



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:

- Commission received from container liners for providing service taxable as business auxiliary service : CCE & C Vs. RE Shipping (CESTAT – Hyderabad);
- Supply of medicines & allied items to in-patients by hospital is composite supply; not separately taxable : Ernakulam Medical Centre (P.) Ltd (AAR);
- Supply to Indian Naval Ships and Indian Coast Guard Ships to be treated as exports : Fairmacs Shipstores (P.) Ltd., (AAR – Andhra Pradesh);
- ITC of GST paid on freight for transportation of non-taxable goods to another unit not available : Indian Oil Corporation Ltd., [2018] 97 taxmann.com 384 (AAR - WEST BENGAL);
- Transportation services without consignment notes not to be considered as GTA services : Northern coal field ltd. Vs. CCE (2018) 92 Taxmann.com 219 (CESTAT – All.);
- No reversal of CENVAT credit if output service was taxed before receipt of completion certificate : Alembic Ltd. Vs. Commissioner of Central Excise & Service Tax (CESTAT – Ahmedabad);
- Service Tax cannot be demanded on commission paid to foreign commission agents : Wanbury Ltd Vs. CCE & ST Raigad (CESTAT – Mumbai);
- Customs Tariff Act, 1975 is a distinct legislation and case laws pertaining to the said Act of 1975 cannot apply to VAT cases: Ricoh India Ltd Vs. State of Maharashtra (HC – Mumbai)

CCE & C Vs. RE SHIPPING (2018) 93 TAXMANN.COM 319 (CESTAT – Hyd)

- The assessee received commission from container liners for providing services to them.
- The Commissioner (Appeals) held that the services provided by the assessee would fall under the definition of 'Steamer Agent'.
- The Tribunal held that the container lines were different from shipping lines which run the ships.
- As per the Finance Act, definition of 'Steamer Agent' the services rendered to container lines could not be covered under this definition.
- Therefore, such service could be classified under the category of 'Business Auxiliary Service'.

ERNAKULAM MEDICAL CENTRE (P.) LTD., IN RE [2018] 98 Taxmann.com 161 (AAR-KERALA)

- The assessee is rendering medical services with professionals like doctors, nursing staff, lab technicians etc., in the present GST scenario health care services by a medical establishment have been exempted.
- Hence the assessee sought for an advance ruling on the liability of hospital under GST Act on the supply of medicines and allied items through the pharmacy.
- The goods supplied to inpatients are indispensable items and it is a composite supply to facilitate health care services.
- Therefore, the supply of medicines and allied items provided by the hospital through the pharmacy to the inpatients is part of composite supply of health care treatment and hence not separately taxable.
- But the supplied of medicines and allied items provided by the hospital through the pharmacy to the outpatients is taxable.

Fairmacs Shipstores (P.) Ltd., (2018) 99 Txxmann.com 108 (AAR – Andhra Pradesh)

- The applicant holds a special warehouse license, duty free ship store supplier through special warehouse and the applicant was importing cosmetics, toiletries food products like confectioneries and cigarettes etc.,. The goods so imported would be kept in special warehousing without collecting duties.
- The applicant was permitted to export the above goods which were kept in special warehouse as duty free to the ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships.
- The applicant had sought an advance ruling, that whether it was exempted from tax under GST on such outward supplies made by it. The advance ruling authority held that the applicant was not exempted from tax under GST on these outward supplies.
- The applicant had now raised a new issue that whether the transaction entered into with ocean going merchant vessels on foreign run, Indian Naval Ships and Indian Coast Guard Ships were export (zero rated) or not.
- Further as per the circular, the Government of India, decided to treat Indian Naval vessels, as 'foreign going vessels'.
- As per section 88(A) of Customs Act,1962, the goods supplied to merchant ships on foreign run will be treated as export. As per section 16 of IGST Act'2017, the exports will be treated as 'zero' rated supplies.
- Therefore the outward supplies made by the applicant to ocean going merchant ships which are in foreign run, Indian Navy ships and Indian Coast guard ships, will be treated as 'exports'.

Indian Oil Corporation Ltd., [2018] 97 taxmann.com 384 (AAR WEST BENGAL)

- Applicant exports High Speed Diesel (HSD), Aviation Turbine Fuel (ATF) and other refined petroleum products to Nepal under terms and conditions laid down in an agreement between Indian Oil Corporation and Nepal Oil Corporation.
- It has been paying GST on input service of Railway Freight for above transportation.
- It is seeking advance ruling on whether GST paid on railway freight for transportation of goods from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit under GST Act.
- It is observed that transfer of ATF and other non-taxable supplies from Refinery to Depot are not export of as per IGST Act, but exempted supplies from West Bengal Unit to Bihar Unit of applicant, who are distinct persons in terms of GST Act.
- Therefore, not applicable and, thus, applicant cannot claim credit of GST paid on input services like railway freight on ATF and other non-taxable supplies from West Bengal to his Bihar Unit.

Northern coal field ltd. Vs. CCE (2018) 92 Taxmann.com 219 (CESTAT – All.)

- The assessee is engaged in several transporters for transport of coal from coal face to coal stock yards.
- The transporters had not generated the consignment notes and payments were made only on the basis of particulars were made only on the basis of particulars generated during weighment.
- The department held that the said services received by the assessee would fall under the category of 'Goods transport agency services'.
- The tribunal held that the definition of 'Goods transport agency services' clearly specifies the person who provides the service in relation to transport of goods and issues a consignment note.
- Therefore, such services could not be classified as 'Goods transport agency services' as no consignment notes were issued by the transporters to the assessee.

Alembic Ltd. Vs. Commissioner of Central Excise & Service Tax, Vadodara-I [2019] 101 Taxmann.com 461

- The assessee was engaged in development of real estate projects and availed CENVAT Credit of service tax paid on various input services used to construct residential complex under the category of works contract service for the residential units sold to various customers.
- The assessee had obtained completion certificate on 24-02-2014 and on such date approximately 35% property was unsold and no booking was made on such. They had given due intimation to the competent authority that it shall be availing only proportionate credit of Service Tax on input services received after date of obtaining completion certificate.
- Meanwhile, CERA auditors audited and asked to reverse CENVAT Credit / pay a certain amount towards proportionate CENVAT Credit availed by it during period 2010-11 till date of obtaining Completion Certificate.
- The department has issued a SCN stating that no service tax was paid by the assessee, on the ground that it had availed cenvat credit and provided taxable as well as exempt services and had not maintained separate accounts.
- The Tribunal held that the assessee is not liable to pay since service became exempt after receipt of completion certificate and since the CENVAT Credit has been availed only proportionately by maintain separate books.
- Therefore the assessee is not required to reverse cenvat credit availed during the period when output service was wholly taxable before receipt of Completion Certificate and is eligible to seek refund of amount paid under protest.

Wanbury Ltd Vs. CCE , ST & Customs Raigad

- The Mumbai Tribunal has held that foreign commission agent services received for promoting sales of goods outside India which was nothing but services utilized for promoting sale of goods abroad which related to exports as the goods were exported hence Service Tax is not applicable on an export transaction.
- Pre inspection quality training for getting approval from a foreign food and drug administration are services not received by Indian supplier of goods hence not liable to Service Tax under Reverse Charge.
- The Appellants also paid fees for getting registered for membership of overseas stock exchange for listing securities of Indian entities supplying goods to overseas customers. Even such services are not liable to tax as stock exchange services.

Ricoh India Limited Vs. State of Maharashtra 2019 (21) GSTL 127 (Bom.)

- Multifunction printers, machines, spares and parts etc.. where subject to concessional levy of tax as Appellants availed benefit of VAT Notification No. 1505/CR-116/Taxation-1 as per Schedule C , in Entry 56 of Maharashtra VAT Act.
- The dispute arose because Serial No.3 of the notification covered goods corresponding to Central Excise Tariff Heading 84.71. of Tariff Act. The department made a case by contending that Entry 56 did not cover Appellants products. Though the Excise Tariff Heading covered printers , notes could not be ignored.
- The dispute came up for hearing before Mumbai High Court which held that where description against any heading or sub heading is shown as other than interpretation provided in Note 2 of VAT Notification would apply.
- The court held that if description of a particular commodity is different from corresponding description in the Excise Tariff , then only those commodities described as aforesaid would be covered by scope of the VAT Notification and other commodities covered by corresponding description in the Tariff will not be covered by the scope of the VAT Notification.

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