



**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 and direct tax:**

- Execution of project for state government under composition contract classifiable as works contract services : Sew Infrastructure Ltd. Vs. CCE, CE & ST (CESTAT – Hyderabad);
- Cash refund on unutilized CENVAT credit admissible on introduction: Great India Steel Fabricators Vs commissioner of C.EX & S.T (CESTAT – Chandigarh);
- Providing software services by sending employees was to be considered as ‘Manpower recruitment services’ : Future Focus Infotech (P.) Ltd. Vs. CCE (ST) (CESTAT – Chennai);
- GST registration limit for co-owners of a property to be checked individually : Elambrancheri Khaldoon (AAR – Kerala);
- Re-gasified LNG & de-mineralized water can be sent to job worker for processing without GST : Bharat Petroleum Corporation Ltd., (AAR – Kerala);
- Transaction charges collected by stock broker couldn’t form part of taxable value of service : Shreyas Stocks (P.) Ltd., Vs. C/GST & CE ( CESTAT – Chennai );
- HC upheld due to ‘Window-dressed’ financials prepared to obtain bank loan : Binod Kumar Agarwala Vs. CIT (HC – Calcutta);
- Section 68 additions couldn’t be deleted just because assessee had permission to receive public deposits : Shreyas Stocks (P.) Ltd., Vs. C/GST & CE ( CESTAT – Chennai )

### **Sew Infrastructure Ltd. Vs. CCE, CE & ST [2018] 94 Taxmann.com 308 (CESTAT- Hyderabad)**

- The assessee had executed the project for Madhya Pradesh Govt. Originally it had discharged the service tax liability on the construction work under the category of 'Commercial or industrial construction service'.
- Subsequently, noticed that these services were not covered under the above category and filed the refund claim for the same.
- The department rejected on the ground that service tax was correctly discharged under the category of 'Commercial or industrial construction service'.
- The tribunal held that the project was executed under composite contract.
- Therefore, such contract would be classified as works contract service and hence the impugned order was correct and did not require any inference.

### **Great India Steel Fabricators Vs Commissioner of C.EX & S.T. G.S.T.L 279 (CESTAT- CHAN.)**

- The assessee provides Multimodal transport operator services and is registered with the Directorate of General of Shipping.
- Pursuant to investigation, it was found that the assessee had availed services of an overseas agent for destuffing the cargo at Hub port and reshipped to the intended destination, the freight and other charges is paid by the assessee i.e the assessee remits the freight payable to the party acting as their agent at the Hub port at a mutually agreed or a pre-fixed rate.
- The main business is consolidation of cargo and on such cargo even bill of lading is prepared showing M/s. Swift as consignor. On their export container loads, they are reimbursed 2% brokerage by liner agent on the freight.
- The department alleged that the main activity of appellant is promoting services of various shipping lines and also managing distribution and logistics and that the services performed by appellants would be liable to classify under "Business Auxiliary Service" (BAS) under the category of services in relation to promotion and marketing of services.
- The Tribunal held that the 'Multimodal Transport Operator Services' provided by assessee, during period 1-7-2003 to 30-4-2006, would not fall under category of 'Business auxiliary service'.

### **Future Focus Infotech (P.) Ltd. Vs. CCE (ST) [2018] 93 Taxmann.com 276 (CESTAT – Chennai)**

- The assessee entered into an agreement with software companies for understanding software related services. For this purpose, it had sent its employees to software company premises.
- The department held that the assessee was not engaged in development of any software on its own, but it was only providing employees of software companies.
- Therefore, the activities undertaken by the assessee would fall under the category of 'Manpower recruitment or supply agency services'.
- The tribunal held that the assessee was only providing manpower having software technology skills to the organizations. The software or IT development was done by utilizing this manpower.
- Therefore, the activities undertaken by assessee would fall under the category of 'Manpower recruitment or supply agency services'.

### **Elambrancheri Khaldoon [2018] 98 Taxmann.com 159 (AAR – Kerala)**

- The petitioner was one of the co-owners of a jointly owned immovable property. There were 13 co-owners holding equal share of land and building. They had rented out these properties to different parties.
- The total rent from all these properties exceeded INR 20 Lakhs in a financial year, but the individual share was not exceeding the threshold limit.
- It filed an application for Advance Ruling whether small business exemption is available to all owners separately in case of joint owned property.
- The Authority for Advance Ruling held that when the rent is collected together and divided between respective co-owners, then the small business exemption for registration under GST is available to co-owners separately.

### **Bharat Petroleum Corporation Ltd., [2018] 98 Taxmann.com 436 (AAR – Kerala)**

- The assessee was a public sector undertaking engaged in refining of petroleum products and it required the industrial gases for carrying out the activity.
- The industrial gases were obtained from inputs such as re-gasified LNG, de-mineralized water, hydrogen rich off gas and raw water.
- The assessee had executed the job work agreement with another company for processing and producing the industrial gases using the inputs.
- The assessee filed an application for Advance Ruling whether inputs can be sent to another company without payment of GST under the job work provisions.
- The Authority of Advance Ruling held that sending inputs free of cost by principal for processing to the premises for job work can't be treated as taxable supply. Therefore this activity amounts to job work

### **Shreyas Stocks (P.) Ltd., Vs. C/GST & CE [2018] 93 Taxmann.com 229 ( CESTAT – Chennai )**

- The assessee was registered with the service tax department for rendering taxable service under the category of 'Stock-broker services'.
- The department noticed that the assessee had collected transaction charges in addition to brokerage charges from the customers on the value of purchase and sale of the securities. Therefore, transaction charges had to be included in the taxable value.
- The tribunal held that the transaction charges were to be paid by the clients only to the stock exchange for the transaction in shares on their own or through the stock-brokers.
- The assessee was collecting the said charges from the clients and remitting the same to the concerned stock exchange.
- Hence, such charges could not form part of gross value of taxable services.

## DIRECT TAX

### **Binod Kumar Agarwala Vs. CIT [2018] 94 Taxmann.com 422 (HC – Calcutta)**

- The assessee was interested in obtaining credit facilities from bank. Thus, a balance sheet was prepared by affirm of chartered accountants and presented to avail loan facility.
- However, later on different financial statements were presented before Income-tax department which were audited by another chartered accountant firm.
- The Assessing Officer (AO) made additions due to difference in two audited balance sheet.
- The assessee who had presented the balance sheet and profit & loss account for obtaining loan could no longer resile from such position.
- The High Court held in favour of revenue, as the financial statement of the assessee was accompanied by a certificate as to its fairness, couldn't be tailor-made to suit the purpose to make it attractive.
- Thus, it was open to AO and Income tax authorities to pin assessee down on basis of assessee's representation contained in earlier balance sheet and make additions.

### **CIT Vs. Mathrubhumi Printing & Publishing Co. Ltd. [2018] 96 Taxmann.com 617 (HC – Kerala)**

- The assessee company had received certain deposits from its dealers / agents and also from general depositors.
- Assessing officer treated those deposits as unexplained cash credit and accordingly, made additions to income of assessee.
- Tribunal found that assessee had accepted deposits from public as permitted by Companies Act, 1956, thus, deleted additions made by Assessing officer.
- The High Court held that merely because there was a permission granted under Companies Act to accept deposits from public, it would not necessarily follow the deposits shown by assessee were really those received from members of public or from agent.
- Therefore, deletions of additions by tribunal was erroneous.



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#### DAA | CHENNAI

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

#### DAA | BANGALORE

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

#### DAA | MUMBAI

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

#### 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



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