ANJU KUSHAL JAIN

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 48/2019-20/B- 05, Mumbai, dt. 15/01/2020 (the date is partl… Dated **15.01.2020**

Q Questions Before the Authority

- Whether GST is leviable on the sale of shop which is 44 years old and between lessor to the lessee or any other person?

F Facts

The applicant, Anju Kushal Jain, entered into an Agreement to Sell dated 5 September 2019 with the vendor for four shops (A3, A4, A5 and A6) in Rajkamal Complex, Panchsheel Square, Dhantoli, Nagpur, which are about 44 years old. The shops are occupied by M/s Vidarbha Vehicles Pvt. Ltd., a tenant since October 1984, of which the applicant is a director. The applicant is buying the property along with the existing tenancy and wants to know whether GST applies to this transaction.

H Ruling

The authority held that the application was not maintainable because the applicant is the recipient of the immovable property and is not undertaking any supply of goods or services. Since the condition in Section 95 was not met, the question was held to be outside the authority's purview. The application was rejected under sub-section (2) of Section 98, and the merits of the GST question were not discussed.

R Reasoning

The authority noted that an advance ruling under Section 95 concerns supply of goods or services undertaken or proposed to be undertaken by the applicant. It found that the applicant was only a recipient of property under the transaction, so the condition was not satisfied. It also recorded the jurisdictional officer's oral submission that the question is not covered under Section 97(2). Because the threshold issue failed, the authority did not examine the applicant's arguments on Schedule II entry 5(b), Notification 11/2017, or the Delhi High Court decision in K. Industries.

P Provisions Relied On

Section 95 of the CGST Act and MGST Act, 2017 (definition of advance ruling)

Section 97(2) of the CGST Act and MGST Act, 2017 (matters on which advance ruling may be sought)

Section 98(2) of the CGST Act and MGST Act, 2017 (rejection of application)

Chapter XVII of the CGST Act, 2017, Sections 95 to 98, 102 to 105 (as referred to by the authority)

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

Section 7 and Schedules II and III of the CGST Act, 2017 (cited by the applicant)

Schedule II, clause 5(b), and Notification 11/2017-Central Tax (Rate) dated 28.06.2017 (cited by the applicant)

! For the Practitioner

A practitioner can cite this order for the point that the AAR will reject an application where the applicant is merely the buyer or recipient of property and is not itself making a supply. It does not decide whether the sale of a 44-year-old building with a sitting tenant attracts GST, and the applicant's completion-certificate and first-occupancy arguments were left unexamined. Those arguments would need a fresh application framed around a supply the applicant itself undertakes or proposes to undertake.

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_aar_48_2019-20_b-05_15.01.2020_akj.pdf

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