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Tax & Corporate Laws of INDIA

Top 25 Goods and Services Tax Cases in 2018

Taxmann's editorial board scrutinizes each and every Judgement of High Courts, Anti-profiteering cases and Advance Rulings. In the year 2018, we have reported almost all important Judgments on GST. We have been very diligent while selecting a Case Law for reporting.

During the year 2018, we reported 700+ Case Laws on new regime and out of them we have selected 25 most important cases and prepared a digest thereof. The list includes cases with rulings delivered on Krishi Kalyan Cess, E-way Bill, Anti-profiteering, back office services, canteen services, etc. The year 2018 was the year of advance rulings and Anti-profiteering cases on the GST. There are various conflicting decisions taken by two or more State AAARs on the same issue. At present, there is no provision of Centralized Appellate Authority for Advance Ruling (AAAR). The GST Council in its 31st meeting has recommended the creation of Centralized AAAR to deal with such rulings.

We are also coming out with a publication which includes the digest of all cases on GST.

The summary of top 25 Cases on GST reported by Taxmann is given below:

1 Supply of food and beverages in trains to be considered as supply of 'Goods': AAR

[Deepak & Co., In re. - [2018] 93 taxmann.com 94 (AAR - New Delhi)]

The assessee was engaged in supply of food and beverages to the passengers in trains as per the menu and tariff approved by the Indian Railways. It contended that the supply of any food or beverage should be taxable at 5% if they are consumed on or away from the premises. It filed an application for advance ruling for the same.

The Authority for Advance Ruling held that the train is a mode of transport and cannot be called as a restaurant, eating joint, mess or canteen, etc. Therefore, the supply of goods, i.e., food, bottled water, etc., should be charged to GST on the value of individual items at the applicable rates as there is no element of service in it.

2 GST would be applicable on cheque bouncing charges: AAR

[Maharashtra v. Bajaj Finance Limited - [2018] 100 taxmann.com 396 (AAR)]

The applicant, a NBFC is engaged in providing various types of loans to the customers, such as auto-loans, loans against the property, personal loans, consumer durable goods loans, etc. It has entered into agreements with borrowers/customers for providing loans to them. The loan agreements provide for repayment of the outstanding dues/EMI through cheque/ECS/NACH or any other electronic or clearing mandate. In case of dishonouring of payment instrument or instruction, the applicant collects the penal or bouncing charges. The applicant filed an application for Advance Ruling whether the bouncing charges should be treated as supply? It contended that bouncing charges collected from the customers are in the nature of penalty or liquidated damages. Therefore, same are not considerations for supply of services and, hence, not subject to GST levy.

The Authority for Advance Ruling held that the receipt of cheque bouncing charges on dishonouring of cheques would be receipt of amounts for tolerating the act of their customers it dishonouring of cheque. Therefore, it would be treated as supply under GST as per S. No. 5(e) of Schedule II of the CGST Act, 2017 and, hence, taxable under the GST Act.

3 Penal interest charged on default in EMI payment is taxable under GST: AAR

[Bajaj Finance Limited, In re- [2018] 99 taxmann.com 236 (AAR - Maharashtra)]

The applicant was engaged in providing various types of loans to customers. The applicant received penal charges on delayed payment of EMIs of loans. The applicant filed an application for advance ruling to determine whether penal charges on delayed payment of EMIs of loans would be considered as supply?

The authority observed that penal charges on delayed payments would be considered as receipt of amounts for tolerating an act of their customers for having delayed/defaulted on their EMI payments within due dates. The amount received as penal charges would not be considered as additional interest and, therefore, was to be treated as 'supply' under the GST Act. Therefore, penal Interest on default in EMI payment would be taxable under GST.

4 Sale of religious books or DVDs in Satsang would attract GST: AAR

[Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra, In re- [2018] 97 taxmann.com 20 (AAR - Maharashtra)]

The assessee filed an application for Advance Ruling on whether the sale of spiritual products such as books, DVDs, etc., could be treated as supply as per GST Act? It contended that the money earned from such goods was used for main object only, i.e., for charitable and religious purposes. Therefore, such an activity could not be treated as an activity of carrying out business.

The Authority for Advance Ruling held that there was no specific exemption to registered charitable trusts for supply of such goods under GST. The sale of spiritual products which was incidental or ancillary to main charitable object of assessee could be said to be business. Therefore, the sale of spiritual products could be treated as supply under the GST Act and GST would be applicable on it.

5

Transfer of business as ‘Going Concern’ is exempt from GST: Karnataka AAR

[Rajashri Foods (P.) Ltd., In re- [2018] 93 taxmann.com 417 (AAR-Karnataka)]Asia Pacific Pte. Ltd., In re. [2018] 94 taxmann.com 195 (AAR - New Delhi)]

The assessee has manufacturing units. It intends to sell one unit along with all its assets and liabilities for a lump sum consideration. It filed an application for Advance Ruling on the following two issues.

1. Whether such transaction would be deemed as supply of goods or supply of services or both?

2. Whether such transaction would be exempt under S. No. 2 of the Notification No.12/2017-Central Tax (Rate), dated June 28, 2017?

The Authority for Advance Ruling held that the business will continue in new hands. Hence, such transaction would be in the nature of a going concern. When the business is transferred as a going concern, then it does not amount to supply of goods as per part 4(c) of the Schedule II of the Central GST Act. Further, the column no. 3 of the Table in the Notification No. 12/2017-Central Tax (Rate) gives the description of the services. Therefore, such transaction would be treated as 'Supply of service' and, hence, would be exempt from GST as per S. No. 2 of the Notification No.12/2017-Central Tax (Rate), dated June 28, 2017.

Sr. No.	Chapter	*Description of Services*	*Rate*	*Condition*
2	Chapter 99	Services by way of transfer of a going concern, as a whole or an independent part thereof.	Nil	Nil

6

Recruitment services rendered by an intermediary to students of foreign universities are not 'export of services'

[Global Reach Education Services (P.) Ltd., In re - [2018] 92 taxmann.com 211 (AAR-West Bengal)]

The assessee provided recruitment services to the students seeking admission in foreign universities and the consideration for such receives was received in convertible foreign exchange from such foreign universities. It filed an application for advance ruling to decide if such services should be treated as an export of service. The applicant contended that as per Section 13(2) the place of such supply should be deemed to be outside India as location of service recipient is outside India.

The Authority for Advance Ruling (AAR) held that such services would be provided only as a representative of the University and not as an independent service provider. Being an intermediary service provider, the place of supply shall be determined as per section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act.

Therefore, the place of supply shall be the location of service provider. As the condition for export of service was not satisfied, the assessee's service to the foreign universities would not qualify as ‘Export of Services’. Hence, such service would be taxable under the GST Act.

As per Section 2(13) of IGST Act, ‘Intermediary’ means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account

7

Supply of food items to employees for a consideration in canteen run by co. is taxable under GST: AAAR

[Caltech Polymers (P.) Ltd., In re - [2018] 98 taxmann.com 355 (AAAR-Kerala)]

The applicant-company was engaged in manufacturing and sale of footwear. It was providing canteen services exclusively for the employees. It incurred the canteen running expenses for a month and recovered the same from its employees without any profit margin. The applicant submitted that the service provided to the employees was not being carried out as a business activity and it was rendered by virtue of provisions of Factories Act, 1948. Therefore, the applicant is of the view that this activity would not come under the scope of Supply.

The Appellate Authority for Advance Ruling observed that the applicant recovers the amount from employees. Therefore, the supply of food items to the employees for a consideration in a canteen run by the appellant would come under the definition of 'supply' as per the GST Act.

8

GST registration limit for co-owners of a property to be checked individually: AAR

[Elambrancheri Khaldoon, In re - [2018] 98 taxmann.com 159 (AAR-Kerala)]

The petitioner is one of the co-owners of a jointly owned immovable property. There are 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 exceeds Rs. 20 lakhs in a financial year. But the individual share is not exceeding the threshold limit. It filed an application for Advance Ruling whether small business exemption would be 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 equally between respective co-owners, then the small business exemption for registration under GST is available to co-owners separately.

9

HC refrains to issue any direction to Govt. on bringing petrol and diesel under GST

[K.K. Ramesh v. Union of India- [2018] 91 taxmann.com 416 (Madras)]

The applicant filed a writ petition in the Madras High Court for inclusion of petrol and diesel under the ambit of GST to ensure 'One Nation One Tax'. The applicant pleaded that the prices of petrol diesel and other essential goods will come down after its inclusion in GST.

The High Court held that it wasn't entrusted with the power to issue any directions to the Government for inclusion of petrol and diesel under GST. It was only the prerogative of Central Government to act on the recommendations of GST council for its inclusion under GST.

10

Goods procured from one country and supplied to another doesn't attract IGST: AAR

[Synthite Industries Ltd. - [2018] 92 taxmann.com 144 (AAR)]

The assessee received an order from a customer in USA for the supply of spices. It placed a corresponding order with a Chinese supplier, who shipped the goods directly to the customer in the USA. The Chinese supplier raised an invoice on the assessee and assessee raised the invoice on the customer in the USA. The assessee filed an application for advance ruling to determine if GST is leviable on sale of goods to the USA Company, when such goods would be shipped directly from China to the USA without entering India.

The Authority for Advance Ruling (AAR) held that the goods are liable to GST when imported into India. As goods are not imported into India at any point of time, the assessee is not liable to pay IGST on the sale of goods procured from China and supplied to the USA.

11

No contravention of anti-profiteering rules by ‘Honda’ car dealers as they passed on benefits of reduced rate

[Dinesh Mohan Bhardwaj v. Vrandavaneshwree Automotive (P.) Ltd. - [2018] 92 taxmann.com 360 (NAA)]

The assessee filed an application before the Standing Committee alleging the profiteering practice of Honda car dealer. He stated that he had entered into a contract to buy a Honda Car through an authorized Honda car dealer for Rs. 9.13 lakhs, which included excise duty (35%), CST (2%) and UP VAT (14%), i.e., in aggregate the tax was 51%. He took the delivery of the Car in the GST regime by paying an amount of Rs. 8.99 lakhs. He alleged that the dealer had not given the benefit of reduced rate of tax, which was 29% in GST regime. Thus, such practice should be treated as profiteering and, hence, the action should be taken against the dealer.

The Anti-profiteering authority referred the matter to the Director General of Safeguards (DGSG). The DGSG in his report found that in old regime, the tax incidence was 31.25% instead of 51%. Hence, the contention of assessee was incorrect. The National Anti-profiteering Authority (NAA) held that the benefit of Rs. 10,550 on account of reduction of tax by 2% (reducing tax rate from 31.254% (pre-GST) to 29% (post-GST)), had already been passed on to the assessee. Therefore, no additional benefit on account of availment of ITC by the car dealer was required to be passed on to the customer. Thus, the contention of the assessee was not valid and was to be rejected.

12

Goods couldn't be seized if e-way bill was generated before seizure order: HC

[Bhumika Enterprises v. State of U.P. - [2018] 92 taxmann.com 343 (Allahabad)]

The Authority seized the goods of the assessee on the grounds that the tax invoice was kept in a sealed envelope and the goods were transported without E-way Bill-02. It also issued a notice to the assessee for imposition of penalty. The assessee filed the writ petition in the High Court against the same.

The High Court held that the E-way Bill-02 had been generated in favour of the assessee on March 26, 2018 at 11.50 am but the seizure order had been passed on March 27, 2018 at 6 pm. Therefore, there was no justification in the impugned seizure order. Hence, the seizure order as well as show cause notice were to be quashed.

13

Credit of GST paid on sanitary fittings not available as it is an integral part of building: AAR

[Bahl Paper Mills Ltd., In re- [2018] 94 taxmann.com 70 (AAR- Uttarakhand)]

The assessee filed an application before the Authority for Advance Ruling on the issue 'whether credit will be available for the GST paid in respect of office fixtures and furniture, AC plant and sanitary fittings installed in a new building constructed for furtherance of business and which would be capitalized in books of account.?'

The Authority for Advance Ruling held that the input tax credit (ITC) of GST paid in relation to building or any other civil structure is not available. The sanitary fittings are integral parts of building or any other civil structure. Therefore, the ITC of GST paid on such sanitary fittings is not available. However, the credit of GST paid in respect of office fixtures & furniture, AC plant is admissible if registered person doesn't claim depreciation on the GST component under the Income-tax Act.

14

GST is applicable on compensation received by tenant for delayed possession of new premises: AAR

[Zaver Shankarlal Bhanushali, In re- [2018] 95 taxmann.com 3 (AAR - Maharashtra)]

The assessee is a tenant in building premises. The owner of said building premises entered into an agreement with a developer for redevelopment of said premises. Consequent to the said agreement, the assessee is to vacate the premises to facilitate the redevelopment of the building. The assessee filed an application for Advance Ruling for applicability of GST on the compensation received by it for facilitating an alternative accommodation for the tenant and for delay in delivery of possession of the new premises.

The Authority for Advance Ruling held that as assessee agrees to do an act, i.e., vacating the premises to facilitate the supply of service by the developer to the owner, the compensation received from the developer for vacating the said premises shall be subject to GST. Further, the amount received for delayed possession of new premises would be a receipt for tolerating the construction-cum-redevelopment work and for tolerating an act of not completing the re-development work within the prescribed time. The same would be covered under the definition of 'supply' and, therefore, the GST would be leviable on the said amount.

15

‘Rakhi’ classifiable as per its constituent materials; GST exemption is not applicable: AAR

[M D Mohta, In re- [2018] 95 taxmann.com 69 (AAR-West Bengal)]

The assessee is a manufacturer of ‘Rakhis’ including decorative and designer rakhis. These rakhis consist of cotton thread, zari thread, silk thread, plastic beads, coloured stones and rudraksha. It filed an application for Advance Ruling on the classification of Rakhis. It contended that rakhis should be considered as handicrafted goods.

The Authority for Advance Ruling held that ‘Rakhi’ is an independently identifiable product which is made of many materials. The material which provides the essential character to rakhi varies. Therefore, the ‘Rakhis’ have to be classified according to the constituent materials used in it. Further, the GST exemption under Notification No. 2/2017- Central Tax (Rate), dated June 28, 2017 is not available for rakhis.

The CBIC has also clarified through FAQs dated July 20, 2017 that the rate of GST shall be nil in respect of following:

1. Puja samagri, including kalava (raksha sutra)

2. Rakhi, which is in form of kalava [raksha sutra]

Any other rakhi would be classified as per its constituent materials and attract GST accordingly.

16

No GST on salary remitted by HO to liaison office set-up in India for routine operations: AAR

[Habufa Meubelen B.V., In re - [2018] 95 taxmann.com 120 (AAR- Rajasthan)]

The assessee is the liaison office of a company incorporated at Netherlands. It doesn't undertake any activity of trading, commercial or industrial in nature, except activities required for normal functioning of office. The salaries of the employees are remitted by HO to liaison office. The HO also reimburses other expenses incurred by liaison office for its operation.

The assessee filed an application for Advance Ruling on the issue 'whether reimbursement of expenses and salary is liable to GST and whether it is required to get registered under the GST?

The Authority for Advance Ruling held that the liaison office in India does not render any consultancy or other services directly or indirectly. Therefore, the reimbursement of expenses and salary paid by head office to liaison office is not liable to GST. Further, as no taxable supplies are made by the liaison office, they are not required to get registered under GST.

17

No credit of Krishi Kalyan Cess allowed under GST; Appellate authority upholds AAR's order

[Kansai Nerolac Paints Ltd., In re- [2018] 96 taxmann.com 153 (AAAR - Maharashtra)]

The assessee wanted to carry forward the accumulated credit of Krishi Kalyan Cess (KKC) shown in service tax return as on June 30, 2017 to the electronic credit ledger under the GST Act. It filed the application for Advance Ruling regarding admissibility of KKC as input tax credit under the GST Act. The Authority for Advance Ruling (AAR) held that the ITC of KKC could not be carried forward under GST. The assessee filed an appeal against the order of AAR before the Appellate Authority on the ground that KKC is subsumed in the CGST Act and it does not have any independent identity as KKC. Therefore, it should be allowed as credit under the transitional provision.

The Maharashtra Appellate Authority for Advance Ruling (AAAR) held that cess and duty are separate levies and cannot be equated. The credit of KKC can only be utilized for payment of KKC only. Further, the FAQs issued by CBIC have clarified that ITC of KKC cannot be carried forward under GST. Accordingly, it upheld the order of AAR.

18

Supply of UPS along with battery should be considered as 'Mixed Supply': AAR

[Switching Avo Electro Power Ltd., In re - [2018] 96 taxmann.com 106 (AAAR-West Bengal)]

The assessee filed an application for Advance Ruling to determine whether supply of UPS along with battery has to be considered as mixed supply as they are supplied under a single contract at a combined single price? It contended that UPS cannot function without battery because it is an integral part of UPS. Hence, it is naturally bundled and such supply should be treated as a composite supply and not as a mixed supply.

The Authority for Advance Ruling held that the storage battery has multiple uses and can be put to different uses. Therefore, when battery is supplied with UPS, then it can not be considered as a composite supply or a naturally bundled supply.

19

Supply of Goods by Cafe Coffee Day to SEZ units will not be treated as Zero rated supply

[Coffee Day Global Ltd., In re- [2018] 96 taxmann.com 247 (AAR- Karnataka)]

The applicant, Café Coffee Day, is engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines. It contended that all supplies to SEZ, without any distinction, to be treated as zero-rated supplies. The applicant is of the view that the supplies made by CCD to the SEZ units are in the nature of zero rated supplies, notwithstanding fact that they are not used for authorized operations.

The Authority for Advance Ruling observed that IGST ACT provides same meaning to SEZ which is assigned to it in the Special Economic Zones Act, 2005. SEZ Act also provides that the operations to be carried out in the Special Economic Zone and also in the units located therein have to be in accordance with the authorization to be given by the Central Government. It is also observed by the AAR that the rule relating to refund under GST Act stipulates that the supply, in respect of which tax has been paid and refund is sought, shall be necessarily for authorized operations. Therefore, it is decided that the supply of non-alcoholic beverages/ingredients, to SEZ units using coffee vending machines by the applicant, would not qualify as zero rated supply.

20

GST to be levied on activities done by employees of corporate office for its units located in other states

[Columbia Asia Hospitals (P.) Ltd., In re- [2018] 96 taxmann.com 245 (AAR-Karnataka)]

The employees of corporate office performed the activities in the course of or in relation to employment. The same activities are also performed for the units located in the other States. The assessee filed an application for Advance Ruling whether GST would be applicable on supplies made to other units located in other States by employees of corporate office?

The Authority for Advance Ruling held that the services provided by the employees to the employer, the corporate office, have the nature of the employee and employer relationship. The corporate office and the units are distinct persons. Therefore, activities performed by employees of corporate office for other units of company shall be treated as supplies as per Entry 2 of Schedule I of the CGST Act. Hence, GST would be applicable even if made without consideration.

21

NAA imposes penalty on builder for not passing on the benefit of ITC to buyers

[Sukhbir Rohilla v. Pyramid Infratech (P.) Ltd.- [2018] 97 taxmann.com 379 (NAA)]

The Applicants, 100+ home buyers, filed an application against the builder before the Haryana State Screening Committee for not passing on the Input Tax Credit (ITC) of the GST paid on construction services. They booked flats under the Haryana Affordable Housing Policy 2013 and paid Excise Duty and Value Added Tax (VAT). After the GST roll-out, 12% tax was levied on the construction service which was further reduced to 8% from January 25, 2018. But the benefit accrued to the builder post-GST had not been passed on to the flat buyers.

The National Anti-profiteering Authority (NAA) said that the concession given on construction services had impacted the tax revenue of Govt. and this step had been taken so as to reduce the prices charged by the builders from the vulnerable sections of society who could not afford high value apartments. The NAA held that the builder had to reduce the price of the flat to be recovered from the buyers. It also issued the show cause notice so as to levy the penalty on the builder.

22

GST would be applicable on free IPL tickets given on complimentary basis: AAR

[K.P.H. Dream Cricket (P.) Ltd., In re - [2018] 98 taxmann.com 243 (AAR-Punjab)]

The assessee filed an application for Advance Ruling whether it is required to pay GST on the 'Complimentary tickets' for the IPT matches? It contended that the activity of providing complimentary tickets without any consideration on account of business promotion would not fall under definition of supply and, thus, would not be liable to GST.

The Authority for Advance Ruling decided that the activity of assessee of providing complementary cricket match tickets to some persons would be considered as supply of service. Therefore, all tickets supplied by assesse, including complementary tickets, would be taxable and, thus, liable to GST.

23

GST paid under wrong head by mistake can be adjusted under another head: HC

[Saji S. vs. Commission, State GST Department Tax Tower, Thiruvananthapuram - [2018] 99 taxmann.com 218 (Kerala)]

The assessee, a registered dealer, purchased goods from consignor in Chennai. While those goods were in transit, goods were detained and consignor paid the tax and penalty and it remitted the amount under the head 'SGST' instead of 'IGST'. The authorities refused to release the goods on the ground that the remittance had to be paid under the head 'IGST'. The assessee filed writ petition.

The assessee submitted that if the remittance was treated as a mistake on the consignor's part, the statute had empowered the authorities to transfer the deposit from one head to another, i.e., from SGST to IGST. However, the authorities submitted that the petitioner had to pay the amount under 'IGST' and then claim a refund from the head 'SGST'.

The High Court observed that the GST Act provides for the refund of the tax paid mistakenly under one head instead of another head. But Rule 4 of the GST Refund Rules speaks of adjustment. It was further observed that if the amount of refund would be completely adjusted against any outstanding demand under the Act, an order giving details of the adjustment to be made in Part A of Form GST RFD-07. Thus, in the case of assessee, GST paid under wrong head by mistake could be adjusted under another head. Therefore, High Court directed that the concerned officials must allow the adjustment and get amount transferred from the head 'SGST' to 'IGST'.

24

Back office support services to overseas companies treated as Intermediary Services: AAR

[VServ Global (P.) Ltd., In re [2018] 99 taxmann.com 253 (AAR - Maharashtra)]

The applicant is engaged in back office administrative and accounting support services, pay-roll processing and maintenance of employee records to overseas clients. It filed an application for advance ruling to determine whether it would constitute an 'export of service'?

The authority observed that the applicant would arrange/facilitate supply of goods or services or both between overseas client and customers of overseas client, therefore, applicant would be clearly covered and would fall in 'intermediary' definition as contained under Section 2(13) of IGST Act, 2017. Therefore, the place of supply in case of services provided by applicant being intermediary would be the location of supplier of services. Hence, services proposed to be rendered by the applicant would not qualify as 'export of services' and, thus, would not to be treated as 'zero rated supplies'.

25

Car couldn't be detained for transportation of personal effects on ground of e-way bill: HC

[Kun Motor Co. (P.) Ltd. v. Assistant State Tax Officer- [2018] 100 taxmann.com 271 (Kerala)]

The 2nd appellant in State 1 purchased a Mini-Cooper car from the 1st appellant who was dealer of motor vehicles in State 2. A temporary registration in the name of the 2nd appellant was taken from State 2 Motor Vehicles Department. The dealer had transported the car in a specially equipped carriage by road. The invoice of purchase of car showed collection of IGST and an invoice was also issued for transportation of the car.

The competent authority issued the order of detention of car on the ground that no e-way bill had been uploaded. The appellant filed the writ petition in the Kerala High Court against such detention order. The Kerala High Court held that the supply of new vehicle by dealer was terminated after the purchase of car in State 2 and subsequent movement of goods to State 1 was not occasioned by supply. There could not be detention for transportation of personal effects for not uploading E-Way Bill.

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