



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:

- Refund of CENVAT credit to be paid in cash : Rawalwasia Ispat Udyog Pvt. Ltd., Vs. Commissioner of C.EX., (Chennai – CESTAT)
- ITC not eligible where payments are netted off against receivables : Sanghvi Movers Ltd. (Tamil Nadu - AAR)
- ITC can be availed on full GST charged on undiscounted supply where post-purchase discount is extended by the supplier : MRF Ltd. (Tamil Nadu - AAAR)
- ST no liable on Supply of Tangible goods when effective possession and control is transferred to lessee : Century Pulp And Paper Vs. Commissioner of C.Ex. & S.T., (Delhi – CESTAT);
- Refund claim to be filed within one year from the receipt of convertible foreign exchange : Commissioner Of GST, Central Vs. Everstone Capital Advisors Pvt. Ltd. (Mumbai – CESTAT);
- Computers used for providing output service don't qualify as inputs for availing of transitional ITC - Geojith Financial Services Ltd., (KERALA – AAR)
- Maintenance & Repair services of commercial & industrial machinery taxable at rate of 18% GST : Sandvik Asia (P.) Ltd., (Rajasthan - AAR)
- Re-packing & re-labelling of spare parts tantamount to manufacture : Piaggio Vehicles (P.) Ltd. Vs. Commissioner of Central Excise (Mumbai – CESTAT)

**Rawalwasia Ispat Udyog Pvt. Ltd., Vs. Commissioner of C.EX., Panchkula 2019 (26) G.S.T.L. 196
(Chennai – CESTAT)**

- The appellant was engaged in manufacture of excisable goods i.e. MS galvanized pipes.
- The appellant paid duty on zinc dross / ash under protest which was not required therefore filed refund claim.
- Though the claim was sanctioned the refund was directed in their Cenvat Credit account after introduction of GST regime.
- Aggrieved by the order the appellant filed an appeal before the CESTAT.
- Considering the facts that the commissioner has allowed the refund to be credited in CENVAT Credit account which is against the spirit of law, the Tribunal held that the refund arising on account of Cenvat Credit, duty, tax, interest or any amount to be paid in cash.

Sanghvi Movers Ltd., (2019) 108 Taxmann.com 70 (AAR – Tamil Nadu)

- The applicant is providing cranes on lease or hire to clients without transferring the right to use cranes.
- The head office (H.O.) of the applicant in Maharashtra owns the cranes which are provided to Chennai's branch office, i.e., the applicant, on monthly rental basis which are further given on lease to customer.
- The applicant has sought an advance ruling to determine the admissibility of ITC on IGST paid by head office on inter-State movement of cranes.
- The AAR, observed that head office and applicant have obtained separate GST registrations and, hence, they are to be treated as distinct persons under GST.
- The H.O. raises tax invoice on it for the cranes provided on hire/rental basis whereas the ownership of cranes remains with H.O.
- However, it is not paying full consideration for this transaction to H.O. but the same is being netted off against receivables in the books of account of the applicant which is considered as deemed payment.
- Therefore the applicant will not be eligible for full ITC as it is not paying full amount to H.O. as the payments are netted off against receivables and required to reverse ITC if already taken.

MRF Ltd. [2019] 108 taxmann.com 65 (AAAR – TAMILNADU)

- The applicant intends to enter into an agreement with M/S C2FO India LLP for setting-up an interactive automated data exchange relating to sale and purchase of goods and services between applicant and supplier.
- The supplier will offer a certain discount for an early payment of an invoice, however, the quantum of discount offered is not known at the time of supply of goods/services.
- It has sought an advance ruling to determine whether the applicant can avail ITC on complete GST charged on the undiscounted supply invoice or a proportionate reversal of the same is required in case of post purchase discount given by the supplier to it through the C2FO platform.
- AAAR sets aside ruling of AAR and holds that where a post purchase discount is extended by supplier of goods or services to appellant MRF Ltd. on account of their registering in interactive automated data exchange arrangement setup by C2FO India LLP, appellant can avail Input Tax Credit of full GST charged on undiscounted supply invoice of goods/ services by their suppliers and similarly a proportionate reversal of credit is not required to be done by them.

Century Pulp And Paper Vs. Commissioner of C.Ex. & S.T., MEERUT -II 2019 (26) G.S.T.L. 42 (Tri – Del.)

- The appellant company gave on lease certain machineries for a period of 18years, under the said agreement the packing and finishing machineries for repacking.
- The plant has been installed in the lessee's premises at Haryana and further, the agreement provides that the appellant shall remain the lawful owner.
- And the agreement also provides that the lessee shall utilize the machinery as per normal industry standards and shall be responsible for normal maintenance and repair and VAT was paid on the said service.
- The department issued a notice demanding Service Tax on Supply of Tangible Goods (SOTG) along with penalty.
- The appellant contended that as per circular by CBEC the supply of tangible goods for use and leviable to VAT / Sales tax is a deemed sales of goods and not covered under the scope of the proposed services.
- Since the have been paying VAT and charging the same in the invoice raised, the Tribunal held that Service Tax is not liable under the category of SOTG when effective control and possession is transferred to lessee and VAT already paid on such rent.

**COMMISSIONER OF GST, CENTRAL Vs. EVERSTONE CAPITAL ADVISORS PVT. LTD. 2018
(12) G.S.T.L. 328**

- The respondent is engaged in providing export of services and has filed a refund claim within a period of one year.
- The issue is regarding whether the period of one year of filing the refund should be taken from the date of receipt of foreign exchange date or from the date of invoice and the remittance received against the export in Indian rupees will be considered as receipt of convertible foreign exchange for qualifying the supply as export.
- In case of export of services, the same qualifies as export only when convertible foreign exchange is received.
- The appellant has admittedly filed the refund claim within one year from the receipt of convertible foreign exchange.
- Therefore, the relevant date is the date of FIRC and not the date of service and regarding the receipt of remittance in Indian rupees, the Indian rupees received through foreign bank is considered as the payment in convertible foreign exchange.

Geojith Financial Services Ltd., [2018] 98 taxmann.com 160 (AAR-KERALA)

- The assessee is engaged in providing various retail financial services like stock broking, share broking, marketing of initial public offering of companies and mutual funds, corporate advisory services etc., which were not taxable under VAT law.
- The assessee filed an application for Advance Ruling regarding whether computers used by the applicant for providing output services would qualify as inputs for the purpose of availing transitional ITC and if the goods are physically available as closing stock as on 30th June, 2017, can ITC be availed for the VAT paid.
- The Authority of Advance Ruling held that the applicant being a service provider is not eligible to avail input tax credit on computers and laptops held during the transition period and hence the transitional credit claim of the assessee in respect of capital goods is not acceptable.
- Therefore, the computer, laptops, etc., used by the applicant for providing output services would not qualify as inputs for the purpose of availing transitional ITC.
- Similarly the goods physically available as closing stock as on 30th June 2017, ITC is not eligible for the VAT paid.

Sandvik Asia (P.) Ltd., [2018] 100 taxmann.com 14 (AAR- RAJASTHAN)

- The applicant is a private limited company and is a multi-product, multi-division entity engaged in the manufacturing, distribution and sales agency activities of various industrial products which include metal cutting tools, mining/construction equipment's, etc.
- Further, the applicant is also engaged into business of after sale support for the mining equipment manufactured by its overseas group entities which are imported by the customers into India.
- The applicant has sought an advance ruling, that whether the maintenance services rendered under comprehensive maintenance services and supply of spare parts should be classified as 'composite supply' or 'mixed supply' and the tax that need to be charged.
- It was held that, applicant engaged into business of after sales support for mining equipment manufactured by its overseas group entities which are imported by customers into India, i.e., activities performed under the 'Comprehensive Maintenance Contract' are to be treated as a composite supply of services
- And the activities performed under 'Equipment Parts Supply and Services Agreement' are to be treated as Mixed Supply.
- Maintenance & Repair services of commercial & industrial machinery taxable at rate of 18% GST

Piaggio Vehicles (P.) Ltd. Vs. Commissioner of Central Excise, Pune-III [2018] 100 taxmann.com 276 (Mumbai - CESTAT)

- The assessee was engaged in the manufacture of Three Wheeler Motor Vehicle.
- It procured spare parts falling under Heading Nos. 3208, 8536 and 8539 of the Central Excise Tariff Act from various vendors and after repacking them into unit containers and re-labelling of containers cleared the containers to various dealers/customers, etc. under its brand name.
- The Adjudicating Authority held that the activity of repacking/re-labelling of the spare parts amounted to manufacture in terms of section 2(f)(iii) of the Central Excise Act, which specified that repacking/re-labelling of the goods specified in the Third Schedule of the Act to make them marketable amounted to manufacture. Therefore, the activity carried out by the assessee was of manufacture and excise duty on the basis of MRP
- The Tribunal held that where assessee procured spare parts falling under Heading Nos. 3208, 8536 and 8539 of Central Excise Tariff Act, i.e., covered under Third Schedule of Central Excise Act from vendors and after repacking them into unit containers and re-labelling of unit containers cleared unit containers to dealers, activity of repacking/re-labelling amounted to manufacture.

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