

Attachment to Drop Proceedings

As per the Notification No. 14/2017-ST (rate) dt. 29.07.2017 from 29th of July, 2018, services by way of any activity in relation to a function entrusted to a municipality under 243W of the constitution, undertaken by the local authority shall be treated as neither as a supply of goods nor a supply of service. The said article 243W reads as follows:

*243W. Powers, authority and responsibilities of Municipalities, etc.-
Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-*

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

*(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the **Twelfth Schedule**;*

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

As per the entry at Sr. No. 1 to the Twelfth Schedule of our Indian Constitution, “Urban planning including town planning” is a function entrusted to Municipalities.

In order to avail the benefit of the aforesaid notification, the services in form of providing FSI against charging fees by the RMC should have the element of direct relation or integral connection with “Urban planning”.

Notice was issued by considering the below mentioned facts;

1. it was appeared that supply of FSI against collection of fees is not integral part of "town planning". Transaction of supply of FSI by the RMC to the taxpayer merely commercial activity. Performance or non-performance of "town planning work" has no nexus with activity per se the supply of FSI, which is entirely independent to each other. Supply of FSI to the business entity serves the only purpose of generating revenue for local authority.
2. In the aforesaid Notification No. 14/2017 ST (Rate), the phrase "Services by way of any activity in relation to a function entrusted to a Municipality under article 243W of the Constitution" does not mean "Commercial activities under consideration". Thus, the said activity in form of the supply of FSI against charging fees by RMC being an independent taxable supply of services, would not be qualified for and could not be treated as "No Supply of Services".

Thus, as per entry-16 (iii) in Notification No. 11/2017 state tax (rate) read with entry-5 in Notification No. 13/2017 state tax (rate), tax under RCM is payable by the taxpayer as recipient of services. Taxpayer has not discharged such tax liability under GST Act on receipt of services in form of FSI supplied by RMC.

View of the assessing authority ;

As per the entry at Sr. No. 2 to the Twelfth Schedule of our Indian Constitution, "Regulation of land-use and Construction of buildings" is a function entrusted to Municipalities.

The Gujarat Town Planning and Urban Development Act, 1976 under clause (m) of Section 12 provides the power to development authority to regulate the use and development of Land and Floor Space Index which reads as:

(m) "provision for controlling and regulating the use and development of land within the development area, [including imposition of charges at such rate as may be provided for grant of Floor Space Index (FSI) or height, and also imposition of] conditions and

restrictions in regard to the open space to be maintained for buildings, the percentage of building area for a plot, the location, number, size, height, number of stories and character of buildings and density of built up area allowed in specified area, the use and purposes to which a building or specified areas of land may or may not be appropriated, the sub-divisions of plots, the discontinuance of objectionable uses of land in any area in any specified period, parking spaces, loading and unloading space for any building and the sizes of projections and advertisement signs and hoardings and other matters as may be considered necessary for carrying out the objects of this Act;"

Further, in the case *EshaEkta Apartments v/s Municipal Corporation of Mumbai*, Honorable Supreme Court of India held that

"The municipal laws regulating the building construction activity may provide for Regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area."

From the above para, it appeared that amount received by municipal authority in the name of FSI is towards performing the function of the Regulation of construction of building and land use under the entry at Sr. No. 2 to the Twelfth Schedule of our Indian Constitution (i.e. Regulation of land-use and Construction of buildings). Thus, the same shall fall under the exemption provided under the GST Law.

As per Notification No. 14/2017 and its subsequent amendments in Notification No. 16/2018, if the services are provided by the Urban Local Bodies under Article 243W of the Indian Constitution, they are to be considered neither as supply of goods nor as supply of services.

Further, as per Notification No. 12/2017, the tax rate applicable on services provided by the Urban Local Bodies under Article 243W of the Indian Constitution is nil.

Therefore, based on the above arguments and legal provisions, The proceedings to be dropped herewith.



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