

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra Joint Commissioner O/o Commissioner, State Tax (CGST), Raipur, Chhattisgarh.	Shri Rajesh Kumar Singh, Additional Commissioner, O/o Principal Commissioner, CGST & Central Excise, Raipur, Chhattisgarh.
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Subject :- Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 sought by M/s Chhattisgarh Rajya Gramin Bank, GSTIN : : 22AAAJC0849H1ZO, Raipur, Chhattisgarh regarding GST applicability on salary recovery/STDR forfeiture.

Read :- Application dated 11/07/2020 from M/s Chhattisgarh Rajya Gramin Bank, GSTIN : : 22AAAJC0849H1ZO, Raipur, Chhattisgarh.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/10/2020

Raipur Dated ...17.../11/2020

M/s Chhattisgarh Rajya Gramin Bank, GSTIN:22AAAJC0849H1ZO, Raipur Chhattisgarh [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling on GST applicability on salary recovery/STDR forfeiture.

2. Facts of the case:-

The applicant is a registered tax payer as artificial judicial person registered under circle-1 Raipur engaged in the banking and financial service provision under HSN 00440173.

Whether GST is payable on any amount recovered/forfeited from employees who are leaving the services without serving notice period/ resigning during probation period.



Dev

3. Contentions of the Applicant: -The applicant's contention is as under :-

3.1. that, one of their ex-employee has filed an RTI recently and the Department of Excise and Custom have replied that service tax/ GST is not payable in case of salary recovered for not serving the notice period. The said departmental view is also supported by the following decided case laws, that Service tax/GST should not be payable on this recovered/forfeited amount as the nature of transaction do not tantamount to supply.

- (i) GET & D India Ltd. v/s DCCE Chennai – Madras High court.
- (ii) HCL Learning Ltd. V/s Commissioner of CGST Noida - CESTAT ALLAHABAD.

3.2 that :-As per Sec 7(1) , Sec 7(1)(a)

GST is leviable on supply of goods or services or both. Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Comment: The said transaction between employer and employee not fall in any of the above categories, further the transaction are not in the course or furtherance of business, Hence it does not fall under the definition of Supply.

Sec 7(2)(a)

Notwithstanding anything contained in Sec 7(1)

- (a) Activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services.

Schedule III

Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Services

- 1) Services by an employee to the employer in the course of or in relation to his employment.

Comment: Above mentioned transaction are in-between employer and employee, Hence it does not fall under the purview of "supply".

3.3. Supporting materials for reference

- 01. GET & D India Ltd vs DCCE Chennai – Madras High court.
 - 02. HCL Learning Ltd. Vs Commissioner of CGST Noida - CESTAT ALLAHABAD
 - 03. Reply of an RTI Application in this regards by CBECE dated 13.05.2020.
- 3.4. Going through the all above justifications supported by various case laws and departmental reply, we have of the firm opinion that GST is not leviable on amount



recovered/forfeited from employees who are leaving the services during probation period.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant and accordingly their authorized representative Shri Suresh Agrawal, C.A. attended the personal hearing, before the authority for hearing on 21/10/2020 and reiterated their contention

5. The legal position, Analysis and Discussion:-

5.1 At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

5.2 The applicant sought advance ruling to the points which could be discussed as under:-

- a. Any amount recovered/forfeited from employees who are leaving the services without serving notice period/ resigning during probation period is the consideration received when an employee resigns without notice and puts an end to his contract of employment, allowing the company from which he is resigning to recover a part of his salary, ranging from one to a few months, which is adjusted against his final settlement amount and the net amount payable to the outgoing employee, and is treated as his remuneration for provision of his services and accordingly accounted for in the books of accounts. Any adjustment or deduction on any account arising out of contract of employment is nothing but integral part of salary and wages.
- b. The levy under the CGST Act, 2017 is on "supply" of goods or services or both. In order to attract the levy under Sec.9 of the CGST Act, 2017, the taxable event of "supply" must have taken place. Section 7 of the CGST Act, 2017 defines the scope of "supply" i.e. in a given case if there is no "supply" within the meaning of Section 7 of CGST Act, 2017, there is no scope of any levy of GST under Section 9 of CGST Act, 2017.
- c. Further, Clause (a) of sub-Section (1) of Section 7 Of the CGST Act, 2017 envisages that the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The word "such as" preceding the words sale, transfer, barter, exchange, etc.



indicates that the forms of supply shall be those which are enumerated therein or of similar character but not other dissimilar forms of supply. The expression "such as" indicates the character of the transactions.

d. In the impugned case, the amount recovered/forfeited from employees who are leaving the services without serving notice period/ resigning during probation period does not fit into the scope of "supply" under clause (a) of sub-Section (1) of Section 7. Furthermore, the CGST (Amendment) Act, 2018 dated 30-08-2018 inserted sub-Section (1A) to Section 7 of the CGST Act, 2017 with retrospective effect 01-07-2017 in place of clause (d) of sub-Section (1) of Section 7, which seeks to levy tax on certain declared "supply" of goods or services referred to in Schedule II of the CGST Act, 2017. Thus SCHEDULE II specifies the activities or transactions which are to be treated as supply of Goods or supply of services. For ease of reference we would like to reproduce herewith Section 7 of CGST Act, 2017 and activities excluded as specified under Schedule III to Section 7 supra.

Section 7 of CGST Act, 2017 defines Scope of supply as under:-

(1) For the purposes of this Act, the expression —supply— includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;[and]

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration;[****]*

*(d) [****] .*

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),— (a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

SCHEDULE III [See section 7] ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES



1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any court or Tribunal established under any law for the time being in force. 3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

6. Actionable claims, other than lottery, betting and gambling.

7. [Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption; SCHEDULE III 201

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.]

Explanation [1] .—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[Explanation 2.—For the purposes of paragraph 8, the expression —warehoused goods shall have the same meaning as assigned to it in the Customs Act, 1962.]

e. As the recovery of salary in the instant case does not fall within the ambit of supply i.e. sale, transfer, etc. set out under sub-Section (1) of Section 7, and it being excluded activities or transactions of services by an employee to the employer in the course of or in relation to his employment as stipulated vide clause 1 of Schedule III supra, the conditions of Section 7 of CGST Act, 2017 is not satisfied and accordingly the transaction in question cannot be termed as a "supply" within the meaning of Section 7 and therefore, cannot be subjected to levy of GST. The employee opting to resign by



paying amount equivalent to one month's salary in lieu of notice has acted in accordance with the contract. The employee is free to tender his resignation, make payment of one-month salary and quit. Hence, there is neither any active nor any passive role played by the employer. The same is nothing but transactions pertaining to services by employee to the employer in the course of or in relation to the employment. Thus in view of above discussion, we come to the considered conclusion that as the activities or transactions in question do not satisfy the test of "supply" under Section 7 of the CGST Act, 2017, levy under Section 9 is not attracted here.

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

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

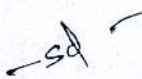
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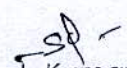
Raipur Dated17/11/2020

The ruling so sought by the Applicant is accordingly answered as under:

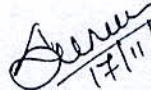
RULING

GST is not payable on any amount recovered/forfeited from employees on account of their leaving the services without serving notice period/ resigning during probation period, it being excluded from the purview of "supply" as stipulated under Section 7 of CGST Act, 2017 as the same are activities or transactions of services by an employee to the employer in the course of or in relation to his employment as stipulated.

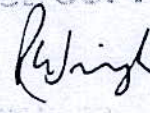

Sonal K. Mishra
(Member)


Rajesh Kumar Singh
(Member)

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