



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:

- Determination of place of supply is out of purview of AAR : Utility Powertech Ltd., (Chhattisgarh – AAR);
- Assessee not liable to pay interest for delayed payment of duty on issuing supplementary invoice : Indo Alusys Industries Ltd. Vs. CCE (New Delhi – CESTAT);
- GST is chargeable on surplus profit transferred by manufacturer to brand owner : United Breweries Ltd., (Kar. – AAR);
- No contravention of anti-profiteering rules as they have passed on benefit of reduced rate : Dinesh Mohan Bhardwaj Vs. Vrandavaneshwree Automotive (P.) Ltd. (NAA);
- Leasing of plant & machinery for manufacturing not classifiable as renting of immovable property service : Mohan Goldwater Breweries Ltd. Vs. CCE & ST (Allahabad – CESTAT);
- Standard input output norms couldn't be applied to determine physical process of goods : Jakap Metind (P.) Ltd. Vs. CC & CE (Mumbai – CESTAT);
- Sufficient opportunity should be given for supporting their claim instead of issuing a deficiency memo : Sri Vasavi Gold & Bullion (P) Ltd Vs C.C. (AIRPORT & AIRCARGO), (Chennai-CESTAT);
- Question of opting provisional assessment during the impugned period does not arise : Jindal Steel & Power Ltd Vs. Commissioner Of Central Excise, Raipur (Delhi - CESTAT).

UTILITY POWERTECH LTD., (2018) 95 TAXMANN.COM 88 (AAR – Chhattisgarh)

- The assessee is registered in the state of Chhattisgarh and received a contract for supply of manpower from NTPC BHEL Power Project Pvt. Ltd. (NBPPL), Andhra Pradesh.
- It procured and deputed the manpower in the state of Andhra Pradesh
- It filed an application for Advance ruling on the issue whether it is required to charge IGST or CGST and SGST and if IGST is charged, will the credit of IGST be available to NBPPL against output tax liability.
- The Authority for advance ruling, Chhattisgarh is not the proper authority to pronounce the ruling regarding the availability of ITC to a firm outside the state of Chhattisgarh.
- Therefore, it is held that the determination of place of supply has been kept out of the purview of AAR.

INDO ALUSYS INDUSTRIES Ltd. Vs. CCE (2018) 94 Taxmann.com 273 (New Delhi – CESTAT)

- The assessee, a manufacturer, had sold the goods and paid duty on the value of such goods.
- Subsequently, it raised the supplementary invoice due to price variation and paid the duty and it did not pay interest on delayed payment of duty on account of supplementary invoice.
- The department held that the assessee was liable to pay interest on delayed payment of duty on account of supplementary invoice.
- The assessee filed an appeal in the tribunal
- The Tribunal held that both the parties were not aware of escalated price at the time of removal of goods.
- Therefore, the supplementary invoice couldn't be a ground to charge interest on delayed payment of duty.

UNITED BREWERIES LTD., 2018 (14) G.S.T.L. 546 (AAR – GST)

- The assessee entered into an arrangement with contract bottling units (CBU) for using its brand name on the bottles.
- The CBU manufactures the beer using the brand name of assessee and supplies it to the 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 service 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 AAR 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.

DINESH MOHAN BHARDWAJ Vs. VRANDAVANESHWREE AUTOMOTIVE (P.) Ltd. (2018) 92 Taxmann.com 360 (NAA)

- The assessee entered into a contract for supply of Honda Car through an authorized dealer of M/s. Honda Car India Ltd for Rs. 9,13,300, such amount included the excise duty @35%, CST @2% and UP VAT @14% i.e., 51%
- The assessee has taken delivery of the car in the GST regime by paying Rs. 8,98,750.
- The assessee alleged that the dealer had not passed the benefit of reduced rate of tax which amounted to profiteering.
- The Director General of Safeguard found that the total pre-GST tax incidence was 31.254% instead of 51%.
- The National Anti-profiteering Authority held that the benefit of Rs.10,550 on account of reduction of tax by 2% (i.e., 31.254% to 29%) has already passed on to the assessee.
- Therefore, no additional benefit on account of ITC was required to be paid by the car dealer and thus the appeal was rejected.

MOHAN GOLDWATER BREWERIES Ltd. Vs. CCE & ST (2017) 83 Taxmann.com 132 (CESTAT)

- The assessee had entered into an agreement with UBL for providing its facility of plant and machinery infrastructure, etc., on payment of lease rent for manufacture of finished goods.
- It was without leasing out land and building.
- The department held that service tax was leviable on lease rent received by assessee under the category of 'Renting of Immovable Property'
- The tribunal held that there was no renting out of land and building along with its fixtures.
- The assessee had only let out plant and machinery and the appellant is engaged in the manufacture of iron and steel and clearing the same for construction purpose on payment of duty.
- The appellant has found that they have paid excess duty due to variation in price and therefore filed a refund claim with supporting documents. Therefore, manufacturing facility would not qualify under the definition of 'Renting of Immovable Property service'.

JAKAP METIND (P.) Ltd. Vs. CC & CE (2017) 83 Taxmann.com 153 (Mumbai – CESTAT)

- The assessee is an EOU and was engaged in manufacture of brass parts of machine.
- It sent brass scrap to job worker and after its conversion job worker returned the brass rod to assessee.
- As per Standard Input Output Norms(SION), permissible burning loss was 5%-7.5% as per SION but the average burning loss during conversion was 15%.
- The department confirmed duty on difference of burning loss of 15% and permissible burning loss was 7.5% as per SION
- The tribunal held that when the physical process was carried out, the SION could not always be the same as actual.
- The actual burning loss was based on various factors therefore, it varied from one manufacturer to other manufacturer.

**SRI VASAVI GOLD & BULLION (P) LTD Vs C.C. (AIRPORT & AIRCARGO), CHENNAI 2018
(359) E.L.T. 588 (CESTAT – Chennai)**

- The Appellant has filed claim for refund of Special Additional Duty (SAD) in respect of Bills of entry in Chennai Sea Customs whereas the goods were cleared through Chennai Air Customs.
- The department alleged that the claim was filed before the wrong jurisdictional authority and due to which time limit has been expired.
- It was held that the Appellant would be given sufficient opportunity for supporting their claim, as the Sea Customs Commissionerate instead of issuing a deficiency memo, processed the same and issued a memo seeking for further documents.
- Therefore it is proper to set aside the impugned order and remand the matter back to the concerned original authority.

**JINDAL STEEL & POWER LTD Vs. COMMISSIONER OF CENTRAL EXCISE, RAIPUR 2018
(359) E.L.T. 610 (CESTAT – Delhi)**

- The appellant is engaged in the manufacture of iron and steel and clearing the same for construction purpose on payment of duty.
- The appellant has found that they have paid excess duty due to variation in price and therefore filed a refund claim with supporting documents.
- The department rejected the refund claim on the ground that the appellant has not opted for provisional assessment during the impugned order.
- The appellant has been discharged the burden of unjust enrichment and therefore they are entitled for refund claim.
- As the appellant has approached the jurisdictional Assistant Commissioner and the same has been rejected, the question of opting provisional assessment during the impugned period does not arise.

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