

**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:**

- Inputs consumed & not returned by job worker during the process of galvanizing not be treated as supplies : Ratan Projects & Engineering Co Private Limited (GST AAR - West Bengal)
- Discount withdrawn by supplier through another invoice didn't amount to profiteering : Rishi Gupta Vs. Flipkart Internet (NAA)
- Material handling & shifting couldn't be taxable as 'Manpower recruitment & supply agency service' : Shailu Traders Vs. CCE, Indore (CESTAT - New Delhi)
- Heavy commercial vehicles for transport of goods could be classified as 'Tipper Truck' : Man Trucks India (P.)Ltd. Vs. CCE (CESTAT - New Delhi)
- Providing games and movies content to Telecom Co. wasn't taxable under business auxiliary service : Times Internet Ltd. Vs. CCE (CESTAT - New Delhi)
- Amount retained by hospital from fees charged by contractual doctors not taxable as fee for support services : Sir Ganga Ram Hospital Vs. CCE (CESTAT - New Delhi)
- Allahabad HC allows manual filing of TRAN-1 in special cases if electronic system doesn't respond : National Chemical & Dyes Company Vs. Union Of India (HC – All.)
- Service tax on commission received from foreign supplier for procuring orders from Indian buyers - CCE Vs. National Engineering Industries Ltd. (2018) 93 Taxmann.com 342 (H.C - Raj.)
- Due date for filing ITC – 04 has been extended – Notification 15/2019 (CGST)

### **Ratan Projects & Engineering Co Private Limited (GST AAR - West Bengal)**

- The Applicant is stated to be a manufacturer of cable tray, angel ladder tray etc, which are mainly used for electrical works.
- The Applicant sends steel structures for galvanising to a job worker along with furnace oil, zinc, nickel that are to be consumed in the galvanising process.
- He seeks a ruling whether dispatch of those consumable materials is to be treated as supply from the principal to the job worker if they are not returned within the time allowed under section 143(1)(a) of the GST Act.
- It was held that the Return of the galvanised goods to the Applicant satisfies the condition of receiving back the inputs in accordance with section 143(1)(a) of the GST Act.
- As the goods like furnace oil, zinc etc – consumed in the process of galvanizing are inseparable from the galvanised goods, they should not be treated as supply in terms of section 143(3) of the GST Act, provided they have been entirely used up in the process of galvanising.

### **RISHI GUPTA Vs. FLIPKART INTERNET (P.) Ltd. (2018) 95 Taxmann.com 221**

- The assessee had ordered Godrej Almirah and a tax invoice was issued to him for an amount of Rs. 14852/- and at the time of delivery, another invoice was issued by the supplier for an amount of Rs. 14152/-
- The assessee alleged that the excess amount paid was not refunded and therefore, the flipkart was restoring to profiteering which amounted to the contravention of the anti-profiteering provision.
- The National Anti-profiteering Authority held that the difference in price was due to different rates in GST at the time of placing the order and at the time of supply and directed the flipkart to refund the excess amount.
- Hence, the allegation of violations of anti-profiteering provisions was not established.
- Further, the issue of denial of discount at the time of supply also did not amount to profiteering, as the discount was offered from profit margin of supplier and did not form part of basic pay.

### **SHAILU TRADERS Vs. CCE, INDORE (2018) 92 Taxmann.com 381 ( New Delhi)**

- The assessee had entered into agreement with a client for undertaking the activities of material handling and shifting within the premises of such client.
- The department held that the services provided by the assessee would fall under the category of 'Manpower recruitment or supply agency service'
- The tribunal held that the employees deployed for executing the assigned task were under the control and supervision of the assessee.
- The assessee was not connected with any recruitment or supply of manpower to the client, therefore such service would not fall under the category of 'Manpower recruitment or Supply agency service'.

### **MAN TRUCKS INDIA (P.)Ltd. Vs. CCE (2018) 92 Taxmann.com 344 ( New Delhi )**

- The assessee was engaged in the manufacture of heavy commercial vehicles for transportation of goods and the said vehicles were used for transportation of goods to the construction sites.
- It contended that such vehicles were classified as 'Tipper Trucks' under Heading No. 8704 23 90
- The department held that the heavy commercial vehicles were classified under heading no. 8704 10 as 'dumpers' designed for off highway use.
- The tribunal held that such vehicles were used to carry the loads but the same were not machines exclusively meant for off-road use.
- Therefore, the motor vehicles manufactured by the assessee would fall under Heading No. 8704 23 90 as tipper trucks.

### **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 scores, jokes, 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.

### **SIR GANGA RAM HOSPITAL Vs. CCE (2018) 94 Taxmann.com 226 (New Delhi – CESTAT)**

- The assessee, a hospital, had engaged doctors on contractual basis and has provided space to the doctors in the hospital with required facilities to attend patients.
- The professional fee was paid to doctors in terms of contracts, was computed on the basis of amount received by the assessee from the patients
- The department held that the collections charges / facilitation fees retained by the assessee was liable to service tax under the category of ‘Support Service’ on the ground that such fees were retained due to infrastructural support provided.
- The tribunal held that the share of clinical establishments was not liable to service tax under the category of ‘support service’ on the mere fact that they had supported the commerce or business of doctors by providing infrastructural support..

### **National Chemical & Dyes Company Vs. UNION OF INDIA (2018) 94 Taxmann.com 167 (All.)**

- The assessee filed a writ petition in the High Court stating that the electronic system of the department did not respond on the last date, i.e., December 27, 2017 for filing the form GST TRAN – 1
- As a result the application was not entertained and it was likely to suffer loss of the input tax credit.
- The High court directed the GST counsel to re-open the GST portal
- If not possible, then manually application will be entertained and the orders will be passed after due verification of credits claimed by the assessee..

### **CCE Vs. NATIONAL ENGINEERING INDUSTRIES Ltd. (2018) 93 Taxmann.com 342 (HC - Raj.)**

- The assessee entered into a combined agreement for procuring orders from Indian buyers and was not paying the service tax on commission received in foreign currency for services rendered in India.
- The department held that the assessee was liable to pay service tax on the ground that the office of a subsidiary company in India would amount to an office of a holding company and not to be treated as export of services
- The revenue filed an appeal in the High Court
- The high court held that the branch of subsidiary company in India would not be treated as branch of the company.
- Hence, such services would be treated as export of services as service recipient was located outside India.

### **Notification 15/2018 - CGST**

CBIC has notified through a notification that has extended the due date for filing form ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July 2017 to March 2019 till the 30th day of June 2019.

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#### DAA | CHENNAI

#13/L, 3rd Floor, Bhagawathi Palace, J Block,  
3rd Avenue, Anna Nagar (East),  
Chennai 600 102

#### DAA | BANGALORE

#46/3, Lakshmi Nivas, 1st Floor, 6th Main Road,  
Opp. Adhyatma Prakasha Karyalaya, Tata Silk Farm,  
Bangalore 560 028

#### DAA | HYDERABAD

#311, H.No 1-7-79/A & B, Legend Crystal,  
Above Indian Overseas Bank, Paradise,  
Secunderabad 500 003

#### DAA | NASIK

Flat No.1, Rajkamal Residency, Plot No.83,  
Opp. Burkule Lawns, Shravan Sector D, CIDCO  
Nasik, MH 422 009

#### DAA | MUMBAI

#306-308, Bonanza, Sahar Plaza,  
Next to Kohinoor Hotel, J.B. Nagar, Andheri (E),  
Mumbai 400 059

#### DAA | COIMBATORE

#466, CPC Corporate Hub, 3rd Floor,  
Thadagam Road, RS Puram,  
Coimbatore 641 001

#### DAA | PUNE

#91 Spring Board, Sky Loft, Creaticity,  
Opp. Golf Course, Off Airport Road, Shastrinagar,  
Yerwada, Pune, MH 411 006

#### DAA | DELHI

#16, Nehru Apartment, Outer Ring Road, Kalkaji,  
New Delhi, 110 019

+91 98407 95565 / +91 80561 02618



[www.daa-india.com](http://www.daa-india.com)