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Case Laws of The Week

15th July 2019

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:

- HC allows revision of GST TRAN-1 for errors due to Technical reasons : M/s Atria Convergence Technologies Ltd Vs Union of India (Karnataka - HC)
- Refund of IGST on exported goods couldn't be withheld due to excess claim of duty drawback : Amit Cotton Industries Vs. Principal Commissioner Of Customs (Gujarat - HC)
- Surgical Therapy Instruments to overcome physiological problem in human body classified under Heading 9018 90 99 : Shivani Scientific Industries (P.) Ltd. Vs. Commissioner of Customs (Import) ACC, Mumbai (Mumbai – CESTAT)
- Brokerage received from shipping Co. in lieu of freight payment on behalf of client's not liable to ST : KANPUR CARGO MOVERS Vs. CCE & ST (All. – CESTAT)
- Services associated with manufacturing of metal is continuous supply of service : VESUVIUS INDIA LTD (West Bengal - AAR)
- Services provided by container liners would fall under BAS and not Steamer Agent Services : CCE VISAKHAPATNAM Vs. RE SHIPPING (Hyderabad – CESTAT)
- Absence of ARE – 1 number in shipping bill amounts to clandestine clearance of goods : BROADWAYS OVERSEAS Ltd. Vs. CCE (Chandigarh – CESTAT)
- Composite Works Contracts not liable to Service Tax prior to 01.06.2007 : M/S. SHAKTI ENTERPRISES VS. CCE & ST (Delhi – CESTAT)

M/s Atria Convergence Technologies Ltd Vs Union of India [2019] 107 taxmann.com 31 (Karnataka - HC)

- The petitioner is a Public Limited company registered under CGST Act 2017 prior to which the petitioner was registered under Central Excise and Service tax regime.
- The petitioner while submitting his FORM GST TRAN-1 inter alia to enable the unreleased CENVAT Credit from the earlier credit to carry forward, inadvertently said to have been transferred a portion of the credit to their branch in Hyderabad.
- Subsequently realized that the credit could be transferred only by a centralized registered person to other persons having the same PAN number and should be a place in the centralized registration obtained under Finance Act, 1994. Hence, decided to file the revised FORM GST TRAN-1 and avail the credit amount inadvertently distributed to the Hyderabad branch.
- It is the grievance of the petitioner that revised option in the GST portal was disabled. The petitioner intimated the issue to the GST help desk vide e-mail dated 26.12.2017 and 27.12.2017 along with screenshots.
- The HC is of the opinion that the petitioner is entitled to revise or rectify the errors in the FORM GST TRAN-1 in terms of Rule 120A. As the petitioner is intending to revise the FORM GST TRAN-1 for the first time, the same squarely comes under Rule 120A.
- Hence, the respondent authorities ought to have considered the request/representation of the petitioner to permit or allow it to revise the declaration in FORM GST TRAN-1.

Amit Cotton Industries Vs. Principal Commissioner Of Customs [2019] 107 Taxmann.com 167 (Gujarat - HC)

- The Applicant a cotton ginning mill being a registered person making zero rated supplies claimed refund of IGST paid in regard to goods exported i.e 'Zero Rated Supplies'.
- The respondent held that applicant had availed higher duty drawback and as there was no provision for accepting refund of such higher duty drawback, applicant was not entitled to seek refund of IGST paid in connection with goods exported, i.e. 'zero rated supplies'.
- It was held that, As per rule 96 of the CGST Rules, 2017, respondent authorities are required to sanction refund amount considering shipping bills as refund application which had been submitted by the applicant. Refund could only be withheld if circumstances mentioned in rule 96(4) arise which was not so in instant case.
- Hence, there is no provision in CGST Act, 2017 or IGST Act, 2017 or that there is no circular or instruction even, under GST law which would provide for restriction of IGST refund for reason that higher rate of drawback is claimed.

Shivani Scientific Industries (P.) Ltd. Vs. Commissioner of Customs (Import) ACC, Mumbai [2019] 107 Taxmann.com 29 (Mumbai – CESTAT)

- The assessee imported instruments used for surgical therapy to overcome a physiological problem in a human body viz. inability to conceive.
- It classified the said goods under Heading No. 9018 90 99 as instruments and appliances used in medical, surgical, dental or veterinary sciences, including scient graphic apparatus, other electro-medical apparatus and site-testing instruments.
- The Lower Authorities held that the goods in question would be classifiable under Heading No. 9011 80 00 as compound optical microscopes, including those for photo microgravity or cinephoto micrography or micro projection.
- The classification adopted by the lower authorities is that of 'microscope'. There is no doubt that the goods, as presented, include a microscope but the impugned goods goes beyond to encompass 'micromanipulator' along with 'microscope' and to be deployed in treatment. therefore, not restricted to enhancement of sense of sight but to act in tandem.
- Where assessee had imported instruments used for surgical therapy to overcome a physiological problem in a human body viz. inability to conceive, said goods would be classifiable under Heading No. 9018 90 99.

KANPUR CARGO MOVERS Vs. CCE & ST (2018) 89 Taxmann.com 14 (All. – CESTAT)

- The assessee was engaged in providing Cargo Handling Services to its client and it receives services of Shipping Lines and Forwarder Companies to provide services to the customers.
- It received some brokerage from shipping Lines and forwarder Companies in lieu of payment of ocean freight on behalf of the clients.
- The department held that brokerage received by assessee was liable to service tax under the category of ‘business auxiliary service’ and raised tax demand upon the assessee.
- The tribunal held that the notional surplus earned by assessee was from purchase and sale of space and not by acting for a client who had space on a vessel.
- Therefore, the brokerage received by assessee was not liable to service tax under category of ‘business auxiliary service’.

VESUVIUS INDIA LTD- 2018 TIOL 117 AAR GST (AAR- WB)

- Appellants supplied end to end solutions for controlled casting of iron and steel which includes supply of refractory components and associated services, intended to offer a new supply Contract Management System.
- Appellants would design the refractories, monitor their usage and inventory and supply the required refractory components and systems. The Appellant also round the clock monitors the flow of iron and steel.
- Appellants contend that there is no transfer of title to refractories used in the course of production process. Usage of refractories are controlled by the Appellants who are not paid for the supplies but are only paid for managing the flow of metal during iron and steel production.
- The Authority on a careful perusal of Appellants arguments held that Appellants have supplied a service associated with manufacture of metal. Provision of services involves monitoring of production of process, evaluation of refractories requirement, quality control , replacement of used refractories etc.
- Appellants activities are covered under continues supply of services under Section 2(33) of GST Act as services are provided on monthly basis and payments are received within 30 days from end of the month.

CCE VISAKHAPATNAM Vs. RE SHIPPING- [2018] 96 TAXMANN.COM 319(HYDERABAD-CESTAT)

- Appellants provided services to container lines and received commission for provision of services to them. Adjudicating Authority held that Appellants have provided Business Auxiliary Services.
- However on appeals the Appellate Authority held that Appellants have provided Steamer Agency Services as they booked, advertised and canvased for cargo on behalf of shipping lines.
- The department appealed before Tribunal which held that shipping lines own and run ships, container lines own the containers and rent them to importers/exporters. Even when a ship proceeds with its journey a container can be unloaded at another port and the container is de stuffed.
- The Tribunal further held that shipping lines are different from a steamer agent which is defined under Finance Act, 1994 which does not include container lines.
- Hence the Adjudicating Authority was correct in classifying the services rendered to container lines as Business Auxiliary Services.

BROADWAYS OVERSEAS Ltd. Vs. CCE (2017) 84 Taxmann.com 107 (Chandigarh – CESTAT)

- The assessee was a manufacturer of aluminum fence fittings.
- It supplied goods to its parental unit for export and cleared them through ARE-1 without payment of duty and the parental unit did not mention ARE-1 number in the shipping bill.
- The department alleged that the goods covered under ARE-1 had been cleared clandestinely by assessee without payment of duty and held that goods were not exported and confirmed demand of duty along with penalty.
- The Tribunal held that, as the proof of export had not been produced and the goods were cleared from the factory.
- Therefore, the absence of ARE-1 number in shipping bill amounts to clandestine clearance of goods

M/S. SHAKTI ENTERPRISES VS. CCE & ST- 2018 TIOL 2701 (Delhi – CESTAT)

- Appellants executed, managed, maintained and repaired traffic signal poles or lights and installation or commissioning of surveillance cameras which was carried out on behalf of State Government as a turnkey contract in connection with provision of traffic signals across the Rajasthan state.
- Service Tax was demanded on erection, commissioning or installation services and also under works contract services by the Adjudicating Authority.
- The Appellate Authority however confirmed the demand only on erection, commissioning and installation services for the period October 2005 to May 2007 but extended benefit of works contract composition scheme to the Appellant.
- When the dispute came up before tribunal on appeals filed by the Appellant and the department the tribunal held that composite works contract was liable to Service Tax only after 01.06.2007 and prior to June 2007 Service Tax cannot be levied under any category of services.
- When the question of application of Rule 3(3) of composition rules came up before Tribunal, the Tribunal held that requirement of exercising an option is procedural and when complied with cannot come in the way of extending a benefit. Hence appeals of the revenue were dismissed

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DAA | CHENNAI
No. 156, 6C-6D Doshi Towers,
Poonamallee High Road, Kilpauk,
Chennai - 600 010

DAA | MUMBAI
201, B - Wing, Pramukh Plaza Cardinal
Gracious Road, Chakala, Andheri (East),
Mumbai - 400 099

DAA | BANGALORE
No. 221, 16th Main Road, 19th Cross Street,
HSR Layout, Bangalore - 560 102

DAA | COIMBATORE
#No.466, CPC Corporate Hub, 3rd Floor,
Thadagam Road, RS Puram, Coimbatore- 641 002

Our Associate Offices are located at Pune, Delhi, Nasik and Hyderabad.

+91 98407 95565 / +91 80561 02618

www.daa-india.com