



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:

- E-way bill mandatory for non-taxable supplies through delivery challan : ASSTT. STO Vs. Indus Towers Ltd. (Kerala-HC)
- No Service tax on commission received from foreign supplier for procuring orders from Indian buyers : CCE Vs. National Engineering Industries Ltd. (Raj. – HC)
- Booking space for cargo transportation in airlines or ships not classifiable as ‘Business Auxiliary Service’ : Interfreight Services (P.) LTD. Vs. CST (Chennai – CESTAT)
- No denial of benefit of abatement if credit of duty availed is reversed : CCE Vs. Indian Oil Tanking (P.) Ltd. (Mum. – CESTAT)
- Assessee entitled to rebate of duty paid on export of capital good by reversing ITC : Union Of India Vs. Sterling Industries (Bom. – HC)
- Product ‘Lightning Arrester’ classifiable as ‘Electric Apparatus’ under Heading No. 8535 : Rapid Electrodes (P.) Ltd., (Gujarat - AAR)
- Brackets & Clamps of cast iron classifiable as other cast articles of iron or steel; taxable at the rate of 18% GST : Alka Industries, (Gujarat - AAR)
- Taxability on recovery of food expenses from employees for the canteen services provided by the company - Caltech Polymers Pvt. Ltd (AAR – GST)

ASSTT. STO Vs. Indus Towers Ltd. (2018) 95 Taxmann.com 160 (Kerala)

- The assessee transported the goods procured by it for own use to site and issued the delivery challan for the same but no E-way bill was generated before the transportation.
- The department officer has detained the goods and levied the tax and penalty as per CGST Act.
- The assessee filed a writ petition in the High Court on the grounds that the transaction was not for consideration (i.e., would not fall within the scope of Schedule I). Further, the transaction would not fall within the scope of a taxable supply.
- The High Court held that the assessee would be entitled to adjudication, but it would have to prove that the declaration was made.
- If they do prove the aspect, then they would be absolved of the liability otherwise, they would be required to pay tax & penalty.

CCE Vs. National Engineering Industries Ltd. (2018) 93 Taxmann.com 342 (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..

Interfreight Services (P.) LTD. Vs. CST (2018) 93 Taxmann.com 197 (CHENNAI – CESTAT)

- The assessee, a customhouse agent, 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 and not by acting on behalf of client who had space/slot in the vessel.
- Therefore, it does not fall under the category of 'Business auxiliary services' as they do not act on behalf of the client.

CCE Vs. Indian Oil Tanking (P.) Ltd. (2017) 83 taxmann.com 391 (Mum. – CESTAT)

- The assessee provides commercial and industrial construction service and erection, commissioning or installation service to a party and engaged other service providers and procured duty paid goods.
- It used accrued CENVAT Credit for discharge of duty on output service and sought to avail of the benefit of abatement subject to condition that CENVAT credit of duty paid on inputs had not been availed
- The department denied the benefit of the abatement and demanded service tax on availed abatement.
- The Tribunal held that the assessee had reversed the CENVAT Credit of duty availed and there was sufficient compliance of condition for eligibility for abatement.
- Therefore, the assessee was entitled to benefit of abatement.

Union Of India Vs. Sterling Industries (I) Ltd. (2017) 87 Taxmann.com 201 (Bom.)

- The assessee imported used aluminum casting machines as capital goods.
- It availed credit of duty on those capital goods that were exported on payment of duty by reversing the input tax credit availed.
- Subsequently, the assessee claimed rebate of duty paid on export of capital goods.
- The department rejected the rebate claim of the assessee.
- The High Court held that the duty paid by debiting the credit entry, rebate claim was allowable and it was not open to the department authorities to argue to the contrary.
- Therefore, the assessee was entitled to rebate of duty paid on export of capital goods by reversing the input tax credit.

Rapid Electrodes (P.) Ltd., (2018) 94 Taxmann.com 149 (AAR – Guj)

- The assessee is carrying out manufacturing, assembling, fitting, repairing, renovation and installation of all kinds of 'Earthing Products'.
- An application was filed for advance ruling for the classification of Lightning Arrester.
- The Authority for Advance Ruling held that the base of Lightning Arrester is fabricated, so that the rod with other fitments fits with it.
- The Tariff Heading 8535 covers the products 'Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits.
- Thus, the product 'Lightning Arrester' is specifically covered under Tariff Heading 8535

Alka Industries, 2018 94 Taxmann.com 455 (AAR-GUJARAT)

- The applicant manufactures CI Casting for which it purchases pig iron, scrap, molasses, coal, foundry minerals, sand etc. and melts pig iron and is poured into molding boxes of sand and required shape of cast article according to the requirement of customers.
- The applicant also manufactures bracket and clamp of cast iron, which are used for hanging wash basins etc., and the applicant is of the view that the products manufactured by it are required to be classified under Chapter Heading 7325 or 7308 or 7326 of the HSN.
- Chapter Heading 7325 covers all cast articles of iron or steel, not elsewhere specified or included and the cast iron manufactured by the applicant are product of casting industry.
- The brackets and clamps so manufactured are not machined by the applicant therefore the same cannot be termed to have acquired the essential character as parts of sanitary ware. In view thereof, articles (brackets and clamps) manufactured by the applicant fall under Chapter Heading 7325 taxable at 18%.

Caltech Polymers Pvt. Ltd. 2018 (12) G.S.T.L. 350 (A.A.R. – GST)

- The applicant is a Private Limited Company engaged in the manufacture and sale of footwear and they are providing canteen services exclusively for their employee's.
- They are incurring the canteen running services and are recovering the same from its employees without any profit margin.
- An application was filed for advance ruling on whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and is taxable under Goods & Service Tax Act.
- The AAR held that, as there is no profit as claimed by the applicant on the supply of food to its employees, there is "supply" and since the applicant recovers the cost, there is consideration too.
- Therefore it is hereby clarified that recovery of food expenses from the employees falls under the definition of 'outward supply' and taxable as a supply of service under GST..

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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