

TAX INFO

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Latest update on GST Law: Information regarding **Supply of water is considered as maintenance service despite separate contract** based on the **Judgement issued by Rajasthan Authority for Advance Ruling.**

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Supply of water is considered as maintenance service despite separate contract

Name of Appellant	In re Latest Development Advisory Ltd.
Name of Court	AAR-Rajasthan
Appeal Number	RAJ/AAR/2019-20/32
Date of Judgement	07/02/2020

Facts of the Case:

The Applicant proposes to engage in the business of providing maintenance services to housing societies ('Society'). For the purpose of providing maintenance services, the Applicant will enter into an agreement (hereinafter referred to as 'Contract i') with the Society / Owners' Association ('Association') / individual Customers. The maintenance services embody services for Common Area Maintenance ('CAM'), and the Applicant levies goods and services tax ('GST') for provision of such services.

The Applicant submits that since the Project is located in an area where there is no proper water supply, the Customer intends to enter into a contract with the Applicant for supply of water [hereinafter referred to as 'Contract II']. The transaction under the Contract II shall involve purchase of water by the Applicant from the vendors and supply the water 'as such' to the Customer. Further, the Applicant will procure the water from the vendors and will supply the water 'as such' to the Customer without carrying out any further processes in the water.

Question on which Ruling is sought

Whether the applicant is required to pay GST on water charges collected from the customers for supply of water under Contract II?

Contention of Applicant:

The applicant has also submitted that though he is not admitting that there is supply of services in Contract-II but if it is assumed that there is supply of goods (water) and services involved in Agreement-II, then the supply will be a composite supply of water wherein principal supply will be of water. Since principal supply is exempted from GST, the whole supply of Contract-II is exempted from GST.

Observations:

Entry no. 99 of the Notification No.2/2017 – Central Tax Rate dated 28th June, 2017 provides exemption from levy of GST on supply of water, other than the specified categories. The water supplied by the Applicant is tanker water and is not covered in any of the above mentioned exclusions form the exemption such as aerated, mineral water, purified water etc

The applicant is involved in two agreements where Contract-I is for maintenance services provided to the Resident Welfare Association (RWA) and Contract-II is for supply of water to the individual resident residing in the society (RWA). We further find that GST on services provided by the Resident Welfare Association (RWA) to its resident members is @ 18% when each unit household in a society pays more than Rs. 7500/- per month for said services and the supplier of services (RWA in the present case) is registered by way of crossing over of threshold limit of Rs. 20 lakhs.

As a general practice across trade and market, the maintenance services is inclusive of supply of water and hence supply of water provided by the applicant through a separate agreement raises a suspicion in its activity. The reason behind the suspicion is that the water received by the society (RWA) is used for multiple purpose i.e. for gardens, washing cleaning, swimming pool and for the use in the apartments etc. and is stored in the common underground water tank which is maintained by the society (RWA).

It is observed that in general each society consists of many residential towers, varying floors from three to fifteen plus and further each tower consists of many residential apartments which have a common underground and overhead water storage tank. Even though the applicant might have a separate agreement for supply of water and for receiving charges on the basis of per square feet with the residents of the apartment in a particular tower but it is not possible to supply water to each apartment separately as mentioned in the Contract-II, because the apartments do not have their own separate water storage tanks.

It is observed that the applicant seems to have bi-furcated the services provided to society (RWA) in order to escape the condition of Rs. 7500 per month per member or it might be crossing the GST registration threshold limit of Rs.20 lakh.

Ruling:

Contract-I and Contract-II appears to be directly linked with each other as there is no case of direct supply of water by the applicant to the individual residents of the society therefore the applicant is required to pay GST as applicable on Contract-I.

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