

GIB/MH/BUILDERS ASSOCIATION/28.03.2018/HC-243

High Court Category : LEVY OF GST

State : Maharashtra

Order No.: GIB/MH/BUILDERS ASSOCIATION/28.03.2018/HC-243

Name of Entry :
BUILDERS ASSOCIATION OF NAVI MUMBAI

Date : 28-03-2018

Breif Issue :

FACTS AND ISSUE OF THE CASE:

In this case the first assessee was a registered public charitable trust and the second assessee was a partnership firm carrying on business as Builder and Developer. The members of the assesseees were reputed Builders and Developers of Navi Mumbai and areas surrounding it. They had contributed to the growth and development of Navi Mumbai by constructing and developing several residential and commercial properties.

The City Industrial and Development Corporation of Maharashtra Limited (CIDCO) was a special planning authority for the areas of Navi Mumbai and was incorporated with the specific aim for creating a new planned, self-sufficient and sustainable city on the mainland across Thane Creek adjoining the Mumbai City. The assesseees won the bid for securing lease of such land from CIDCO in areas of Navi Mumbai and Panvel. However, the assesseees questioned the levying of GST separately on the one-time lease premium amount at the time when allotment letter was issued.

The assessee contended that GST could not be levied, assessed and recovered. A long-term lease of 60 years tantamounts to the sale of the immovable property since the lessor is deprived of, by the allotment of the right to use, enjoy and possess the property. The assesseees also contended that the whole transaction is akin to the sale. If that is the position, then, section 7 of the GST Act cannot have any application. Once the position in law is understood in this perspective, then, there is no warrant for the imposition of the GST.

The revenue however contended that the law does not make any distinction between governmental and non-governmental agencies and supply of goods or services attracts GST. Once the legal provisions are clear, unambiguous and plain, then, regardless of the consequences, the tax is leviable.

Decision of Advance Ruling Authority :

DECISION:

If one refers to Schedule II, section 7, then, Item No. 2 styled as land and building and any lease, tenancy, licence to occupy land is a supply of service. Any lease or letting out of a building, including commercial, industrial or residential complex for business, either wholly or partly is a supply of service. It is settled law that such provisions in a taxing statute would have to be read together and harmoniously in order to understand the nature of the levy, the object and purpose of its imposition. No activity of the nature mentioned in the inclusive provision can thus be left out of the net of the tax. Once this law, in terms of the substantive provisions and the Schedule, treats the activity as supply of goods or supply of services, particularly in relation to land and building and includes a lease, then, the consideration therefor as a premium/one-time premium is a measure on which the tax is levied, assessed and recovered. We cannot then probe into the legislation any further.

The demand for payment of GST is in accordance with law. The said demand cannot be said to be vitiated by any error of law apparent on the face of the record. In these circumstances, we do not find any merit in the writ petition. - Decided in favor of revenue.