ACUPRO CONSULTING

WEEK 3, MAY 2023

THE GST PULSE

ONE PLACE FOR ALL THE UPDATES



Recent Judgement and Rulings

NO SERVICE TAX LIABILITY APPLICABLE TO LIQUIDATED DAMAGES.

THE HON'BLE CHENNAI CESTAT

M/s. Bharat Heavy Electricals Ltd. (the Appellant), a manufacturer of heavy engineering equipment and provider of power plant/projects erection services, had agreements with vendors that included a clause for payment of liquidated damages in case of delays in supply and service. An enquiry by the Directorate General of Goods and Services Tax Intelligence (DGGI) revealed that the Appellant was charging liquidated damages but not paying service tax on them. The Revenue department issued a Show Cause Notice (SCN) demanding service tax along with interest and penalties on the liquidated damages collected during a specific period.

The Appellant filed a detailed reply in response to the demands stated in the Order-in-Original (OIO). However, the reply failed to satisfy the Respondent and resulting in the confirmation of the demands. The Appellant subsequently filed an appeal before the Commissioner of G.S.T. and Central Excise (Appeals) but the appeal was rejected. Aggrieved by this the appellant filed an appeal before the CESTAT that
whether the Appellant would be held responsible for paying Service Tax on the liquidated damages collected from vendors.

The Hon'ble Chennai CESTAT held that recovery of liquidated damages from defaulting party cannot be said to be towards any service, since the purpose of imposing damages is to ensure that the defaulting act is not undertaken or repeated.



SALE OF OPEN CAR PARKING SPACE TO FLAT BUYERS ATTRACTS 18% GST

THE WEST BENGAL AAAR

The Eden Real Estates (the Applicant), a construction company is engaged in the development of residential apartments. The Applicant was of the view that the provision of car parking spaces was exclusively offered to flat buyers, and stamp duty was paid on the entire consideration and should be considered as composite supply for Goods and Services Tax purposes.

The issue was whether the sale or right to use of a car parking space would be considered as naturally bundled with construction services or not, and whether the same will qualify as a composite supply under Goods and Services Tax.

The West Bengal AAAR observed that the prospective flat buyers had the option to include or exclude a car parking space during the flat booking process. The AAAR held that the sale or right to use a car parking space is not naturally bundled with construction services and should not be treated as a composite supply. As a result, the transaction willattract GST at the higher rate of 18%.



NO GST LEVIED ON THE MARGIN BETWEEN PURCHASE AND SELLING PRICE OF SECOND-HAND GOLD JEWELLERY.

THE KARNATAKA AAR

M/s. White Gold Bullion Private Limited (the Applicant), involved in purchasing and selling of second-hand gold jewellery. The applicant purchased used gold jewellery from unregistered individuals and sold it to registered or unregistered persons after cleaning and polishing it. Further, Unsold old jewellery or damaged parts of the jewellery were melted to form lumps of gold. The applicant did not charge GST on the purchase of old jewellery or parts as per a specific notification, but paid GST on outward supplies based on Rule 32(5) of the CGST Rules, 2017. The applicant does not have any input on these purchases

The issue raised was whether the applicant should be liable to pay GST on the margin difference between the sale price and purchase price of the second-hand gold jewellery.

The Karnataka AAR held that when the applicant melts the gold jewellery and transforms it into lumps of gold, there is a change in the nature and characteristics of the goods. Due to this transformation, the applicant does not fulfill the conditions and is not eligible to avail the benefits of Rule 32(5) of the CGST Rules, 2017. Consequently, purchasing of second-hand gold jewellery from unregistered individuals and selling it as lumps of gold after melting does not attract GST on the margin difference between the sale price and purchase price.



ARCHITECTURAL CONSULTANCY SERVICE PROVIDED TO SURAT MUNICIPAL CORPORATION IS EXEMPTED FROM GST.

THE GUJARAT AAR

Ajit Babubhai Jariwala (The applicant) is a provider of diverse professional consulting services which include architecture, engineering, planning, urban design, landscape, sustainability, research and art, building design, interior design, surveying, environmental sciences, project management, and project economics. The Applicant was contracted by the Surat Municipal Corporation (SMC) to offer architectural consulting services for the construction of SMIMER Hospital & College Campus. Their responsibilities was to prepare architectural and working drawings essential for the project's construction.

The issue raised was whether the architectural consultancy service provided by the applicant to the SMC for the construction project is exempt from Goods and Services Tax.

The Gujarat AAR held that the Architectural Consultancy Service provided to the SMC for the construction of SMIMER Hospital and College Campus is exempt from GST. This exemption is granted under Article 243W of the Constitution of India, as the services are considered as pure and related to functions entrusted to a municipality. Further, this exemption applies specifically to architectural consultancy services, excluding works contract services or composite supplies involving goods.



Thank You!

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