



**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:**

- Benefit of transitional credit could not be taken away due to non-filing of form GST Tran-1 within due date : Siddharth Enterprises Vs. Nodal Officer ( Gujarat – HC ) ;
- 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);
- 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);
- Services associated with manufacturing of metal is continuous supply of service : VESUVIUS INDIA LTD (West Bengal - AAR);
- Absence of ARE – 1 number in shipping bill amounts to clandestine clearance of goods : BROADWAYS OVERSEAS Ltd. Vs. CCE (Chandigarh – CESTAT)

### **Siddharth Enterprises Vs. Nodal Officer [2019] 109 taxmann.com 62 (Gujarat)**

- The applicant is a partnership firm in the business of import-export and distribution of branded housewares registered under GST.
- The applicant had filed a writ petition before the High Court for permit to file declaration in form GST Tran-1 and Tran-2 to claim transitional credit of the eligible duties in respect of the inputs held in the stock.
- The assessee submitted a declaration stating that form GST TRAN-1 could not be filed on account of the technical glitches.
- The Honorable Court held that respondents are directed to permit the writ-applicants to allow filing of declaration in form GST TRAN-1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day.
- Therefore, the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision and since it is a vested right and could not be taken away due to non-filing of form GST Tran-1 within due date.

### **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 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..

**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 scientific 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 micrography 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.

### **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.

### **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.



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