Kolte Patil Developers Ltd. (Appellant; GSTIN 27AAACK7310G1ZT)

Appellate Authority for Advance Ruling — Maharashtra

ORDER NO. MAH/AAAR/SS-RJ/31/2018-19, Date 11.04.2019 Dated **11.04.2019**

Q Questions Before the Authority

- Whether GST input tax credit of Service Tax and State VAT paid while booking of a flat is available to the Developer if the flat is cancelled in the GST regime.
- What will be the methodology to avail input tax credit on the said Service Tax and VAT paid.

F Facts

The appellant develops residential and commercial complexes. Buyers who booked flats before GST paid Service Tax (4.5%) and Maharashtra VAT (1%), and those flats were cancelled on or after 1 July 2017. The appellant asked whether the pre-GST Service Tax and VAT can be claimed as credit by the developer or refunded to the buyers.

H Ruling

The AAAR agreed with the Advance Ruling Authority that the application was not maintainable. It held that section 97(2)(d) covers only input tax credit of tax paid or deemed paid as defined in sections 2(62) and 2(63), which does not extend to Service Tax or VAT paid under the existing laws. Neither the AAR nor the AAAR therefore had jurisdiction to rule on the admissibility of such credit, and the AAAR found no reason to differ with the AAR's ruling.

R Reasoning

The AAAR examined the closed list of questions in section 97(2) of the CGST Act. It read clause (d), admissibility of input tax credit of tax paid or deemed to have been paid, together with the definitions of input tax and input tax credit in sections 2(62) and 2(63). On that reading, the clause reaches only taxes that fall within the GST definition of input tax, not Service Tax or VAT paid under the pre-GST laws. The order does not address the appellant's merits arguments on section 142(2) of the CGST Act, Rule 6(3) of the Service Tax Rules 1944, section 140(5), section 174 or the General Clauses Act, 1897. It also does not rule on the MGST section 142(1) argument on goods returned.

P Provisions Relied On

Section 97(2)(d) of the CGST Act, 2017 (admissibility of input tax credit of tax paid or deemed to have been paid)

Section 2(62) of the CGST Act, 2017 (definition of input tax)

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Section 2(63) of the CGST Act, 2017 (definition of input tax credit)

Section 97(2) of the CGST Act, 2017 (scope of questions for advance ruling)

Sections 99, 100 and 101 of the CGST Act, 2017 and MGST Act, 2017 (constitution of the AAAR, appeal, and proceedings)

! For the Practitioner

This order is useful for showing that an advance ruling authority will not decide whether pre-GST Service Tax or VAT can be credited or refunded when a booked flat is cancelled, because that question falls outside section 97(2). It is a jurisdictional and maintainability decision, not a merits decision, so it settles nothing on the developer's credit or the buyer's refund. A practitioner should read it alongside the appellant's detailed submissions on section 142(2) and Rule 6(3), which the AAAR did not address.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> mah.aaar_kpdl-31-2018-19.pdf

Prepared 02-11-2026.

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