KOLTE PATIL DEVELOPERS LTD

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-40/2018-19/B-118, Mumbai Dated **24.09.2018**

Q Questions Before the Authority

- What is the legal procedure for cancellation of a flat booked in the pre-GST regime and cancelled in the post-GST regime, and what is the GST liability where some small amount is retained on cancellation?
- Whether cancellation of a flat can be equated with a downward revision of contract price, so that a credit note may be issued under Section 142(2) of the CGST Act.
- Whether service tax and MVAT paid at booking can be claimed as credit, or allowed as refund to the property buyer, under Rule 6(3) of the Service Tax Rules, 1944, and within what time limit under Section 11B of the Central Excise Act, 1944.
- Whether GST input tax credit of the service tax and State VAT paid at booking is available to the developer on cancellation in the GST regime, and by what method it is to be availed.

F Facts

The applicant is a developer engaged in constructing residential and commercial complexes. Customers booked flats before GST, and service tax and MVAT were paid at booking, giving an indirect tax burden of about 4.50% to 5.50%. Some of these bookings were cancelled on or after 1 July 2017, and the applicant sought to know whether the taxes paid earlier could be credited to it or refunded to the buyers.

H Ruling

The Authority held that the application was not maintainable under Section 97(2) of the CGST and MGST Acts. The questions raised did not fall within any of the heads on which an advance ruling may be sought, and no transaction had taken place under the GST Act because the booking was made in the pre-GST regime. The Authority therefore declined to decide the merits and did not answer the questions.

R Reasoning

The Authority noted that the booking was made before GST and that the questions concerned refund of pre-GST service tax, not admissibility of input tax credit of tax paid under the GST Act, its classification, or the time, value or liability of a supply. Section 97(2) of the CGST and MGST Acts was applied to the questions as framed, and each head was found not to be engaged. The Authority referred to Section 140(5) of the CGST Act and Section 11B of the Central Excise Act, 1944 as the route for refunds of tax paid under the existing law, and to Rule 6(3) of the Service Tax Rules, 1944 as continuing to govern pre-GST matters. Section 142 was discussed only in relation to the applicant's submissions and was not applied to decide the question.

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

P Provisions Relied On

- Section 97(2) of the CGST Act and MGST Act
- Section 98 of the CGST Act and MGST Act
- Section 140(5) of the CGST Act
- Section 142(1) and 142(3) of the CGST Act (as reproduced in the order)
- Section 173 and Section 174 of the CGST Act
- Section 2(62) and Section 2(63) of the CGST Act
- Section 11B of the Central Excise Act, 1944
- Rule 6(3) of the Service Tax Rules, 1944

! For the Practitioner

A practitioner should not expect the GST advance ruling route to resolve refunds of pre-GST service tax or VAT on cancelled flat bookings, since the Authority held such questions outside Section 97(2). The order points to a refund claim under the existing law, read with Section 11B and Section 140(5), as the proper avenue, so the time-limit and cancellation-date arguments belong in that forum. The order does not decide whether cancellation equals a downward revision of price under Section 142(2), nor whether the one-year limit runs from cancellation or from payment, and it does not answer the question on retained amounts because the applicant withdrew that point.

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 -> maha-gst-ara-40-b-118_dt._24.09.18_kolte_patil.pdf

Prepared 24-10-2026.

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