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THE GST PULSE

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Recent Judgement and Rulings

HIGH COURT DISMISSES SERVICE TAX DEMAND OF RS. 56.61 CRORES AGAINST MTNL

HON'BLE DELHI HIGH COURT

MTNL (The Appellant) a Government of India enterprise is in the business of providing telecom services to subscribers in Delhi and Mumbai. The Appellant has challenged a show cause notice issued by the Director General of GST Intelligence seeking recovery of service tax worth Rs. 56.61 crore, inclusive of cess, and imposing penalties under Sections 76 to 78. The SCN was related to the surrender of CDMA spectrum, which was licensed to the applicant until October 2017 but was surrendered in April 2014 and for which financial support was given on a pro rata basis for the unexpired period of three years and 173 days at the auction rate.

The issue pertained to whether MTNL should pay service tax on the compensation received from the Government of India for surrendering its CDMA spectrum. The Appellant contended that the show cause notice was issued beyond the stipulated time period and without mandatory pre-consultation. Further, The Appellant stated that compensation was not a taxable service under Section 66E(e) as it was not a declared service prior to the enactment of the Finance Act, 2016. As the amendment specifically include transactions related to the assignment and transfer of radio frequency spectrum as declared services under clause (j) in Section 66E only took effect from May 14, 2016. Thus, the compensation was received before this date and should not be subject to service tax.

The Hon'ble Delhi High Court has ruled in favor of MTNL and quashed the demand of service tax amounting to Rs. 56.61 crores. The court stated that the Appellant had received compensation for the surrender of spectrum before the introduction of Clause (j) in Section 66E of the Act. Therefore, it would not be chargeable to service tax.



12% GST APPLICABLE ON WOODEN ICE-CREAM STICKS AND SPOONS

THE KARNATAKA AUTHORITY FOR ADVANCE RULING

Ragu Packaging ("The Applicant") is a Bengaluru-based company, who supplies wooden ice cream sticks and spoons that are made from European white Birch (Betula Pendula) obtained from the Siberian forest. The Applicant follows a chemical-free process in which wooden logs are boiled for 24 hours and then fed into a peeling machine to obtain thin sheets. These sheets are then cut into specified sizes for sticks or spoons. The Applicant sorts the wood into multiple grades, bundles them as per customer requirements, and dispatches them to ice cream factories and other places.

The Applicant contended that the products should be classified under HSN code 4421 91 90 as this heading pertains to articles of wood such as hangers, spools, and bobbins. The AAR (Authority for Advance Rulings) examined the facts and submissions presented and observed that wooden sticks and spoons are articles of wood covered under Chapter 44 of the first schedule to the Customs Tariff Act, 1975.

The Karnataka's Authority for Advance Rulings (KAAR) has ruled that wooden ice-cream sticks and spoons qualify as tableware made of wood, falling under the category of spoons and crumb-scoops under HSN code 4419 90 90. Further, the products will be chargeable to GST at a rate of 12%.



18% GST WOULD APPLY TO EMPLOYEE SERVICES BETWEEN A COMPANY'S BRANCH OFFICE AND HEAD OFFICE

THE AUTHORITY FOR ADVANCE RULING

Profisolutions Pvt Ltd ("The applicant") has a registered office in Karnataka and a branch office in Chennai. The branch office provides support services such as engineering, design, and accounting to the head office located in Bangalore, Karnataka. The applicant approached the Authority for Advance Ruling (AAR) seeking a ruling on whether the services provided to the head office would attract Goods and Services Tax (GST).

The applicant contended that the employees are appointed and working for the company as a whole and not employed for a specific office. Whether the services provided by the employees of a company's branch office to its head office and vice versa located in different states would attract GST liability.

The AAR observed that under the GST law, businesses need to obtain registration in every state in which they have a physical presence. It further noted that the supply of services between two registrations of the same person in the same state or in different states attract tax. Therefore, the AAR held that the services, including services of common employees of a person, provided by the branch office to the head office and vice versa, each having separate GST registration, will attract GST at 18%.



Thank You!

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