



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:

- Payment of interest on gross tax amount instead of net tax amount due to delay in filing of GSTR 3B : M/s. Megha Engineering & Infrastructures Ltd. v. Comm. of Central Tax (HC)
- Notional surplus earned from purchase and sale of space does not fall under the category of 'Business auxiliary services' : INTERFREIGHT SERVICES (P.) LTD. Vs. CST (CESTAT – Chennai)
- Support services provided as a commission agent would be taxable under category of business auxiliary service : HINDUSTAN UNILEVER LTD. Vs. CCE & ST, Chennai (CESTAT – Chennai)
- GST shall be charged on total freight, including cost of diesel provided by the recipient : Shri Nawodit Agarwal (GST AAR Chhattisgarh)
- GST is applicable on long term lease : Goa Tourism Development Corporation Ltd., (AAR)
- Amount retained by hospital from fees charged by contractual doctors not taxable as fee for support services : SIR GANGA RAM HOSPITAL Vs. CCE (CESTAT)
- Material handling & shifting couldn't be taxable as 'Manpower recruitment & supply agency service' : Shailu Traders Vs. CCE, Indore (CESTAT - New Delhi)
- ITC of GST paid on freight for transportation of non-taxable goods to another unit not available : Indian Oil Corporation Ltd., (AAR – West Bengal)

M/s. Megha Engineering & Infrastructures Ltd. v. Comm. of Central Tax

- The Assessee is engaged in manufacturing of MS pipes and in the execution of infrastructure projects and had been regularly filing GST returns.
- However, there was a short delay in filing of GSTR 3B for the period October 2017 to May 2018 and therefore, the Assessee filed returns after the due date along with applicable interest
- The interest on such delayed filing of returns was calculated on net tax payable i.e. after deducting input tax credit available in the electronic ledger for the period October, 2017 to May, 2018.
- Accordingly, the Department issued letters to the Assessee demanding interest at 18% on the gross tax liability instead of net tax liability. Aggrieved by the demand made by the Commissioner for payment of interest on the gross tax liability, the Assessee has filed writ petition with the Hon'ble High Court.
- As per section 49(2) of the CGST Act, only after the credit entry has been made in the electronic credit ledger, the said input tax credit becomes available for making payment to the Government.
- That until a return is filed as self-assessed, no actual entry of credit in electronic credit ledger can take place and as a consequence, no payment can be made from such credit entry
- Therefore the Hon'ble High Court held that interest shall be payable on the gross tax amount and not on net tax amount

INTERFREIGHT SERVICES (P.) LTD. Vs. CST (2018) 93 Taxmann.com 197(Chennai – CESTAT)

- The assessee is engaged in booking the space for cargo transportation in airlines or ships and pays the charges for booking the space to the airlines/agents and therefore collects the same from the customers by charging freight.
- The department held that the activities undertaken by the assessee would fall under the category of 'Business auxiliary services'.
- The tribunal held that the notional surplus earned from purchase and sale of space does not fall under the category of 'Business auxiliary services' as they do not act on behalf of the client. Hence, the impugned order is set aside.

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

- 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'.

Shri Nawodit Agarwal (GST AAR Chhattisgarh)

- The applicant was a transporter in few cement companies and was engaged in transporting cement/clinkers of one SRC. SRC had moved a proposal that while transporting their cement/clinker it would provide the required diesel for transportation of the same.
- The applicant sought clarification whether such supply of diesel by the recipient was to be added to the freight amount charged by the applicant or not.
- Diesel so provided by the service recipient to the applicant for use in trucks/vehicles of the applicant forms an important and integral component of this business process, without which the process of supply of cement can never get materialized.
- Thus, any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both is includible in value.
- Therefore, the applicant is required to charge GST upon SRC on the total amount including the cost of diesel i.e. on the total freight amount inclusive of the cost of diesel so provided by the service recipient i.e. SRC.

Goa Tourism Development Corporation Ltd., [2018] 100 taxmann.com 128 (AAR - GOA)

- The applicant is a Government and has executed Concession Agreement for Renovation/Development of their Anjuna property through Private Investment Mode, with Myrayash Hotels Pvt. Ltd, given the exclusive right, license and authority to construct, operate and maintain the project for a period of 30 years extendable by further period of 30 years totaling 60 years.
- The applicant has collected the amount in the name of onetime upfront Concession Fees for a term of 60 years.
- The applicant has sought an advance ruling, claiming exemption under entry 41 (Entry 41 – defining upfront amount) under Notification No. 12/2017-Central Tax (Rate), as amended by the Notification No. 32/2017-Central Tax (Rate).
- It was held that no such Notification declaring the area consisting of plot leased out by the applicant, as industrial/financial business area, is on record. Therefore, the area cannot be treated as industrial or financial business area.
- Hence, the applicant is not entitled for the benefits of the said notification and the activity of long term lease is liable for levy of GST

SIR GANGA RAM HOSPITAL Vs. CCE (2018) 95 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.

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'.

Indian Oil Corporation Ltd., [2018] 97 taxmann.com 384 (AAR WEST BENGAL)

- Applicant exports High Speed Diesel (HSD), Aviation Turbine Fuel (ATF) and other refined petroleum products to Nepal under terms and conditions laid down in an agreement between Indian Oil Corporation and Nepal Oil Corporation.
- It has been paying GST on input service of Railway Freight for above transportation.
- It is seeking advance ruling on whether GST paid on railway freight for transportation of goods from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit under GST Act.
- It is observed that transfer of ATF and other non-taxable supplies from Refinery to Depot are not export of as per IGST Act, but exempted supplies from West Bengal Unit to Bihar Unit of applicant, who are distinct persons in terms of GST Act.
- Therefore, not applicable and, thus, applicant cannot claim credit of GST paid on input services like railway freight on ATF and other non-taxable supplies from West Bengal to his Bihar Unit.

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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