

## **Case Study Series – GST Advance Ruling**

### **Crux of the case:**

Is a partner required to pay GST if he provides any property owned by him to the firm to carry on business on a rent free basis?

Authority	Tamil Nadu Authority For Advance Ruling
Legal Name of Applicant	Shanmuga Durai
Details of Application	GST ARA-01 Application SI.NO.30/2021/ARA Dated:26.08.2021

### **Facts of the case:**

- The applicant is the managing partner of a partnership firm and the owner of certain properties.
- The properties of the managing partner are used for conducting business by the firm on a rent free basis till the introduction of GST. Upon the introduction of GST, the firm is paying a nominal amount as rent to the managing partner for the use of his premises.
- The applicant (i.e. the managing partner) wants to know if he is providing any taxable supplies and if yes, what is the value of the taxable supply and whether the supply is in the course of furtherance of business.
- The property is the name of the managing partner, the property is being used by the partnership firm, the electricity and water charges are being borne by the partnership firm.

### **Discussion and Findings:**

- **On whether the supply is in the course of furtherance of business.**
  - The managing partner enjoys a 2/3<sup>rd</sup>s profit/loss share in the partnership firm.
  - The managing partner only stands to gain from the act of giving his properties to the firm on a rent free basis or on payment of a nominal amount as rent.
  - This is because, if the firm pays less rent or does not pay any rent, its profit will increase and the that profit will be ultimately enjoyed by the managing partner owing to his 2/3<sup>rd</sup>s share in the partnership.

- This means that an economic benefit accrues to the partner and hence this supply is said to be in the course of furtherance of business only.
- **On whether the service of giving properties on rent constitutes a supply**
  - The service of renting will amount to supply if made for a consideration in the course of furtherance of business as per section 7(1) of the CGST Act, 2017. (It is already established above that the supply is in the course of furtherance of business).
  - If the properties are given on a rent free basis, the same will not amount to supply because of the absence of consideration.
  - However, If the property is given on a rent free basis **to a related or distinct person**, the same will amount to supply as per Schedule 1 of the CGST Act, 2017 - (Deemed supply)
  - **In the given case**, the service of giving his properties of rent (either on a rent free basis or for a nominal rent) will constitute a supply.
- **On the value of the taxable supply:**
  - Since the transaction is between related persons, value of the supply will be decided as per Rule 28 of the Valuation Rules. (Value of supply of goods or services or both between distinct or related persons, other than through an agent)
  - Rule 28 requires the supply to be valued at Open market value. Where the open market value is not available, the value of like, kind and quality will be the taxable value, if both or not available, the taxable value shall be cost plus 10% Mark-up.

**Order:**

- **Whether GST liability does arise in respect of property of the partner used by the partnership firm to carry out the business by the firm at free of rent**
  - Yes
- **If so, what is the relevant section or rule or provision in GST Law under which the partner of the firm is required to pay GST on notional rent**
  - Rule 28 of CGST Rules.

- **Is it mandatory to execute rental deal between partner and partnership firm, when there is no furtherance of business for that partner**
  - Since this is a procedural issue, the same is not answered.
- **What is the applicable valuation rule when consideration is not fixed and not received by the partner**
  - Rule 28 of CGST/TNGST Rules, 2017.

**Key Take away from the above decision:**

- GST is liable to be paid by the partner with respect to the service provided by him in the nature of renting out properties owned by him to the firm on a **rent free basis** to carry on its business.
- This is because the service of renting of properties to a related person will be considered as a taxable supply even if there is no consideration.
  - Since the same is a deemed supply by virtue of Schedule 1 of the CGST Act, 2017 and
  - The service provided by the partner is in the course of furtherance of business as discussed above.
- The value to be adopted for the purpose of charging GST shall be the value determined as per Rule 28 of the CGST/TNGST Rules, 2017.