

GST Update-whether exemption available to sub-contractor if the services provided by principal contractor is exempt?

In this update we shall discuss about the recent Karnataka Advance Ruling pronounced by Appellate Authority for Advance Ruling (AAAR) in the case of M/s The Nurserymen Co-operative Society Ltd. on the issue that whether the garden work carried out for state and central government by its sub-contractors is liable to GST when the said services provided by the applicant to the government is exempt. In nutshell, whether exemption available to the principal/main contractor is also available to the sub-contractor?

The applicant, M/s The Nurserymen Co-operative Society is in the business of maintaining the gardens and landscape development for State and Central Governments, local bodies, and government undertakings. They have been providing pure services excluding works contract services and the same is exempted by way of serial no. 3 of the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017. The applicant seeks advance ruling with respect to the following question

“Whether the landscape development and maintenance of Garden work for state and central government departments, all government local bodies (Municipalities and Corporations) etc. and other government undertakings through contract from Sub contracts attracts GST as inward supplies from those vendors?”

The applicant contended that they purely provide back to back contract received from government agencies to sub-contractors and the outward supply provided by them is exempt as it falls under entry no. 3 of Notification No. 12/2017 dated 28.06.2017. The contention of the applicant is that taxing these transactions shall defeat the main aim of Article 243G and 243W of the constitution. Moreover the issue faced by the applicant is that if the subcontractor charges GST then the applicant cannot claim input tax credit of the same as the outward supply is exempt. So the applicant contends that as ITC is not available then it would be cost to him as well as to the government organisations which will defeat the objective of exemption granted by the government.

The Karnataka AAR has pronounced the ruling in negative stating that the benefit of exemption notification is applicable only to the contractor but not to the Sub-contractor and so the services provided by the Sub-contractor are taxable and not exempt. The relevant portion of the ruling is reinterred below

“The supply by the Sub-contractor to the applicant of execution of the sub-contract work of the said activity would not be exempt as it not covered either in entry no. 3 of Notification No. 12/2017-Central Tax(Rate) dated 28.06.2017 (as amended), as the applicant being the recipient of service is not covered under the class of recipients enumerated under the said entries.”

Aggrieved by the ruling, the applicant preferred appeal before the AAAR. On hearing the facts of the case and the applicant, the AAAR also upheld the ruling pronounced by AAR and dismissed the appeal filed by the applicant. It was held that it is trite principle of law that exemption notifications are to be strictly interpreted and when the exemption is given only with respect to services provided to the government, the exemption cannot be available with respect to services provided by sub-contractor to the appellant. Consequently, the appeal filed by the appellant was rejected.

It is pertinent to mention here the fact that whether a receiver of goods/services who is not liable to pay GST under reverse charge mechanism is eligible to file advance ruling is in doubt because recently, the Maharashtra AAR in the case of **TELSTRA TELECOMMUNICATION PVT. LTD.** has held that applicant who is recipient of services cannot obtain GST advance ruling unless the recipient is paying the taxes under reverse charge mechanism on the transaction of receipt of supply.

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