M/S. FAMOUS STUDIOS LTD.

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-73/2018-19/B-166, Mumbai, dated 21/12/2018 (the scan's or… Dated **21.12.2018**

Q Questions Before the Authority

- Whether the exemption from payment of GST on reverse charge basis under section 9(4) of the CGST/SGST Act for receipt of supplies of goods and/or services from an unregistered person applies irrespective of any threshold limit from 01-07-2017, under Notification No. 8/2017 dated 28.06.2017 read with Notification No. 38/2017 dated 13-10-2017.
- Whether any action for recovery of tax under section 9(4) of the CGST Act or the corresponding SGST provision can be initiated if such tax is not paid for the period 01-07-2017 to 12-10-2017 within the respective due dates.
- Whether interest on delayed payment of CGST/SGST under section 9(4) is applicable where the tax on the relevant transaction has been kept on hold till 30-09-2019 under Notification No. 22/2018-Central Tax (Rate) dated 06-08-2018.
- Whether the circular dated 2nd May 2018 (Circular No. 44/18/2018-CGST) will have any effect on taxation, including interest, on the transaction dated 31st August 2017.

F Facts

The applicant is a registered taxable person carrying on studio services such as advertisement film production and post-production, and it also rents out part of its premises to tenants. Under an agreement dated 31.08.2017, it took over the tenancy rights of one tenant, a partnership firm that was not registered under GST, for a consideration of Rs. 54,00,000. The applicant treated the transfer of tenancy rights as a supply of services liable to GST under reverse charge.

H Ruling

Q1: Exemption under s. 9(4) reverse charge for supplies from unregistered persons, without threshold, from 01.07.2017 (Notification 8/2017 read with 38/2017)	****Negative.** RCM applies to transactions effected from 01.07.2017 to 12.10.2017.**	The omission of the Rs. 5,000 per day proviso by Notification 38/2017 dated 13.10.2017 has no retrospective effect, so the exemption is available only from 13.10.2017.
Q2: Whether recovery action under s. 9(4) can be initiated for tax not paid for 01.07.2017 to 12.10.2017	**Not answered; the question was withdrawn by the applicant.**	The authority did not rule on this point.

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

Q3: Whether interest on delayed s. 9(4) payment is applicable where tax was held over till 30.09.2019 under Notification 22/2018	**Not answered; the question was withdrawn by the applicant.**	The authority did not rule on this point.
Q4: Effect of Circular dated 02.05.2018 on taxation and interest on the 31.08.2017 transaction	**Not answered; the question was withdrawn by the applicant.**	The authority did not rule on this point.

The authority answered question 1 in the negative: the reverse charge exemption under Notification 8/2017 read with Notification 38/2017 does not apply from 01.07.2017, and RCM is payable on transactions effected from 01.07.2017 to 12.10.2017. The amendment in Notification 38/2017 omitting the proviso was held not to be retrospective. Questions 2, 3 and 4 were not answered because the applicant withdrew them.

R Reasoning

The applicant argued that omitting the proviso by Notification 38/2017 operates from the date of the parent Notification 8/2017 (01.07.2017), relying on section 6 of the General Clauses Act and Supreme Court decisions distinguishing repeal from omission. The authority rejected this. It held that there is no clear stipulation in Notification 38/2017 making the amendment retrospective. Applying the golden rule of construction in Garikapati Veeraya and the principles in Hitendra Vishnu Thakur, it held that a statute affecting substantive rights is presumed prospective unless retrospective effect is expressly or necessarily intended. The result is that section 9(4) RCM applies to supplies from unregistered persons from 01.07.2017 irrespective of threshold until 12.10.2017.

P Provisions Relied On

- Section 9(4) of the CGST Act, 2017 (and corresponding SGST provision)
- Notification No. 8/2017-Central Tax (Rate) dated 28.06.2017
- Notification No. 38/2017-Central Tax (Rate) dated 13.10.2017
- Notification No. 22/2018-Central Tax (Rate) dated 06.08.2018 (referred to in the question; not ruled upon)
- Circular No. 44/18/2018-CGST dated 02.05.2018 (referred to in the question; not ruled upon)
- Clause (b) of para 1 of Schedule II to the CGST Act (transfer of tenancy rights treated as supply of services, as stated in the o…
- Section 6 of the General Clauses Act, 1897 (argued by the applicant)
- Sections 97 and 98 of the CGST Act and MGST Act, 2017

! For the Practitioner

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

This ruling is useful for any registered recipient who took supplies from unregistered suppliers between 01.07.2017 and 12.10.2017, since it confirms that RCM applied without threshold in that window and that the 13.10.2017 amendment is prospective. It settles only question 1. The authority did not decide recovery, interest on the deferred RCM period, or the effect of Circular 44/18/2018, because the applicant withdrew those questions. Practitioners should check the full order and later notifications before relying on it for the interest or tenancy-rights points.

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 -> ara_order_73_2018_maharashtra_famous_studios_ltd.pdf

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