

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan , 8th floor, 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	27AAACF7895D1ZE
Legal Name of Applicant	M/S. FAMOUS STUDIOS LTD.
Registered Address/Address provided while obtaining user id	Famous Cine Building, 20, Dr. E. Moses Road, Mahalaxmi, Mumbai -400011.
Details of application	GST-ARA, Application No. 73 Dated 28.08.2018
Concerned officer	State Tax Officer (C-862)Nodal Division – III, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Recipient
B Description (in brief)	The activity of the applicant is renting of immovable property to his tenants, Video Tape Production, Sound Recording Service.
Issue/s on which advance ruling required	(ii) applicability of a notification issued under the provisions of the Act (iv) admissibility of input tax credit of tax paid or deemed to have been paid
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)

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. FAMOUS STUDIOS LTD, seeking an advance ruling in respect of the following questions.

1. Whether the exemption from payment of GST on reverse charge basis under section 9(4) of the CGST Act / SGST Act for receipt of supply of goods and / or services by us from an unregistered person is applicable irrespective of any threshold limit right from 01-07-2017 vide Notification No.8/2017 dated 28.06.2017 read with Notification 38/2017 dated 13-10-2017?
2. Whether any action for recovery of tax under section 9(4) of CGST Act or corresponding provision of SGST Act can be initiated if such tax is not paid for a period from 01-07-2017 to 12-10-2017 within the respective due dates?
3. Whether interest on the delayed payment of CGST / SGST under section 9 (4) of the Act is applicable, when such tax on the relevant transaction/s has been kept on hold till 30-09-2019 by virtue of Notification No. 22/2018 - Central Tax (Rate) dated 06-08-2018?
4. Whether the circular dated 2nd May 2018 (*citd supra*) will have any effect of taxation including interest on the transaction dated 31st August 2017

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".

FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS SOUGHT .

The applicant is a registered person under the GST Act, 2017 and holding registration No. 27AAACF7895D1ZE. The activity of the applicant is renting of immoveable property to his tenants, Video Tape Production, Sound Recording Service: The applicant desires to have advance ruling on the following points:

1. Notification Nos. 8/2017 CT (Rate) on 28-06-2017 & 38/2017 CT (Rate) dated 13-10-2017 and **applicability:**

The Government of India issued a Notification No. 8/2017 CT (Rate) on 28-06-2017 effective from 01-07-2017 granting exemption from tax on goods and /or services liable under reverse charge basis (RCM) under section 9 (4) of CGST Act, 2017 on the supplies from an unregistered person provided such supplies is within the limit of Rs.5,000.00 per day as per the Proviso to first para of the said notification. The said proviso is reproduced as below:

"Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the supplies, who is or are not registered, exceeds five thousand rupees in a day."

The said Proviso in the aforesaid notification dated 28-06-2017 (*cited supra*) has been omitted vide Notification No. 38/2017 CT (Rate) dated 13-10-2017, with the result all supplies from unregistered person are exempted without any threshold limit. The subsequent notifications resting with Notification No. 22/2018 - Central Tax (Rate) dated 06-08-2018 has extended the exemption from tax liable under the reverse charge basis under section 9(4) till 30-09-2019. A copy of the notifications attached.

The effect of the above notification dated 13-10-2017 may therefore be mis understood that the GST on reverse charge basis on intra-state supply is applicable from 1-07-2017 to 12-10-2017 if the aggregate amount of supplies from unregistered persons exceeds Rs.5,000.00 per day. From 13-10-2017 onwards payment of GST on RCM basis on such supplies is exempted without any threshold limit.

The above interpretation is incorrect and the omission of the proviso is effective from date of original notification dated 28.06.2017 w.e.f. 01-07-2017, for the reasons stated here-in-below:

1. The Notification 38/2017 dated 13-10-2017 has omitted the proviso as contained in the 1st Para of the notification No. 8/2017 dated 28-06-2017 without having any saving clause specifying its effective date. In other words, this amendment is for the omission of the proviso in the aforesaid Notification dated 28-06-2017 and its effective date is to be considered ab initio from the mother notification dated 28-06-2017 effective from 01-07-2017(*supra*).

2. Had the intention of the legislation is to give the effect of such omission of the "Proviso" from the date of notification of 13-10-2017, then such a clause of date of effect of applicability would have been specifically provided therein. Moreover, in absence of any such specific clause mentioning effective date, support of

General Clauses Act, 1897 is to be taken. Accordingly, section 6 of the said Act is applicable in case of repeals and not omission. Hence, unless a date is specified in the amendment notification, an omission of any clause is considered to be made effective from the date of issue of mother notification. (i.e. No. 8/2017 CT (Rate) dated 28.06.2017 effective from 01-07-2017)

3. The interpretation as stated in Paras (1) and (2) above, is based on the decisions by the Supreme Court in various cases. The Supreme Court cases on the issue may be referred as under:

- i. In the case of Rayala Corporation (P) Ltd. vs. Director of Enforcement (AIR 1970 SC 494),
- ii. Similarly, in the case of Kolhapur Canesugar Works Ltd. vs. Union of India. (2000 (2) SCC 536),
- iii. Supreme Court further in the case of General Finance Co, and another Vs. Assistant Commissioner of Income Tax, Punjab, [(2002) 7 SCC 1) - (AIR 2002 SC 3126)],

The details of written interpretation is mentioned in the next submission which is reproduced as below.

2. Circular No. Circular No.44/18/2018-CGST F. No. 341/28/2017-TRU dated 02-05-2018 on taxability of tenancy rights' under GST

The Government of India issued a circular dated 2nd May, 2018 (cited above) stating that the transfer of tenancy rights is a taxable service under the GST law. In a transaction of transfer of tenancy rights from the applicant's tenant, who is a partnership firm, M/s Moviemann transferred his tenancy rights in favour of the applicant on 31 August, 2017 for Rs.54,00,000/-. The aforesaid circular dated 2nd May, 2018 States that the Tenancy rights is a service taxable under GST law.

The aforesaid tenant is not a registered person under GST law and hence the liability to pay tax stands on the applicant under section 9(4) of the Act as being a registered taxable person under GST.

Written Submission on behalf of the Applicant on 03.10.2018

1. The Applicant submits that the present application seeking Advance Ruling on the questions raised is not pending or decided in any of the proceedings in the case of applicant under any of the provisions of this Act and hence is eligible to decide under the section 97(2) of the CGST Act, 2017.
2. Applicant Company is a **registered taxable person** under the GST Act carrying on the business of Studio services such as Production of **advertisement** films and Post Production services as Video Editing, Sound recording, Animation, VFX, etc. **and also renting out some of the premises** to his tenants.
3. One of the **tenants has surrendered** his "Tenancy Rights" in favor of the applicant **vide agreement dated 31.08.2017** for a consideration of Rs.54,00,000/- (Rupees fifty four lakhs only). The applicant has discharged his liability of Registration Fees and Stamp Duty as per the **relevant laws in Maharashtra**. A copy of the said agreement is enclosed herewith and marked as **Annexure-A**.
4. The Tax Research Unit, Department of Revenue, Govt of India, New Delhi issued a circular No. 44/18/2018-CGST- F No.341/28/2017-TRU dated 02.05.2018, on the taxability of the transfer of "Tenancy Rights" (also commonly called "Pagdi") under the provisions of GST. Relevant para 4 of the said circular **states as under:**

Merely because a transaction or a supply involves. execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST. The transfer of tenancy rights



cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus a consideration for the said activity shall attract levy of GST.

5. The instant transaction relating to transfer of tenancy rights is from an unregistered person and the consideration paid by the applicant is liable to GST under section 9 (4) of the CGST Act under the **reverse charge** mechanism (RCM). For ready reference, the said sub-section is reproduced below: *9(4): The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.* (Emphasis underlined}

6. The applicant refers to the Notification No. 8/2017 CT (Rate) on 28.06.2017 granting exemption from tax on goods and / or services liable under RCM on the supplies from an unregistered person provided such supplies is within the limit of Rs.5,000.00 per day as per the Proviso to first para of the said Notification. **Relevant extract is reproduced below:**

Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day.

2. This Notification shall come into force with effect from the 1st day of July, 2017.

7. The aforesaid Notification dated 28.06.2017 (cited supra) has been omitted vide Notification No. 38/2017 CT (Rate) dated 13.10.2017, with the result all the supplies from unregistered person are exempted without any threshold limit. **The relevant part of the Notification is reproduced as below:**

In the said Notification, the proviso under Paragraph I shall be omitted,

2. **The exemption contained in the Notification No. 8/2017-Central Tax (Rate) dated the 28th June, 2017 as amended by this Notification shall apply to all registered persons till the 31st day of March, 2018,**

8. It would be seen that unlike referring the effective date of 1st July, 2017 for the Notification No.8/2017 CT (Rate) dated 28.06.2017, there is no such effective date at all for the Notification No.38/2017 CT (Rate) dated 13.10.2017 as it is simply an amendment "omitting" the proviso under Paragraph-1 from the day one of the mother Notification effective from 01.07.2017. In other words, by removing the impugned proviso, there is no applicability of **tax payable** under RCM basis under section 9 (4) of the Act irrespective of any threshold limit of Rs.5000.00.

9. Even the intention of the legislation can be easily inferred from the minutes of the 22nd meeting of the GST Council of 6.10.2017 as published in the Press **Release** at Point No.6, which states that "RCM shall be suspended till 31.03.2018". It is reproduced as below:

6. The reverse charge mechanism under sub-section (4) of section 9 of the CGST Act, 2017 and under sub-section (4) of section 5 of the IGST Act, 2017 shall be suspended till 31.03.2018 and will be reviewed by a committee of experts. This will benefit small businesses and substantially reduce compliance costs [Emphasis underlined!]



It would be seen from the aforesaid minute the GST Council meeting that there is no reference of effective date of the suspension of the provisions of section 9(4) of the CGST Act / 5 (4) of the IGST Act. On the strength of the Council's decision the Notification dated 13.10.2017 is issued omitting the proviso from the mother Notification [No.8/2017-CT (Rate) of 28.06.2017), which is effective from 01.07.2017.

10. The applicant further submits that the aforesaid amendment "omitting" the proviso is not a retrospective in nature but is in accordance with the intention of the legislation that the tax on RCM basis under section 9(4) of the Act is to be suspended till 31st March, 2018. (Note: It is further extended to 30th September 2019 vide subsequent Notification No. 22/2018 - Central Tax (Rate) 06.08.2018)
11. Applicant submit that in the normal circumstances while issuing Notifications, effective date should be taken as the date of issue of the Notification unless specifically so specified. But, in case of the "omission" of any provision, unless a date is specified it should be construed to be effective from the date of issue of the mother Notification from which such provision being omitted i.e. such provision stands ineffective *ab initio* in absence of a saving clause with regard to effective date.
12. The applicant further submits that in order to remove doubts, it would be necessary to refer section 6 of the General Clauses Act, 1897 deals with "Effect of Repeal". The said Section 6 is analysed as **under:**

Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence. committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

13. It would be seen from the aforesaid analysis of section 6 of the **General** Clauses Act, it is applicable only in case of Repeals and nothing will affect any provision of an Act, or any Central Act or Regulation, unless a different intention appears.
14. The applicant submits that various judgments of the Hon'ble Supreme Court has distinguished the effect of "repeal" from that of "omission" of any provision from an enactment or a regulation. The applicant rely on the following case law relating to deletion / omission:



i. **Rayala Corporation (P) Ltd. & Ors vs Director of Enforcement, New Delhi - (1970 AIR 494 = 1970 SCR (1) 639)** - The Court made it clear that the word "omission" is different than the word "repeal" and the provisions of section 6 of the General Clauses Act which are applicable to repeal are not at all applicable to word omission in absence of an appropriate saving clause. The Court's observations reproduced as below:

"In the case before us, s.6 of the General Clauses Act cannot obviously apply on omission of R. 132A of the D.I.R.s for the two obvious reasons that s.6 only applies to repeals and not omission, and applies when the repeal is of a Central Act or Regulation and not of a Rule" (Refer para 3-page16)

ii. **Kolhapur Canesugar Woks Ltd....vs Union of India - (2000 (1) SCR 518)**, - The Supreme Court has held that section 6 of the General Clauses Act was not applicable in case of omission of an enactment and it was applicable only in case of repeal of an amendment. The finding of the court reproduced below:

The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. (Para 4- page 11)

iii. **General Finance Co. & Anr vs Assistant Commissioner of Income Tax, Punjab (2002) 7 SCC 1 = AIR 2002 SC 3126,**

The Supreme Court held that in the light of its earlier decisions in Rayala Corporation Pvt. Ltd. (supra) and Kolhapur Canesugar Works Ltd. (supra), the principle underlying section 6 of the General Clauses Act as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act but only to repeal, omission being different from repeal as held in the said decisions. The observations of the court reproduced below:

Though we find the submissions of the learned counsel to be forceful; we are constrained to follow the two decisions of the Constitution Benches of this Court in Messrs Rayala Corporation (P) Ltd. case (supra) and Kolhapur Canesugar Works Ltd. case (supra). This view has held the field for over three decades and reiterated even as late as two years ago. (Para 3 - page 3)

15. It would be clear from the aforesaid detailed discussions with regard to omission of any provision, unless any qualifying reference with regard to the effective date is referred, the said omission is effective from the date of original enactment / Notification from where the provision is omitted.
16. Without prejudice to the aforesaid contentions, and in order to avoid possible litigation and penal proceedings the applicant has paid the taxes on reverse charge basis and interest thereon Under Protest on the transaction dated 30.08.2017 for total amount of Rs. 11,09,572/- on 04.07.2018 and a copy of the challan is enclosed herewith as an Exhibit-1
17. A copy of the letter dated 14.08.2018 indicating "Payment Under Protest" addressed to the applicant's Jurisdictional Authority is enclosed herewith and marked as Exhibit-2
18. Considering the aforesaid discussions, the applicant humbly submits that rulings may be issued on the questions raised in the main application of the Advance Ruling as under:



1. Whether the exemption from payment of GST on reverse charge basis under section 9(4) of the CGST Act / SGST Act for receipt of supply of goods and / or services by us from an unregistered person is applicable irrespective of any threshold limit right from 01-07-2017 vide Notification No.8/2017 dated 28.06.2017 read with Notification 38/2017 dated 13-10-2017?
2. Whether any action for recovery of tax under section 9(4) of CGST Act or corresponding provision of SGST Act can be initiated if such tax is not paid for a period from 01-07-2017 to 12 10-2017 within the respective due dates?
3. Whether interest on the delayed payment of CGST /SGST under section 9 (4) of the Act is applicable, when such tax on the relevant transaction/s has been kept on hold till 30-09-2019 by virtue of Notification No. 22/2018 - Central Tax (Rate) dated 06-08 2018?
4. Whether the circular dated 2nd May 2018 (*citd supra*) will have any effect of taxation including interest on the transaction dated 2nd September 2018?

03. **CONTENTION – AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

The Jurisdictional Officer MUM- VAT-C-862 of Nodal Div. 3 after examined the said application with legal submission along with relevant record submitting herewith written contention as under.

Point in Question : Please refer No. 14 of ARA-01

Question 1: Whether the exemption from payment of GST on reverse charge basis under section 9(4) of the CGST Act/SGST Act for receipt of supply of goods and / or services by us from an unregistered person is applicable irrespective of any threshold limit right from 01/07/2017 vide notification No. 8/2017 dated 28.06.2017 read with Notification 38/2017 dated 13/10/2017.

Contention :- As per notification No. 08/2017 of CGST intra-state supplies of goods or services or both received by a registered person from any suppliers, who is not registered from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central goods and Services Tax Act, 2017 (12 of 2017) are exempted.

Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by registered person from any or all the suppliers, who are not registered, exceeds five thousand rupees in a day.

As per notification No. 38 of 2017.

The proviso under paragraph I of notification No. 8/17 dt. 20.06.2017 shall be omitted.

The exemption contained in the notification No. 8/2017- Central Tax (Rate) dated the 28 June, 2017 as amended by this notification shall apply to all registered persons till the 31st day of March, 2018.

Hence it is clear that the exemption is applicable only from 13.10.2017.

Question 2: Whether any action for recovery of Tax under section 9(4) of CGST Act or corresponding provision of SGST Act can be initiated if such Tax is not paid for a period from 01/07/2017 to 12/10/2017 within the respective due dates?

Contention : Yes, Recovery of under sub section 9(4) of CGST act can be initiated if such tax is not paid for a period of 01.07.2017 To 12.10.2017 as per provisions contained in the Act.

Question 3: Whether interest on the delayed payment of CGST/SGST under section 9(4) of the Act is applicable, when such tax on the relevant transactions has been kept on hold till 30/09/2019 by virtue of notification No. 22/2018 central Tax (Rate) dated 06/08/2018?

Contention: Yes, interest on delay payment is applicable, as per provisions contained in the Act.

Question 4: Whether the circular dated 2nd May 2018 (Citd supra) will have any effect of taxation including interest on the transaction dated 31st August 2017.

Contention :- Yes, transaction date 31.05.2017 for Rs. 54,00,000/- is taxable under GST Law as per circular dated 2nd May 2018.

Para -5 is reproduced **as under.**

To sum up, the activity of transfer of "tenancy rights" is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempted (51. No. 12 of notification No. 12/2017- Central Tax (Rate). Hence, grant of tenancy rights is a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempted. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

The said circular is related with tax liability of tenancy right UNDER GST

04. HEARING

The Preliminary hearing in the matter was held on 18.09.2018, Sh. Narendra Ambatkar, Advocate along with Ms. Prajkta Dhuri, Practitioner, appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer Sh. Ganesh Tade, Sales Tax Officer (C-862), Nodal Division -III, Mumbai, appeared and stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 11.12.2018, Sh. Narendra Ambatkar, Advocate along with Ms. Prajkta Dhuri, Practitioner appeared and made oral and written submissions. They have agreed with this authority that only question no 1 of the ARA is relevant for the purpose of Advance Ruling and not question Nos. 2,3, and 4 as per the provisions of Section 97 of GST Act, 2017. The Jurisdictional Officer Sh. Ganesh Tade, Sales Tax Officer (C-862), Nodal Division -III, Mumbai appeared and made written submissions. We had heard from both the parties.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is in respect of a applicability of notification to the transactions effected during the course of business which would be on the lines thus –

We find the applicant Company is a **registered taxable person** under the GST Act carrying on the business of Studio services such as Production of **advertisement** films and Post Production services as Video Editing, Sound **recording**, Animation, VFX, **etc. and also renting out some of the premises** to his tenants. One of **the tenants has surrendered** his "Tenancy Rights" in favor of the applicant **vide agreement dated 31.08.2017** for a consideration of Rs.54,00,000/- (Rupees fifty four lakhs only). The

applicant has discharged his liability of Registration Fees and Stamp Duty as per the **relevant laws in Maharashtra.**

In the present matter, we find that applicant has received the tenancy rights from an unregistered person. The agreement was made between the parties on 31.08.2017. The transaction amount is Rs. 54 .00 lakhs .The Transfer of tenancy rights in goods or of undivided share in goods without the transfer of titles thereof is treated as **supply of services** under clause (b) of para 1 of schedule II of CGST Act 2017.

On this factual matrix we have been called upon to decide applicability of the notification No. 38/2017 Central tax (Rate) dated 13.10.2017 that has amended, original notification No.8/2017 Central Tax (Rate) dated 28.06.2017, which had granted exemption from tax on goods and/or Services under reverse charge mechanism (RCM) u/s. 9(4) of the CGST Act on the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers provided that the supplies are within the limit of Rs.5000 per day. The contention of the applicant is already reproduced herein above. In short applicant submits that the omission of the above said exemption, mentioned in the original notification, has been deleted by the amending Notification No. 38/2017 dated 13.10.2017 and is therefore effective from the date of original notification dated 28.06.2017 i.e. RCM provisions are inapplicable for the period from 01.07.2017 to 12.10.2017. To arrive at this conclusion applicant submits that nothing is mentioned in the notification to say that the effect of omission of the proviso is from the date of notification.

We shall now reproduce the relevant provisions Section 9 (4), notification No.8/2017 of the GST Act and Notification No. 38/2017 of the GST Act.

Section 9(4) -The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Notification No.8/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017):

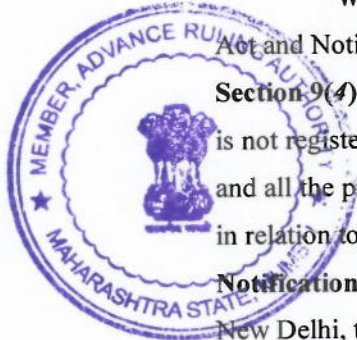
Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day.

2. This notification shall come into force with effect from the 1st day of July, 2017.

Notification No. 38/2017 – Central Tax (Rate)

New Delhi, the 13th October, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the



public interest so to do, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.8/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 680(E), dated the 28th June, 2017, namely:-

In the said notification, the proviso under Paragraph 1 shall be omitted.

2. The exemption contained in the notification No. 8/2017-Central Tax (Rate) dated the 28th June, 2017 as amended by this notification shall apply to all registered persons till the 31st day of March, 2018.

From the reading of provisions of RCM and the relevant notification, we find that there is no clear stipulation that the amendment is retrospective or prospective. In *Garikapatti Veeraya v. N. Subbiah Choudhury*, [1957] SCR 488, the Court observed as follows:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

Further Supreme Court in *Hitendra Vishnu Thakur and Others v. State of Maharashtra and Others*, [1994] 4 SCC 602 has culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation as follows :

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

Applying the Golden rule of construction and the principles laid down by the Apex Court as above to the facts of the present case we find no difficulty in arriving at the conclusion that there is nothing to show that the amendment notification No.38/2017 would have retrospective effect and therefore we find that the provisions of RCM u/s.9(4) of the CGST Act are applicable, irrespective of any threshold limit, right from 01.07.2017. Thus the benefit of exemption from payment of tax on RCM as provided u/s. 9(4) of the GST Act is not applicable from 01.07.2017 as claimed by the applicant.

05. 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- 73/2018-19/B-

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Mumbai, dt.

21/12/2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question:- 1. Whether the exemption from payment of GST on reverse charge basis under section 9(4) of the CGST Act / SGST Act for receipt of supply of goods and / or services by us from an unregistered person is applicable irrespective of any threshold limit right from 01-07-2017 vide Notification No.8/2017 dated 28.06.2017 read with Notification 38/2017 dated 13-10-2017?

Answer: - Answered in the negative. The RCM is applicable on the transactions effected from 1.7.2017 to 12.10.2017.

Question:- 2. Whether any action for recovery of tax under section 9(4) of CGST Act or corresponding provision of SGST Act can be initiated if such tax is not paid for a period from 01-07-2017 to 12 10-2017 within the respective due dates?

Answer: - Not answered since the question has been withdrawn by the applicant.

Question: - 3. Whether interest on the delayed payment of CGST / SGST under section 9 (4) of the Act is applicable, when such tax on the relevant transaction/s has been kept on hold till 30-09-2019 by virtue of Notification No. 22/2018 - Central Tax (Rate) dated 06-08 2018?

Answer: - Not answered since the question has been withdrawn by the applicant.

Question: - 4. Whether the circular dated 2nd May 2018 (*cited supra*) will have any effect of taxation including interest on the transaction dated 2nd September 2018?

Answer: - Not answered since the question has been withdrawn by the applicant.



PLACE - Mumbai

DATE - 21/12/2018

—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

Copy to:-

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

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.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE