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Compromising composite supply.

Author : G. Natarajan, Advocate, G N Law Associates

Section 2 (30) of the GST Acts define "composite supply" as below and the manner in which such composite supplies have to be taxed is laid down in Section 8. The said provisions are reproduced below.

Section. 2 (30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Section. 2 (90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Section 8. Tax liability on composite and mixed supplies. – The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :–

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

The composite supply principle owes its origin to the principle of "bundled service" under Service Tax regime, prescribed under Section 66 F of the Finance Act, 1994.

This time tested principle of composite supply was given a go by for the first time, when the Government prescribed that in respect of supply of renewable energy devices and parts thereof, along with their erection, commissioning and installation, the value of supply of goods would be 70 % of the gross value, attracting lesser rate of 5 % as supply of goods and the remaining 30 % of the value would be considered as the value of services and subjected to 12 % GST. Reference in this regard is made to the amendments made to S.No. 234 of Schedule I of Notification 1/2017 Central Tax (Rate) Dt. 28.06.2017, vide Notification 24/2018 Central Tax (Rate) Dt. 31.12.2018 and the amendment made to S.No. 38 of Notification 11/2017 Central Tax (Rate) Dt. 28.06.2017, vide 27/2018 Central Tax (Rate) Dt. 31.12.2018.

This was necessitated due to various advance rulings, wherein it was held that such supply, erection, commission of renewable energy projects are “works contract” and as per S.No.6 (a) of Schedule II of the GST Act, to be considered as supply of service and attract 18 %.

As the supply, erection, commissioning of such renewable energy plants are always undertaken together, the intention of prescribing a lesser rate of 5 % for such goods was defeated. Thus a departure was made for a good reason and the Government prescribed 70 % of the as value of supply of goods and the balance 30 % as value of services. A correct approach should have been to clarify that such supply, erection, commissioning of renewable energy plants, constitute a composite supply and the tax treatment would be based on the “principal supply” i.e the supply of goods.

Now, for the second time, the Government is compromising the principle of composite supply, in proposing to tax renting of rooms in hospitals where the room rent is more than Rs.5,000 per day, though such supply of rooms is ancillary to the principal supply of health services being provided by hospitals, which is exempted.

Such blatant violation of legislative wisdom by executive notifications is not a welcome move, be it whether it is for the benefit of taxpayers or otherwise.

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