



**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:**

- No GST on medicines supplied to patients admitted for day procedure, being a 'composite supply' of health care service : M/s. Starcare Hospital Kozhikode Private Limited (GST AAR - Kerala);
- Deputing employee for executing work cannot be considered as manpower supply service : Lea International Ltd. Vs. Commissioner Of Service Tax, Delhi ( CESTAT- Delhi );
- Recovery of food expenses from the employees, being 'outward supply' taxable under GST : Caltech Polymers Pvt. Ltd. (AAR - GST);
- Toll collection and bid amount paid cannot be termed as Business Auxiliary Service : Commissioner Of Service Tax, Mumbai Vs. Ideal Road Builders Pvt. Ltd. (Tri. - Mumbai);
- Commission received on ticket sales exempted from Service Tax : Arafaath Travels (P.) Ltd. Vs. CST (2017) 88 Taxmann.com 207 (Chennai – CESTAT)
- CENVAT Credit couldn't be denied as capital assets were used at other premises : CCE Vs. Bharath Sanchar Nigam Ltd. (Mad. – HC)

### **M/s. Starcare Hospital Kozhikode Private Limited (AAR - Kerala)**

- The assessee is engaged in rendering medical services and they have categorized the patients as in-patient and out-patient for administrative convenience
- The in-patients are provided facilities like accommodation, medicines, consumables, implants, dietary foods including surgical procedures required for the treatment.
- The applicant has filed an advance ruling seeking whether the supply of medicines, consumables, surgical items, items such as needles, reagents etc used in laboratory, room rent used in the course of providing health care services to in-patients for diagnosis or treatments, which are naturally bundled and are provided in conjunction with each other, would be considered as “Composite Supply” and eligible for exemption.
- The AAR held that the supply of medicines, consumables, surgical items, items such as needles, reagents etc used in laboratory, room rent used in the course of providing health care services to in-patients for diagnosis or treatments which are naturally bundled and are provided in conjunction with each other, would be considered as “Composite Supply”.
- Therefore, the above mentioned supply of services and goods in the course of providing health care services to inpatients for diagnosis or treatment is eligible for GST exemption under health care services.

### **LEA INTERNATIONAL LTD. Vs. COMMISSIONER OF SERVICE TAX, DELHI 2018 (12) G.S.T.L. 166 ( Tri.- Delhi )**

- The appellant is engaged in providing engineering consultancy services and technical assistance in various road related projects.
- The authority held that the appellants are liable to service tax along with penalties, as certain expenditure shown in the books of accounts under the category of consultancy fee and technical fee are reflected in LIL, Canada and similarly the staff and officers deputed under the category of manpower supply services are to be taxed under reverse charge mechanism.
- The Tribunal held that the appeal is allowed as the expenditure which is part of the same accounting for income cannot be taxed under reverse charge basis and deputing employee for executing work cannot be considered as manpower supply service.

**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.
- The applicant has filed an advance ruling seeking Whether recovery of food expenses from employees for the canteen services provided by the company falls under the definition of outward supplies and are taxable under Goods & Service Tax Act.
- The ARR held that, though 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.

**COMMISSIONER OF SERVICE TAX, MUMBAI Vs. IDEAL ROAD BUILDERS PVT. LTD. 2018 (12) G.S.T.L. 192 (Tri. - Mumbai)**

- The respondent has purchased the right for the collection of toll from National Highway Authority of India under a tripartite agreement in an auction.
- The department alleged that the respondent are liable to service tax under the category ‘Business Auxiliary Services’ for the difference between toll collected and amount paid to NHAI.
- The appeal filled by the revenue department is dismissed as, they do not get any commission on account of collection of toll and therefore there is no deduction of tax at source.
- Thus the difference between the toll collection and bid amount paid is no way can be termed as activity of Business Auxiliary Service.

**ARAFATH TRAVELS (P.) Ltd. Vs. CST (2017) 88 Taxmann.com 207 (Chennai – CESTAT)**

- The assessee is a general sales agent (GSA) for Saudi Arabian Airline and was registered under the category of 'Air Travel Agent Service'.
- In terms of the agreement made between the assessee and Airline, the assessee was entitled to receive overriding commission at a fixed percentage.
- The department held that the overriding commission received by the assessee was liable to service tax .
- The tribunal held that the service rendered by the assessee to Saudi Arabian Airline was 'export of business auxiliary services'.
- Therefore such service is exempt from service tax.

**CCE Vs. BHARATH SANCHAR NIGAM Ltd. (2017) 84 taxmann.com 13 (Mad.)**

- The assessee is in the business of providing telephone services throughout India and it has created Secondary Switching Areas in various parts of the country.
- The capital equipment, which was received by a zone SSA was used for provisioning of telephone services by other SSA's and claimed the Cenvat Credit on such equipment.
- The department issued a notice and raised demand along with interest and penalty.
- The High Court held that the assessee could not be denied Cenvat credit as there consist nothing in rule 3(1)(i) which suggested that Cenvat Credit would be available to an output service provider only if, capital goods were used in very same premises.

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