VENKATASAMY JAGANNATHAN

Authority for Advance Ruling — Tamil Nadu

ORDER No.19/AAR/2019 DATED: 21.05.2019 Dated **21.05.2019**

Q Questions Before the Authority

- Will the Profit Sharing Agreement between the applicant as an employee and the shareholders attract GST in his hands?

F Facts

The applicant is Chairman and Managing Director of Star Health and Allied Insurance Company Limited (SHA) and also a shareholder of it. Under a Profit Sharing Agreement dated 25 May 2017 with certain promoter and investor shareholders, he is to receive a share of the economic benefit if at least 51% of the equity is sold in a strategic sale, or listed through an IPO, at not less than Rs 75 per share, measured against a base price of Rs 47 per share. The applicant contended that this is remuneration for his services as an employee and so falls within the employer-employee exclusion in Schedule III.

H Ruling

Whether the Profit Sharing Agreement between the applicant (as employee) and the shareholders attracts GST in his hands	**No. Not taxable under CGST or SGST. Treated as an actionable claim, neither a supply of goods nor a supply of services.**	The authority rejected the applicant's employee-services argument (Schedule III entry 1) because the agreement is with the shareholders, not with the company. Entry 6 (actionable claims other than lottery, betting and gambling) was applied instead.

The authority held that the Profit Sharing Agreement is an actionable claim within the meaning of Section 2 of the CGST Act read with Section 3 of the Transfer of Property Act, 1882. It therefore falls under Schedule III entry 6 and is neither a supply of goods nor a supply of services. The ruling is that it is not taxable under the CGST Act or the TNGST Act.

R Reasoning

The authority first held that the agreement is between the applicant and the shareholders, who do not act for the company, and that the company makes no payment under it. This meant Schedule III entry 1 (services by an employee to the employer) could not apply. It then held that the applicant's contingent right to a share of sale or IPO proceeds is a beneficial interest in movable property not in his possession, which civil courts would enforce. That brings the right within the definition of actionable claim in Section 3 of the Transfer of Property Act, 1882, as applied by Section 2 of the CGST Act. Schedule III entry 6 then excludes such claims from supply, because they are not lottery, betting or gambling.

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

P Provisions Relied On

- Section 2 of the CGST Act (definition of actionable claim; the order cites it as both Section 2(1) and Section 2(7) in different pl…
- Section 3 of the Transfer of Property Act, 1882 (definition of actionable claim)
- Schedule III to the CGST Act, entry 1 (services by an employee to the employer), considered and rejected
- Schedule III to the CGST Act, entry 6 (actionable claims other than lottery, betting and gambling), applied
- Corresponding provisions of the TNGST Act, 2017, treated as identical to the CGST Act

! For the Practitioner

This ruling helps where an executive's profit-share is payable by shareholders rather than by the company, and is contingent on a future exit event. It gives a route to treating such a right as an actionable claim outside GST under entry 6. It does not decide the position where the company itself pays an employee bonus or incentive, which would more naturally fall under entry 1. It also says nothing on income tax or on the valuation of any such claim.

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 -> tn-19-aar-2019-venkatasamy_jagannathan.pdf

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