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Case Laws of The Week

18th November 2019

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:

- Trade margin earned by purchase and sale of tickets shall not be liable to service tax: Commissioner of Service Tax Vs Om Air Travels Pvt. Ltd. (CESTAT-Ahmedabad);
- Sale and purchase of space in vessels of shipping liners being trading activity and not a service, profit is not liable to service tax: Sea master shipping and logistics Vs Commissioner of C.T. (CESTAT – Hyderabad);
- ITC admissible on Input services received and consumed in R&D Centre located outside factory: Jubilant life sciences Ltd. Vs Commissioner of Cus., C.Ex. & S.T., Noida - (CESTAT - Allahabad);
- Composite supply of Freight and insurance of goods taxability and incidental expenses to be included in value of supply : Aditya Birla Nuvo Ltd. (A.A.R. – GST);
- Demand on exempted goods not sustainable when cenvat credit reversed with interest : Bombay minerals Ltd. Vs Commissioner C.E. & S.T. Rajkot. (CESTAT - Ahmedabad.);
- Applicant eligible to set of advance against the payment of GST for mobilization advances received from government for works contract services prior to GST - Siemens Ltd., 2019 (AAR-GST);
- Deemed exports by EOU not to be clubbed for determination of DTA clearance : Surya Life Science Limited Vs commissioner Of Central Excise, Bharuch (CESTAT- Ahmedabad);
- Flats partially constructed with customers identified before GST regime, taxability thereof under GST : Durga Projects & Infrastructure Private Limited (AAR- GST)

Commissioner of Service Tax Vs Om Air Travels Pvt. Ltd. 2019 (25) G.S.T.L. 460 (CESTAT -Ahmedabad)

- The assesse is a sub-agent and purchases tickets from IATA agent on a discounted price and sells the same at a higher price to the customer.
- The department held that the discount received from the IATA agent by the assesse is liable to be taxed under business auxiliary services.
- The assessee contended that they purchase ticket on discounted price and further sells the same at a higher price to the customer, therefore the trade margin is not taxable.
- He further submits that the services are classifiable as an air travel agent service and that commission received from IATA agent and selling the tickets to the customer is not taxable.
- The tribunal held that the demand raised on trade margin of purchase and sale of tickets shall not be taxable.

Sea Master Shipping and Logistics Vs Commissioner of C.T., Visakhapatnam 2019 (25) G.S.T.L. 458 (CESTAT – Hyderabad)

- The appellant is a logistics company and enters into agreement with shipping liners and purchase space on their vessels and sell the same to their customer at a higher price.
- The department held that sale and purchase of space on the vessel constitutes rendering of services and service tax is chargeable on the difference value.
- The appellant contended that they were not rendering any services to their customers but were purchasing and selling space on ships for earning profits in the process.
- As per circular 197/7/2016-ST it was clarified that freight forwarders may also act as principal in providing transportation of goods in which case they will not be liable to pay service tax.
- The tribunal further held that the service tax can only be levied on the value of taxable services rendered and that there is no provision to charge service tax on profit earned from trading.

Jubilant Life Sciences Ltd. Vs Commissioner of Cus., C.Ex. & S.T., Noida 2019 (29) G.S.T.L. 319 (CESTAT - Allahabad)

- The assessee manufactures drugs and have their manufacturing facilities and R&D centres that are located outside factory premises. The assessee also provides consultancy or technical consultancy service to the manufacturing units.
- During the phrase of audit it appeared to the revenue that credit of service tax attributable to a service used in a unit exclusively engaged in manufacturing of exempted goods or providing of exempted services, shall not be distributable as per rule 7 of CCR.
- The assessee contended that the service provided by the R&D centres covers up the definition of Input services.
- Further, the appellant urged that the services provided by the R&D to their manufacturing units is classified under the category of 'Scientific & Technical Consultancy Service' and the said service is not taxable.
- The tribunal held that the appellant has rightly taken cenvat credit as the services have been admittedly used by the manufacturer indirectly in relation to manufacture of final dutiable goods.

Aditya Birla Nuvo Ltd. 2019 (29) G.S.T.L. 247 (A.A.R. – GST)

- The applicant is charging GST on freight and insurance considering it as composite supply.
- The applicant has sought an advance ruling as to whether ex-works, freight and insurance to be treated as composite supplies, whether showing and charging freight and insurance separately in invoice would attract GST and if no GST is chargeable then whether they can have two different treatments.
- Applicant Further questions as to whether the elements being incidental expenses for supply liable to be included in assessable value of goods as composite supply.
- The authority observed that supply of principal goods / services along with freight and insurance is a composite supply as per CGST act.
- The question regarding treatment of GST chargeable on the invoice is not applicable and under the purview of AAR.
- Further, it was observed that in case where the value of freight as per pre-contracted fixed freight per unit is different from actual cost, higher of two values is includible in the value of composite supply.

Bombay Minerals Ltd. Vs Commissioner Of C.E. & S.T. Rajkot – 2019 (29) G.S.T.L. 361 (CESTAT - Ahmedabad)

- The appellant is engaged in mining of bauxite and after the mining the mined bauxite is segregated into low grade bauxite and high grade bauxite in the mine itself.
- The appellant directly sells the low grade bauxite from mines and high grade bauxite is sent to factory for further process and has availed CENVAT credit on common input services.
- The department issued a SCN stating that the appellant has availed cenvat credit in respect of common input services which are used for both dutiable and exempted products and hence is required to pay an amount at 10%/5% of value of exempted goods.
- The appellant contended that as per rule 6 of CCR the options to provider of output services, for providing taxable and exempted services and opting not to maintain separate accounts are that either reverse the credit attributable to the inputs used for exempt services or pay 8% of exempted service.
- It was held that the once the appellant has opted for reversal of CENVAT credit with interest then the demand for 5%/10% cannot be made.

Siemens Ltd., 2019 (29) G.S.T.L. 73 (AAR - GST)

- The applicant has entered in a contract for 'design, supply, installation, testing and commissioning' of power supply and distribution system, includes supply of equipment's.
- According to the contract the applicant received mobilization advance, which is recoverable as adjustment towards payment due for tax invoices raised by applicant and there existed an outstanding amount yet to be adjusted as on 30-06-2017.
- The applicant has sought an advance ruling as to whether the GST shall be charged on gross amount of invoice raised post-introduction of GST or the net amount received (prior to such implementation) after adjusting the amount outstanding as on 30-06-2017.
- AAR held that the applicant is deemed to have supplied works contract service to the extent of advance received.
- Therefore, to avoid double taxation, the GST should be charged on the net amount that remains after the adjustments that stood credited in the account on the date of mobilization of advances.

Surya Life Science Limited Vs Commissioner Of Central Excise, Bharuch – 2019 (368) E.L.T. 148 (CESTAT- Ahmedabad)

- The appellant is 100% Export Oriented Unit and appealed against confirmation of demand of duty and imposition of penalties.
- The entire demand was based on the ER-II returns filed by the appellant and the appellant contends that impugned order was erroneous as it treated the deemed exports as DTA clearance.
- The respondent contended that the appellant was not status holder and has to obtain prior permission for clearance and based on the B17 bond executed by the appellant, duty can be demanded anytime without hindrance of limitation.
- The appellant relied on the fact that B17 bond does not contain advanced DTA sale.
- The tribunal held that deemed exports cannot be clubbed for the purpose of calculation clearances in DTA
- Further held that the appellant has disclosed the entire clearances to the respondent and the charge of suppression or mis-declaration of facts cannot be invoked.

Durga Projects & Infrastructure Private Limited – 2019 (29) G.S.T.L. 153 (AAR- GST)

- The applicant is engaged in construction and sale of residential apartments and residential complex based under joint development agreement.
- The applicant has sought an advance ruling in respect of applicability of GST on partially completed flats having customers identified before GST regime on partially completed flats; where customers identified after GST regime on partially completed flats and where no customers are identified.
- The AAR held that where customers are identified before the implementation of GST, then the applicant is liable to pay service tax proportionate to services provided Pre-GST regime and liable to pay GST proportionate to the services provided Post-GST in respect of flats.
- In case where customers are identified Post-GST, the applicant is liable to pay GST on transaction value of supply.
- Incase no customers are identified, applicant is not liable to GST as no supply is involved however if supply is made prior to issuance of completion certificate then GST is liable to be paid on transactional value of supply.

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