

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan , 8th floor, H wing ,New building, Mazgaon, Mumbai-400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax,(Member)

GSTIN Number, if any/ User-id		URD
Legal Name of Applicant		UMADEVI KAMALKUMAR PATNI
Registered Address/Address provided while obtaining user id		Patni House,Rahate Colony,Nagpur-44022
Details of application		GST-ARA, Application No. 98 dt. 03.12.2018
Concerned officer		Asstt. Commr. Of CGST & CX, Division City Nagpur - I, Commissionernarate -I.
A	Category	Service Provision
B	Description (in brief)	The Applicant is partner in business at Nagpur. He regularly withdraw his Share of profit from the firm in the form of Remuneration, Interest and share of remaining profit and provide loans at normal market rate of interest.
Issue/s on which advance ruling required		(v) Determination of the liability to pay tax on any goods or services or both (vi) Whether applicant is required to be registered under the Act.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

1. The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by M/s UMADEVI KAMALKUMAR PATNI, seeking an advance ruling in respect of the following question:

Implication of facts mentioned below on Sec. 22 of GST Act under various situations?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the “GST Act”.

2) Statement of relevant facts having a bearing on the questions raised -

I am partner in partnership firm carrying business at Nagpur. Being a working partner, I regularly withdraw my share of profit from the firm in the form of Remuneration, Interest and Share of remaining profit. As per the requirement of my Friends and relatives I provide loans at normal market rate of interest. Apart from this the unoccupied portion of my immovable property is let out to commercial organization against the consideration of Rent. From all the above activities total gross earnings for the year will be say Rs. 30 lacs. The bifurcation of the amount received can be done as under :-

Rent from House property	10,00,000
Interest Income from Finance activity	12,00,000
Remuneration & Profit from Firm (may arise in the year upto 31/03/19)	10,00,000
Total	32,00,000

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) under following situations:-

Case 1 Rent from House property + Interest Income from Finance activity= 22 Lacs

Total earning of Rs. 22 Lacs has no implication on the business exemption under Section 22 of the GST Act for individual, hence I am not liable for registration under GST.

Case 2 Rent from House property + Interest Income from Finance activity + Remuneration & Profit from Firm = 32 Lacs.

Total earning of Rs. 32 Lacs has no implication on the business exemption under Section 22 of the GST Act for individual, hence I am not liable for registration under GST as Interest Income from Finance activity and Remuneration & Profit from Firm are not taxable.

Case 3 Interest Income from Finance activity + Remuneration & Profit from Firm = 22 Lacs.

Total earning of Rs. 32 Lacs has no implication on the business exemption under Section 22 of the GST Act for individual, hence I am not liable for registration under GST as Interest Income from Finance activity and Remuneration & Profit from Firm are not taxable.

As per the provisions of CGST Act the rent received for the commercial purpose from commercial organization is taxable @ 18% , hence the same will be taxable receipt. As the rent income is below Rs. 20 lakhs, which is below the threshold limit under GST, kindly provide us the implication of Sec. 22 under various case mentioned above

Submissions on 26.02.2019 by applicant.

With reference to above application we like to inform your goodself that the Interest is earned on my savings, which are given to my relatives and friends as and when required as loans for the certain period. I like to clarify that the loans given to my relatives and friends are without any security.

I like to inform you that the above application was submitted only to clarify the ambiguity that Interest on loans given to my relatives and friends is whether liable to be considered for calculation of threshold limit of exemption (i.e. Rs.20 Lacs) under GST Act.

03. CONTENTION – AS PER THE CONCERNED OFFICE

Please refer to Preliminary Hearing Notice vide No. GST/ARA/App1.98/ 2018-19/PH-2 dated 05.12.2018 on the above subject sent to this office for comments in the subject matter.

2. In the above context, it is submitted that Section 22 of the Central Goods and Service Tax Act, 2017 creates liability for registration on every supplier in the State or Union territory, other than special category States, where suppliers make a taxable supply of goods or service or both, if **aggregate turnover** in a financial year exceeds **twenty lakh rupees**. The provisions of Section 22 are reproduced below:

*22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

PROVIDED that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees ;

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where: a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the **successor**, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.-For the purposes of this section,

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution".

3. In their application the applicant has raised following three issues, on which the comments are as under:

(1) Rent from House property

Rent from House property: This service is exempt only if the renting of residential dwelling for use as residence. (Sr. No. 12 of Notification No.12/2017-CT(Rate). In case the residential dwelling is **not used as residence it is Taxable under GST.**

The applicant has disclosed that the unoccupied portion of her immovable property is let out to commercial organization on rent. Therefore the rent amount received against the renting immovable property is liable to tax under GST, if the income from rent for commercial purposes is above Rs.20 lakhs..

(2) Interest Income from Finance Activity:

Services by way of - (a) extending deposits, loans or advances in so far as the consideration is represented by way of **interest or discount** (other than interest involved in credit card) are exempted from goods and Services Tax (Sr. No. 27 of Notification No.12/2017-CT(Rate)

However, following charges/ interest will be taxable under GST:

(i) Any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit would represent a taxable consideration and hence liable to GST.

(ii) In respect of **additional interest** charged in case of default in instalment payment by the customer, the additional Interest charged for default in payment of instalment in respect of any supply, which is subject to GST, will be included in the value of such supply and therefore **additional interest** would be liable to GST. (Section 15(2) of CGST Act, 2017);

(iii) In respect of Interest on finance lease transaction, a finance lease is a method of borrowing against the asset. The interest represents the time value of the money expended by the financier in financing the assets. But, in a financial lease the ownership of the asset is with the financier: In essence, it is a 'purchase the asset and lend it further transaction for financier. Therefore, neither the services are purely in the nature of extending loans not the consideration for a financial lease is purely in the nature of interest. Thus, **interest on finance lease transactions will be taxable under GST.**

The applicant has not disclosed the particulars of the Interest income from Finance in detail. Only summary income is given in the application.

(3) Remuneration and profits from Firm:

Remuneration and profits from firm in the capacity as working partner of the firm is not in the nature of service and therefore not liable for tax under GST.

4. In addition to the above the comments called for at Sr. No. 1 to 9 may please be treated as *NIL' as the assessee is not registered with the department

4) Hearing -

The preliminary hearing in the matter was held on 09.01.2019, Sh. Vaibhav Mandhana, C.A. appeared for the hearing. The Jurisdictional officer Sh. Manoj Donikar, Supt., Range-IV, Nagpur-I Commissionerate appeared and submitted the response of the jurisdictional office.

On 26.02.2019 Sh. Mohan Rathi, C.A. appeared and once again it was brought to his notice that application was not accompanied with requisite fee and letter of authority. To remove this defect he was provided period of eight days. However, applicant has neither submitted the letter of authority nor the proof of payment of unpaid fee.

5) OBSERVATIONS -

We have gone through the facts of the case. The issue put before us is in respect of liability of the applicant for obtaining registration u/s 22 of the GST Act which would be on the lines thus -

Applicant is an un-registered person under the provisions of GST Act. After the receipt of application, applicant was called on for preliminary hearing to examine the correctness of the application and to give interim decision on acceptance or rejection of the application as provided u/s 98 of the GST Act.

For an applicant, it is mandatory as per section 97(1) read with Rule 104 of the CGST/MGST Act to pay applicable fee of Rs. 5000/- each under SGST and CGST Act to be deposited in the manner as provided under Section 49 of the Act. If not, the application would be treated as an incomplete application liable for rejection. Details regarding the payment of fee for the filing an application for advance ruling has been clarified vide Circular No .25/25/2017-GST by GOI, Ministry of finance, Department of Revenue, Central Board of Excise and Customs, GST Policy Wing, New Delhi dated 21st December, 2017 wherein, at point no. 4 it is clarified that the applicant can make the payment of the fee of Rs. 5000/-each under CGST Act and SGST Act. In the instant case we find that the applicant has only deposited an amount of Rs. 5000/- towards fees and not the full amount of Rs. 10000/-. The opportunity so far granted to the applicant in our opinion constitute sufficient opportunity to cure the defect which applicant has failed to avail. As such application is incomplete and is liable for rejection.

08. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 98/2018-19 /B- 26 Mumbai, dt. 12/3/2019

The Application for advance ruling in Form GST ARA-01 registered as ARA NO. 98 dated 03/12/2018 is rejected as being not maintainable.



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B. TIMOTHY
(MEMBER)

sd-
B. V. BORHADE
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax. Churchgate Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.

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MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.