



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:

- ITC not available on goods & services procured for distribution of gifts and incentives : Surfa Coats (India) (P.) Ltd., (AAR – Karnataka);
- Management and repair services lying as receivable cannot be treated as consideration until received : Paramount Facilities & Services Pvt. Ltd. Vs Commr of CESTAT;
- Polypropylene leno bags made from woven PP fabric are classified as ‘Sacks and Bags’ : Mega Flex Plastics Ltd. (AAR – West Bengal) ;
- Order denying credit not to be taken up for consideration while deciding assessee’s rebate claims - Vandana Overseas Vs Union Of India (HC – Bombay);
- Cost of materials supplied by recipient, inclusion thereof in value of works contract service supplied : Tejas Constructions & Infrastructure Pvt. Ltd. (A.A.R.- GST) ;
- Transportation of goods after their loading into trucks couldn’t be classified as ‘Cargo Handling services’ : Swayam Shipping Services (P.) Ltd. Vs. CCE & ST (CESTAT – Ahmedabad) ;
- Sale of land is taxable as capital gains, though depreciation was claimed on staff quarters built on it : ACIT Vs. Seth Industries (P.) Ltd. (ITAT – Mumbai);
- Section 54F relief couldn’t be denied merely because claim wasn’t raised in ITR : Manohar Reddy Basani Vs. ITO (ITAT - Hyderabad)

Surfa Coats (India) (P.) Ltd., [2019] 110 taxmann.com 204 (AAR – Karnataka)

- The applicant company was engaged in the business of manufacturing decorative paints meant for interiors as well as exterior surfaces. The applicant purchased TVs, washing machines, watches, mobiles, gold coins, rain coats, etc., for distribution to painters and dealers in connection to incentive schemes.
- The applicant sought an advance ruling on the question that whether the applicant eligible to claim the GST Input tax credit on these items purchased for furtherance of business.
- The CBIC vide circular no. 92/11/2019-GST clarified that 'input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration'.
- Thus, the Aar held that the applicant is not eligible to avail input tax credit on inward supplies of goods and services which are attributable to incentives provided in form of gifts of goods and services to painters and dealers and other persons under CGST/SGST/IGST Act.

Paramount Facilities & Services Pvt. Ltd. Vs Commr of CESTAT, Ghaziabad 2019 (27) G.S.T.L. 251 (CESTAT - Allahabad)

- The appellant provides management, maintenance and Repairs Services and is in a tripartite agreement between the flat owners, builders and appellant.
- Wherein, some amount was collected by the builder as interest free security deposit towards repairs and maintenance and such amount will be reflected in builder's books of accounts as interest free security deposit and in appellant's books of accounts as receivable.
- And such amount was paid by the builder to the Appellant in case the flat owner fails to pay him for the services.
- The revenue department contended that the said the amount which is receivable should also be treated as consideration for maintenance and repair services.
- The tribunal held that such amount till received cannot be treated as consideration particularly when such amount is not receivable on account of any invoice.

Mega Flex Plastics Ltd. [2018] 95 Taxmann.com 70 (AAR – West Bengal)

- The applicant is a manufacturer of 'polypropylene (PP) leno bags' which are used for packing of various items.
- The applicant sought an advance ruling on classification of such bags under GST and stated that such bags are cleared under Heading No. 630533 as 'sacks and bags' in the domestic market and under Heading No. 392329 as 'Articles for the conveyance or packing of goods' during the export.
- The Authority for Advance Ruling held that 'PP Leno Bags' made from woven PP fabric using strips and without any coating, covering or lamination with plastics are classified as 'Sacks and Bags' under Heading No. 630533.

Vandana Overseas Vs Union Of India 2019 (368) E.L.T. 306 (HC - BOMBAY)

- The petitioner is a merchant exporter and has exported fabrics under rebate claims (rule18).
- The fabrics on which the rebate was claimed was purchased from a supplier who has availed CENVAT credit but subsequently the credit was disallowed as it was taken on fake/bogus invoices.
- The additional commissioner issued a show cause notice to the petitioner seeking to reject petitioner's rebate claims and the rebate stood rejected.
- The petitioner claimed that as the supplier has paid equivalent amount of cash to revenue he is entitled to claim for rebate of duty and then being aggrieved the respondent revenue filed a revision.
- Revenues revision application is to be restored for fresh consideration taking into account claims of subsequent developments.
- Therefore the High Court held that order denying credit not to be taken up for consideration for deciding assessee's rebate claims.

Tejas Constructions & Infrastructure Pvt. Ltd. (2019 (29) G.S.T.L. 525 (A.A.R.- GST)

- The applicant provides construction services and the consideration for the same will be received as per the agreement.
- The applicant submitted value of contract as per agreement which is inclusive of material and labour.
- GST will be paid on entire value of contract, the value of materials supplied by contractee would be deducted and balance amount will be paid to the applicant.
- The applicant sought an advance ruling as to whether the contractor can charge GST on value of material supplied by the recipient of service and what should be the mechanism to calculate the taxable value as per sec 15 of the said act.
- The AAR held that applicant, on issue of supply of concerned materials is not a supplier of goods and services and as per provision sec 95 of CGST act, 2017 they cannot raise this question.
- In case of second question the tax is payable on the entire contract value as per certificate issued by the architect without deducting the value of materials provided by the contractee

SWAYAM SHIPPING SERVICES (P.) Ltd. Vs. CCE & ST (2018) 93 taxmann.com 259 (CESTAT – Ahmedabad)

- The assessee was involved in loading and unloading of timber logs into the truck and transporting the same to the location of the importer.
- It was issuing consignment note for transportation and discharged its duty under the category of ‘Goods transport agency service’.
- The department held that the services provided by the assessee would fall under the category of ‘Cargo handling service’.
- The tribunal held that the ancillary activity undertaken with main contract of the transportation would not change the activity of the service provider.
- Therefore, the services provided by the assessee would not fall under the category of ‘Cargo handling service’.

DIRECT TAX

ACIT Vs. Seth Industries (P.) Ltd. [2018] 94 Taxmann.com 318 (ITAT – Mumbai)

- The assessee entered into a development agreement with a builder for sale of land for INR. 3.26 Crores. A portion of said land comprised of mill workers quarters.
- Developer had got staff quarters vacated by paying INR 1.04 crores to employees and consideration of INR 2.92 crores was paid to assessee.
- Assessing officer (AO) was of view that on workers quarters, assessee had claimed depreciation earlier and therefore proceeds from sale of property comprising of staff quarter had to be taxed as short-term capital gain in terms of section 50(1).
- The Tribunal held that asset transferred was land and not staff quarters. Further, land was not a depreciable asset and it was not a part of the block of assets.
- In absence of a rate of depreciation having been prescribed, provision of section 50 could not be invoked in assessee's case.
- Therefore, assessee's claim of long-term capital gain, by treating asset sold as land had to be accepted.

Manohar Reddy Basani Vs. ITO [2018] 94 Taxmann.com 321 (ITAT - Hyderabad)

- The assessee filed its return declaring certain taxable income.
- The Assessing Officer (AO) noticed that assessee had made sale of property and neither admitted as capital gains on sale of property nor claimed exemption.
- The assessee stated that he was entitled to exemption under section 54F on capital gains since his share of sale consideration of property was utilized for construction of another residential property.
- Commissioner held that since assessee neither declared nor claimed any deduction, his claim for deduction was not allowed in return of income.
- The ITAT held that since there was no dispute about utilization of sale proceeds for construction of another residential property, mere fact that deduction was not claimed in return of income could not result in denial of assessee's claim.

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