UMADEVI KAMALKUMAR PATNI

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-98/2018-19/B-26, Mumbai, dated 12/3/2019 (as printed; the… Dated **12.03.2019**

Q Questions Before the Authority

- What are the implications of the facts stated on Section 22 of the GST Act under various situations (Cases 1 to 3), that is, whether the applicant is liable to register?
- Whether interest earned on loans given to relatives and friends is to be included in the aggregate turnover for the Rs. 20 lakh threshold under Section 22.

F Facts

The applicant is a working partner in a partnership firm at Nagpur and withdraws remuneration, interest and a share of profit from the firm. She gives interest-bearing loans to friends and relatives at normal market rates, without security, and lets out the unoccupied part of her immovable property to a commercial organisation for rent. The application gives gross earnings of about Rs. 30 lakh, but its breakdown (rent Rs. 10 lakh, interest Rs. 12 lakh, firm remuneration and profit Rs. 10 lakh) totals Rs. 32 lakh.

H Ruling

The Authority rejected the application as not maintainable and did not answer the Section 22 question on its merits. The applicant had paid only Rs. 5,000 of the Rs. 10,000 fee (Rs. 5,000 each under the CGST and SGST Acts), and she did not cure the shortfall or produce a letter of authority within the eight days allowed at the hearing on 26.02.2019. The application was therefore treated as incomplete.

R Reasoning

The Authority held that an applicant must pay the prescribed fee under Section 97(1) read with Rule 104 for an advance ruling application, and that this is a mandatory condition. It relied on CBEC Circular No. 25/25/2017-GST dated 21 December 2017, which permits payment of Rs. 5,000 each under the CGST and SGST Acts. It found that the applicant had paid only half of the total fee, that the eight-day opportunity to cure was sufficient, and that she had not used it. The application was therefore **incomplete and liable for rejection** , and the merits were not reached.

P Provisions Relied On

Section 22 of the CGST Act / MGST Act, 2017 (quoted by the concerned office; the Authority did not decide on it)

Section 97(1) of the CGST Act / MGST Act, 2017 (advance ruling application and fee)

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

Section 98 of the CGST Act / MGST Act, 2017 (preliminary hearing and acceptance or rejection of the application)

Rule 104 of the CGST / MGST Rules, 2017 (fee for advance ruling)

Section 49 of the CGST / MGST Act, 2017 (manner of payment of fee)

CBEC Circular No. 25/25/2017-GST dated 21.12.2017 (fee of Rs. 5,000 each under CGST and SGST)

! For the Practitioner

This order is useful mainly as a procedural warning. An advance ruling application is rejected if the full fee is not paid under both the CGST and SGST Acts, and the Authority will not cure that by excusing a short payment after an opportunity has been given. It does not decide whether rent from a commercial tenant, interest on loans to relatives, or a working partner's remuneration is taxable, or how such income counts toward the Rs. 20 lakh threshold. The concerned office's comments (for example, that rent from commercial property is taxable at 18%, and that interest on loans is exempt under Sr. No. 27 of Notification No. 12/2017-CT(Rate) subject to exceptions) were submissions and were not adopted as holdings.

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_98_2018_maharashtra_ukkp.pdf

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