement' are to be treated as Mixed Supply.
- Maintenance & Repair services of commercial & industrial machinery taxable at rate of 18% GST

Enmarol Petroleum India (P.) Ltd. [2018] 100 taxmann.com 124 (AAR - MAHARASHTRA)

- Applicant engaged in the business of the trading in marine fuel additives is an authorized dealer of UK company Innospec selling the marine fuel additive chemicals of Innospec to shipping lines in and outside India.
- An Indian Shipping Company 'AZA Shipping', placed a purchase order on the applicant for fuel additive for vessel M T CHAFA and was to be delivered at Singapore Port.
- The applicant placed purchase order on the Innospec UK which delivered the goods through its Singapore Logistics Partner to the vessel MT Chafa at Singapore Port.
- The applicant has sought an advance ruling, that whether the supply of goods to a customer located outside India to a customer within India without physically bringing the good to India is liable to pay GST and whether the out & out supplies in the present case will be considered as export supplies or exempted supplies.
- It's held that the applicant would not be liable to pay GST on supply of goods located outside India to customers within India without physically bringing goods to India.
- Further, the 'out & out' supplies would be "non-taxable supply" which means a supply of goods or services or both which is not leviable to tax under CGST or IGST Act.

Bavikara Constructions (P.) Ltd. Vs. CCE & ST (2018) 89 Taxmann.com 333

- The assessee entered into a contract for beautification and landscaping of Municipal Garden.
- The activities undertaken by the assessee involved renovation of the existing structures, relaying pipelines, foundation, plinth sides, etc., and related cleaning and movement of garbage.
- The department held that the activities undertaken by the assessee would fall under the category of 'Management, maintenance or repair services'.
- The tribunal held that the majority of work was related to civil work, i.e., in the nature of fresh construction of a civil structure within the park like drainage system, or renovation of civil structure.
- The essential character of this composite work was of construction service. Therefore, the service provided by the assessee could not be classified as "Management, Maintenance or Repair Services".

Text Hundred India (P.) Ltd. Vs. CST (2018) 94 Taxmann.com 170 (New Delhi – CESTAT)

- The assessee received the reimbursable expenses from the client on actual basis.
- The department held that such amount was includible in the gross value for the purpose of payment of Service Tax.
- The Tribunal held that the reimbursable expenses cannot be considered as amount charged 'for providing the taxable service'.
- The assessee was entitled for receiving the actual expenses incurred by it.
- Therefore, such expenses could not be included in the gross value for the purpose of payment of service tax as such amount was not towards the consideration received for providing the taxable service.

United Breweries Ltd., (2018) 95 Taxmann.com 87 (AAR – Karnataka)

- The assessee entered into an arrangement with contract bottling units (CBU) for using its brand name on beer bottles.
- The CBU had manufactured the beer using the brand name of assessee and supplied such beer to market.
- The assessee filed an appeal for Advance Ruling on the issue whether the sale of beer by CBU under its invoicing would be considered as supply of services and whether GST is payable by the Brand Owner on the surplus profit transferred by the CBU to the assessee out of such manufacturing activity?
- The Authority for Advance Ruling held that the CBU is not engaged in supply of service to the assessee.
- Further, the GST would be payable by the assessee, i.e., brand owner on surplus profit transferred by the CBU.

Hindustan Petroleum Corporation Vs. CCE (2018) 91 Taxmann.com 469

- The assessee availed of CENVAT Credit of Service Tax paid on medical insurance premium for the employees of security agent.
- The department denied the CENVAT Credit by applying the amended definition of 'input service'.
- On aggrieved by the decision of department, the assessee filed an appeal in the Tribunal.
- The Tribunal held that the health insurance for personal use for consumption of any employee is excluded from the definition of input service.
- Therefore, the CENVAT Credit on medical premium insurance was not admissible.

Nirmal Constructions Vs. State of Madhya Pradesh (2018) 91 Taxmann.com 461

- Due to implementation of GST law, the State Govt. has decided that no action has been taken on the tenders invited from July 1,2017 to August 5,2017 and for future contracts, i.e., from August 5,2018, the offers should be invited by excluding the amount of GST.
- The assessee filed the writ petition in the High Court due to cancellation of the tender by the state Govt.
- The High Court held that since the entire tax regime has undergone change, the state Government's decision not to act upon the tenders invited from July 1st 2017 to August 5th 2017 could not be illegal or arbitrary.

Mascot Entrade (P.) Ltd. Vs. Union of India (2018) 90 Taxmann.com 223 (Gujarat – HC)

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