



**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:**

- Clinical Research services to entities located outside India are not an export of services, liable to GST : Clantha Research Limited (Maharashtra – GST AAR);
- Movement of goods from one state to another for delivery of goods purchased online would be treated as inter-state sale : WS Retail Services (P.) Ltd. Vs. Union Of India ( Punjab & Haryana – HC);
- No remission on destroyed goods if prescribed procedure isn't adhered to : Sun Pharma Industries Ltd Vs. CCE & ST (Gujarat - HC)
- Operation of power plant cannot be classified as 'Maintenance and repair services' : Shapoorji Pallonji Infrastructure Capital Company Ltd. Vs. CST (Chennai – CESTAT);
- Competent authority not to invoke bank guarantee as assessee has 3 months time to appeal against order : Berger Paints India Ltd Vs. STO (Kerala – HC);
- Discount withdrawn by supplier through another invoice didn't amount to profiteering : Rishi Gupta Vs. Flipkart Internet (P.) Ltd. (NAA);
- ISD credit can be distributed even before obtaining registration- Ballarpur Industries Ltd Vs. CCE (Mumbai-CESTAT);
- Credit available on input services even when depreciation is also claimed on it- Shree Pandurang SSK Ltd Vs. CCE (Mumbai-CESTAT);

### **Cliantha Research Limited [2019] 106 taxmann.com 406 (AAR - MAHARASHTRA)**

- The Applicant, a global Clinical Research Organization, providing comprehensive range of clinical research and support services by performing technical testing and analysis on the Drug/Investigational Product provided by sponsors located outside India and submits final the report to such foreign sponsors.
- The applicant filed an Advance Ruling to determine whether the “Clinical Research” services proposed to be provided by them to entities located outside India is liable to CGST and SGST or IGST or is it eligible to be treated as an export of service
- The Clinical Research services proposed to be provided by them to entities located outside India is not eligible to be treated as an export of service under Section 2(6) of the IGST Act, 2017 and the services are liable to CGST and SGST as the location of ‘supplier of service’ and the ‘place of supply’ is in the same State, in terms of Section 13(3)(a) of IGST Act, 2017.
- Since the place of supply is in taxable territory it is clear that the provisions of Section 2(6) of the IGST Act are not fulfilled in this case and therefore their supply cannot be considered as Export of Services as per the GST Law.

### **WS RETAIL SERVICES (P.) Ltd. Vs. UNION OF INDIA (2017) 84 Taxmann.com 92 (Punjab & Haryana - HC)**

- The assessee carried on the business of selling goods through online portal and when order was placed by a customer of Punjab, it bought goods from its warehouse situated outside Punjab to its delivery hub located in Punjab.
- The assessee filed the declaration at ICC contending that it did not have any taxable turnover in the state of Punjab and also stated that it had paid the central sales tax in respect of the goods bought into Punjab.
- The department issued SCN stating that it had undertaken trading/ sale/ purchase in or from the state of Punjab.
- The High Court held that in Form VAT-36, the assessee had mentioned its TIN of Punjab and thereafter the goods were picked from the hub and delivered to the customer. Hence the sale would be treated as Inter-state sale.

**Sun Pharma Industries Ltd Vs. CCE & ST: [2017] 78 taxmann.com 166 (HC - Gujarat)**

- The Appellants are manufacture of drugs and submitted an application before the Commissioner contending that some of their drugs have crossed expiry dates and became unfit for consumption.
- Appellants requested for permission to be granted to remove finished goods from bonded warehouse for destruction and consequently asked for duty remission on such goods.
- Even after 2 months from date of application permission was not granted for duty remission and the applicants was dismissed by Appellate Authority and Tribunal.
- Appellants filed appeals before High court which held that Appellants had to comply with procedure required under Central Excise Manual and seek approval of concerned officer.

**SHAPOORJI PALLONJI INFRASTRUCTURE CAPITAL COMPANY Ltd. Vs. CST (2017)84 Taxmann.com 106**

- The assessee entered into an agreement with SPCL for operating and maintaining power generation plant.
- It was paying service tax on maintenance and repair charges.
- Later, the assessee took a stand that it was not liable to pay service tax on such maintenance and repair activities, and filed refund claims.
- The department rejected the claim of assessee.
- The Tribunal held that the assessee was operating the power plant to generate electricity on behalf of the owner for supplying the same.
- Hence, the operation of power plant couldn't be classified as 'Maintenance of repair service'.

### **BERGER PAINTS INDIA LTD Vs. STO (2018) 96 Taxmann.com 196**

- The competent authority had seized the goods of the assessee under transport as well as the vehicle and it demanded bank guarantee and security bond for release of the same.
- The goods and vehicle were provisionally released after providing the bank guarantee and security bond by the assessee.
- The assessee filed a writ petition in the High Court stating that the competent authority was threatening to invoke the bank guarantee before it could invoke the appellate remedy.
- The High Court held that the assessee had 3 months from the date of impugned order to file an appeal before the Appellate Authority.
- Therefore, the competent Authority could not invoke the bank guarantee before the assessee could exhaust his appeal remedy.

### **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.

**Ballarpur Industries Ltd Vs. CCE: [2017] 78 taxmann.com 35 (Mumbai-CESTAT)**

- Appellants availed credit in respect of distribution of credit by head office as an ISD.
- Head office distributed credit even before obtaining registration.
- This credit was denied by the Adjudicating and Appellate Authority and Appellants filed appeals before Tribunal.
- The Tribunal held that there is no restriction under Cenvat Credit Rules, 2004 that credit should not be distributed by an ISD without taking any registration.
- Therefore the ISD credit is eligible for distribution of even before registration.

**Shree Pandurang SSK Ltd Vs. CCE: [2017] 78 taxmann.com 102 (Mumbai-CESTAT)**

- Appellants availed credit in respect of input services relating to erection, installation of capital goods.
- The services on which credit was taken was capitalized and depreciation was claimed. Adjudicating and Appellate Authority denied credit on the ground that value of services including service tax was capitalized.
- On Appeals before Tribunal it held that restriction to avail credit if depreciation is availed is only in respect of capital goods and not services as per the provisions of Rule 4(4) of CCR, 2004.
- In this dispute credit was availed on ST paid on services though related to erection and installation of capital goods. Also there is no provision in cenvat law to restrict availing credit on input services when depreciation was claimed on the same.



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