

GIB/KA/MIDCON POLYMERS/11.01.2021/AAAR-61

Appellate Advance Ruling Category : VALUATION OF RENTAL INCOME

State : Karnataka

Order No.: GIB/KA/MIDCON POLYMERS/11.01.2021/AAAR-61

Name of Entry :

M/S. MIDCON POLYMERS PVT. LTD

Date : 11-01-2021

Breif Issue :

FACTS OF THE CASE:

The Appellant is engaged in the business of renting of commercial property on monthly rents and allied business. The Appellant intends to enter into a commercial agreement of renting of immovable property with educational institution in Bangalore. The contract is on the basis of the reserved monthly rent and also refundable caution deposit/security deposit. As per the terms of the contract, the deposit received shall be returned without interest on the termination of the tenancy. The refund of the advance caution deposit does not in any way determine the quantum of rent or enhance the services. The Appellant also discharges the statutory taxes levied by the BBMP on the property and the property tax so paid is no way related to the supply of services.

Decision of Advance Ruling Authority :

ISSUE OF THE CASE AND DECISION:

Whether the property tax paid by the Appellant to the Municipal Authority can be deducted from the monthly rental income received?

ANS:- In this case, the fact that the supplier and the recipient of the service (i.e lessee) are not related and that the rent is the sole consideration for the service of renting of immovable property, are not in dispute. It is seen from the draft rental agreement that the lessee is required to pay monthly rental of ? 1,50,000/- plus applicable taxes, subject to deduction of tax as may be applicable. Therefore, the amount received from the lessee towards the monthly rent as per the invoice that will be raised by the Appellant, will be the transaction value and it is on this value that GST has to be paid - Section 15(2) of the CGST Act, provides for certain inclusions to the value of supply. One such inclusion is that all taxes levied under any law in force will be included in the value. The only taxes which qualify for exclusion from the value are the CGST, SGST, IGST, UTGST and Compensation Cess

which are levied under the respective Acts. Even in respect of these taxes, they can be permissible deductions subject to the condition that the supplier charges them separately in the invoice. Other than the above levies, no other statutory levy can be deducted from the value of supply.

All taxes levied under any law in force are to be included in the value of the renting of immovable property service supplied by the Appellant. Therefore, the property tax paid to the Municipal Authority (BBMP) cannot be deducted from the monthly rental income for arriving at the value of supply.

Whether the notional interest on the security deposit is to be included for the purpose of calculating the total rental income? –

ANS:- This is a concept which has been deliberated at length by many Courts with respect to the Income Tax Act. As far as GST law is concerned, the issue is to be examined in the context of 'supply' and the 'consideration' received for the supply. What constitutes a 'supply' in GST has been provided in Section 7 of the CGST Act and it includes all forms of supply (such as rental) made or agreed to be made for a consideration. In this case, the monthly rental received from the lessee is a consideration for the supply of the renting service. The terms of the rental agreement also state that the lessee shall pay an interest free refundable security deposit of ₹ 5 crore which will be returned to lessee upon vacation of the scheduled property - The interest is paid by the person with who the amount is invested. The interest earned by the supplier from a third person, on account of investing the security deposit amount is not a payment made by the third person "in respect of, in response to, or for the inducement of the supply of the renting service. There is no connection between the payment of interest by the third person and the renting service supplied by the supplier to the lessee. The phrase "in respect of, in response to, or for the inducement of used in the above definition of 'consideration' as given in Section 2(31)(a) of the CGST Act, means there must be a direct link between the supply of the service and the consideration received in the form of interest on the security deposit. Such a connection is absent in this case.

The decision of AAR modified.

The present appeal has been filed against Advance Ruling order no. [KAR ADRG 48/2020](#) dated: 16th Sept 2020