

**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:**

- Transfer to larger bench due to reservation in respect to observations and legal proposition : Tata Motors Ltd Vs. Deputy Commissioner Of Commercial Taxes (Supreme Court)
- HC allows revision of GST TRAN-1 for errors due to Technical reasons : Yokogawa India Ltd. Vs. Union Of India ( Karnataka – HC)
- Supply of goods from bonded warehouse to vessels is exempted from GST : wilhelmsen maritime services private limited (Maharashtra – AAR)
- ST cannot be claimed on the differential amount between ST-3 and balance sheet due to technical glitches : Ashutosh Marines Vs. Commissioner of CGST & C.EX ., (Mumbai – CESTAT)
- No time limit for refund where ST is paid on export of services erroneously : Hitachi Metals India Private Limited Vs. Commissioner of C.EX. & S.T., Gurgaon-I (Chennai – CESTAT)
- Pre-deposit reduced to 3.75%in cash and balance through bank guarantee as amount is high and harsh: Brij Kishore Maniyar Vs. CESTAT, Kolkata (Calcutta – HC)
- Service Tax on salary of staff reimbursed to distributors under Business Auxiliary Services : IPCA Laboratories Ltd. Vs. CCE & ST (Mumbai – CESTAT)
- Whether supply of goods with transportation services - naturally bundled and treated as composite supply : IAC Electricals (P.) Ltd., (West Bengal - AAR)

**TATA MOTORS LTD Vs. DEPUTY COMMISSIONER OF COMMERCIAL TAXES (SPL)  
2019(25)G.S.T.L. 481 (S.C.)**

- The appellant is a dealer of Tata Motors and sales tax is paid on the vehicle sold.
- A warranty is given to the purchaser for free replacement of parts during the period of warranty, to facilitate the dealer is obliged to keep a stock of spare parts.
- Sales tax is paid on the stock of spare parts purchased from Tata Motors and the defective parts are sent back to Tata Motors and credit note is given by them for the said parts.
- The department alleged that the sales tax is liable to be paid even on the return of the spare parts, as credit note is given for the same to the dealer.
- The council of the appellant drew the attention that price of the car is inclusive of the cost of the spare parts and the latter being supplied for free upon replacement and sales tax is paid upon purchase of the car as well as on inventory purchased.
- The Court held that since issue raised is crucial over which consideration needs to be debated and as there are some reservations in respect to observation and legal propositions it is required to be looked into by the larger bench.

**YOKOGAWA INDIA LTD. Vs. UNION OF INDIA 2019 (25) G.S.T.L. 493 (Kar.)**

- The petitioner is engaged in manufacturing, trading and selling of electrical and electronic products, engineering solutions, EPC contracts and software.
- The petitioner had filed the form GST TRAN-1 but has missed disclosing the closing balance of the CENVAT Credit.
- So the petitioned was advised to amend the same but instead of numerous attempts they were unable to revise due to the technical glitches, system error and the petitioner intimated the issue to the GST help desk.
- Therefore the petitioner has filed a writ petition before the high court for the same
- 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 for the first time cannot be denied on technicalities.
- Hence, the respondent authorities ought to re-considered the request/representation of the petitioner to permit or allow it to revise the declaration in FORM GST TRAN-1.

**WILHELMSSEN MARITIME SERVICES PRIVATE LIMITED ([2019] 107 taxmann.com 384 (AAR – MAHARASHTRA)**

- The applicant has the largest maritime services network in the world supplying a wide portfolio of maritime goods and services worldwide to every conceivable vessel type, in every market and region (i.e., maritime logistics).
- They import the goods from foreign countries and keep them in either in Bonded Warehouse or Non-Bonded Warehouse and supply the same to ship proceeding to a foreign port from the Indian Sea-ports.
- The applicant had sought an advance ruling as to whether this supply will fall under the Schedule III of CGST Act and whether the supply will be termed as export of goods and if not treated so then the place of supply.
- The AAR held that supply from Bonded warehouse will fall under Schedule III of CGST Act and exempted from GST and supply from Non-Bonded warehouse will not fall under Schedule III of CGST Act and therefore not exempted from GST.
- Since the transaction is not an export of service the place of supply cannot be maintainable as the second question is not under the purview sec 97(2) of the CGST.

**ASHUTOSH MARINES Vs. COMMISSIONER OF CGST & C.EX ., Mumbai 2019(25) G.S.T.L. 564 (Mumbai – CESTAT)**

- The appellant is engaged in manpower recruitment or supply agency services.
- In response to M/s. ASMAC'S advertisement the appellant was making preliminary interview for candidates and forwarding the names of selected candidates and paid ST on the charges collected.
- And certain amount was paid to ASMAC from the collection for the services rendered by it and the said amount included the Service tax paid by it, and the credit has been passed but the appellant had erroneously added the CENVAT Credit in the wrong column.
- The department demanded the Service tax on the differential amount between the balance sheet and the ST-3 return.
- The Tribunal held that merely due to erroneous filing of ST-3 return as assessee failed to put the CENVAT credit in appropriate column, demanding Service Tax on differential amount between ST-3 return and in balance sheet would amount to double taxation which is permissible.

**HITACHI METALS INDIA PRIVATE LIMITED Vs. COMMISSIONER OF C.EX. & S.T., GURGAON-I 2019 (25) G.S.T.L. 573 (Chennai – CESTAT)**

- The appellant entered into agreement with M/s Hitachi Metals (I) Pvt Ltd having its office in Tokio and similar agreement with outside entities for promotion of products of MET and M/s. Hitachi Metals Ltd.
- Due to lack of clarity the appellant has paid ST during the period April 2006 to February 2008 for the services provided to their foreign recipient and received payment in convertible foreign exchange.
- Further knowing the fact that ST is not payable the appellant had filed refund claim on 12-1-2010.
- The department alleged that the appellant had filed refund beyond the time limit prescribed under sec 11b of Central Excise Act 1944.
- Heard both the parties the tribunal held that since the appellant was not liable to pay service tax, therefore the time limit prescribed under section 11b of Central Excise Act 1944 for filling the refund claim is not applicable.

**BRIJ KISHORE MANIYAR Vs. CESTAT, KOLKATA 2019(366) E.L.T. 969 (Calcutta – HC)**

- The appellant was directed by the tribunal for a pre-deposit of 7.5%.
- The appellant was aggrieved by the order as it was too high and harsh for them, because the total tax effect was INR 5 Crores.
- Considering the facts, that the amount was high and harsh for them and also Sec 35F of Central Excise Act, 1994 lays down mandatory pre-deposit of 7.5%, the High Court held that 50% of the predeposit of total duty to be made in cash and the balance 50% representing the predeposit of 7.5% to be made by furnishing bank guarantee.

### **IPCA LABORATORIES Ltd. Vs. CCE & ST (2018) 93 Taxmann.com 338 (Mum. – CESTAT)**

- The assessee had engaged distributors in various countries where the goods were exported and sold.
- These distributors appointed sales representatives for promotion of the goods and their salary was reimbursed by the assessee to those distributors on the debit note.
- The department held that the assessee was liable to pay service tax on the amount paid to the distributors under the category of “Business Auxiliary Services”.
- The tribunal held that the amount was spent by the distributors for the promotion of their own products. Therefore, the service tax could not be demanded on the said service under the head of “ Business Auxiliary Service”.

### **IAC ELECTRICALS (P.) Ltd., (2018) 93 Taxmann.com 476 (AAR – West Bengal)**

- The assessee had entered into two separate contracts with M/s Power Grid Corporation Of India.
- The first contract was for supply of materials and the second was for supply of allied services like transportation, insurance, loading or unloading etc., for delivery of materials at the contractee’s site.
- The assessee filed an application for AAR regarding the taxability of these services supplied.
- The AAR held that the supply of goods and transportations to the contractee’s site were not separately enforceable. Therefore, the supplies of goods and services of transportation were naturally bundled.
- Hence, such supply would be treated as composite supply and the applicable tax rate on the entire transaction would be the tax rate applicable on principal supply.

## ABOUT DAA

DAA Consulting is a management consulting Firm founded in the year 2009 by D Arvind who earlier worked in Big Four Firms as partner and Tax & Legal head in a large MNC prior to Big Four.

DAA specialises in GST, Customs, Foreign Trade Policy, SVB, Corporate Governance & Corporate Financial Advisory services including FEMA.

We operate out of Mumbai, Chennai, Bangalore, Coimbatore, Hyderabad, Nasik, Delhi and Pune.

To provide one stop solution, we have JVs / Collaboration with:

### U.S.Gandhi & Co.

Chartered Accountants

**US Gandhi Chartered Accountants**, is a leading firm of Chartered Accountants operating for over 3 decades handling very large corporates in the areas of Forensic Audit, Direct Tax Litigations, Process Audit, Corporate Advisory etc. Known for adding huge value to clients, the firm enjoys excellent track record in both domestic and multi-national markets.

### MEHTA&MEHTA

Legal & Advisory Services

**Mehta & Mehta Legal & Advisory Services**, is a leading firm of Company Secretaries and Advisors in Corporate Laws, founded by an Ex-President of ICSI. For more than 2 decades, the firm has been specializing in Company Law, Advisory & Litigation, Secretarial Audits, Corporate Restructuring, including legal parts of Merger, De-Merger & Amalgamations, Legal Compliance Review, FEMA Etc. The firm handles large listed & unlisted companies. in Depth experience in IBC matters, put them in strong footing in handling Insolvency Related Matters including NCLT.

### VTPA | *Vispi T. Patel & Associates*

Chartered Accountants

**Vispi TPatel Associates**, a leading firm in Direct Tax, International Taxation & Transfer Pricing operating out of Mumbai to offer both Direct & Indirect Tax solutions under one roof. Vispi T Patel earlier worked as a Partner in big four.



**Anoma Legal**, is a specialized Legal Consultancy firm that supports us on legal advisory & Due Diligence services to various niche sectors like Financial Services, Infra Structure, Shipping & Logistics, Real Estate, Hospitality, Energy and Natural Resources etc.



To View our Testimonials, visit  
<http://daa-india.com/testimonials/>

#### 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](http://www.daa-india.com)