



## Dimensions – 92<sup>nd</sup> Edition

### Judgment under GST era

#### ***P. V. Rao v. Senior Intelligence Officer, Directorate General of GST Intelligence & Ors.<sup>1</sup>***

##### Issue for Consideration

Whether the present situation relating to Covid-19 can be considered as a ground for insisting upon making an appearance via video conferencing mode instead of making an in-person appearance.

##### Discussion

- The Petitioner is the Chief Financial Officer (“CFO”) of Think and Learn Private Limited (“TLPL”) which is engaged in the business of providing online courses, classes etc. under the brand name “BYJU’S”.
- The Respondent is presently carrying out an investigation into TLPL under section 67 of the CGST Act, 2017 regarding the alleged evasion of GST by declaring supplies of books or printed material in the exempt category. During the course of the investigation, the Respondent visited TLPL’s premises in order to ascertain the admissibility of the exemption being availed.

- A short statement from the Petitioner was recorded during the visit. However, due to ill health and age-related morbidities, the doctor advised the Petitioner to take medication and rest.
- Thereafter, the Petitioner was summoned by the Respondent requiring him to submit his statement and evidence in New Delhi. In response to this summons, the Petitioner asked to make an appearance via video conference given his ill health and the rising number of Covid-19 infections across the country. The request was denied, and the Petitioner was directed to attend in person.
- Aggrieved, the Petitioner filed the present writ petition. After perusing the detailed status report that was submitted by the Respondents, together with the facts of the case, the Hon’ble High Court observed as follows:
  - Following the examination of the medical leave certificate, the Court noted that the certificate did not indicate any serious ailments, and that the Petitioner had been advised to rest due to moderate hypertension. Furthermore, the blood test reports that were enclosed via the

---

<sup>1</sup> 2020 (11) TMI 716



Additional Affidavit did not indicate any serious ailments.

- The certificates that were provided by the doctors only indicate that the Petitioner is undergoing treatment for hypertension and diabetes, that the Petitioner has a high risk-factor for heart disease. The documents do not indicate any serious health issues that would prevent travel from Bengaluru to Delhi.
- The previous conduct of the Petitioner, at the inspection stage, when the officers of the Respondents were visiting Bengaluru, illustrates that the Petitioner consistently avoided recording his statement, for different reasons. The Court stated that it would not be appropriate to interfere in the proceedings, considering the previous non-cooperative conduct of the Petitioner, and the mere apprehension or fear of contracting Covid-19.
- The reliance that was placed by the Petitioner upon the judgment pronounced by the Hon'ble Supreme Court in the case of *The State of Maharashtra v. Dr. Praful B. Desai*<sup>2</sup> was distinguished on the grounds that it does not apply to the facts and circumstances of the present case. Furthermore, the reliance that was placed upon the decision of the Hon'ble High Court of Telangana in the case of *Ilangovan G. v. Union of India & Ors*<sup>3</sup> is an interim order and can be distinguished on factual grounds.
- The Court observed that the evidence to be recorded would impact the entire investigation into tax evasion, and that the questioning during the investigation must involve the evaluation and examination of documents. The authorities may come across crucial facts / discoveries during the course of their interrogation. Judicial interference at this initial stage of the investigation has to be exercised with circumspection. The concept of the balance of

convenience cannot be tilted in favour of the Petitioner, to allow an appearance via video conference, and the mere apprehension or fear of contracting Covid-19 is not a persuasive enough reason for granting any relief.

### Judgment

The Hon'ble High Court dismissed the Writ Petition, taking into account the statement of the Respondents that is on record, to undertake all of the necessary safety measures and protocols during the proceedings, and also that they will record and conclude the statement on a day-to-day basis, so that the statement can be recorded in a single visit.

### **Dhruva Comments:**

The Court has refrained from exercising judicial interference in matters relating to an investigation into alleged GST evasion, and thus an appearance via video conference cannot be a substitute for an actual physical appearance. In the wake of ongoing pandemic, generally most people are undertaking travel only for exceptional reasons. To avoid this situation, it could be important to demonstrate that co-operation has been extended to the department.

## **Ruling under GST era**

### ***Sri. B. R. Sridhar - Authority for Advance Ruling, Karnataka<sup>4</sup>***

#### Issue for Consideration

Can GST be levied on the consideration received towards the flats sold by an owner of land, which have been received as part of the joint development agreement ("JDA") entered into with the developer, post the receipt of occupancy certificate ("OC")?

<sup>2</sup> 2003 (4) TMI 570

<sup>3</sup> 2018 (11) TMI 714

<sup>4</sup> 2020-VIL-313-AAR



## Discussion

- The Applicant, the owner of an immovable property in Bengaluru, had entered into a JDA with M/s Suprabhat Constructions (“developer”) in May 2016 to construct residential flats on the said property.
- As per the JDA, the developer was responsible for constructing the property at his own cost, including obtaining conversion orders, construction plans, other permissions, OC and marketing the project.
- The Applicant and developer are entitled to share of 40:60 respectively of the undivided right, title and interest in the land proportionate to super built up area and car parking spaces of the property.
- The Developer was required to hand over the Applicant’s share of the property after obtaining OC, which was obtained on August 26, 2019.
- The Applicant approached the Authority for Advance Ruling (“the Authority”) to contend that the sale of his own share of flats was not subject to GST on the following grounds:
  - As per the area sharing agreement, the Applicant can execute the sale agreement / conveyance deed only after the Applicant takes over the units and the OC is issued. Agreement for sale with prospective buyers has been entered into only after receipt of OC, hence the consideration received is exempt from GST in terms of notification no. 11/2017-Central Tax (Rate) dated June 28, 2017 and as per notification no. 4/2018-Central Tax (Rate) dated January 25, 2018.
  - The sale of residential flats amounts to “sale of land” and is neither supply of goods nor services as per para 5 of Schedule III to the CGST Act, 2017.
  - Time of supply as per section 13(2)(c) of the CGST Act, 2017, is the receipt of service from the developer reflected in his books of accounts in terms of the JDA / area sharing agreement and the date on which the developer made an application for issue of OC.
- After perusing the facts of the case and the relevant provisions of the GST law, the Authority observed as follows:
  - If the flats are sold after issuance of OC, then the transaction would neither be treated as a supply of goods nor services in terms of para 5 of Schedule III to the CGST Act, 2017, hence would not be leviable to GST.
  - The developer had the sole and exclusive right of marketing the entire project. The Applicant is silent about the fact that whether the developer had executed any sale deeds on behalf of the Applicant in respect of the Applicant’s share. If the Applicant themselves or the developer on behalf of the Applicant sells the Applicant’s share of flats prior to issuance of OC, then the transaction amounts to supply of “Works Contract Service” and would be liable to GST.
  - The value of supply for flats sold prior to issuance of OC would be the open market value as per rule 27 of the CGST Rules, 2017 and as clarified by paragraph (iii) 1B of notification no. 4/2019-Central Tax (Rate) dated March 29, 2019.
  - The time of supply would be the time at which the constructed flats are handed over by the developer to the Applicant which the Applicant contends is after issuance of OC.

## Ruling

The amount received by the Applicant from the sale of its share of flats would not be leviable to GST if the entire consideration is received after issuance of OC.

### **Dhruva Comments:**

The ruling clearly states that no GST shall apply on sale of flats after OC in terms of Schedule III to the CGST Act, 2017. However, it needs to be analysed as to whether transfer of under construction flats by the Owner would be regarded as a works contract service, as the construction work is undertaken by the developer.



## Circular under Pre-GST era

### **Pre-Show Cause Notice Consultation**

- The CBIC has issued circular no. 1076/02/2020-CX dated November 19, 2020 to state that the pre-SCN consultation with the assessee in cases where the demand is more than ₹50 lakhs (except for preventive / offence related to SCN's) is mandatory and shall be done by the SCN issuing authority. The CBIC had previously also issued a circular<sup>5</sup> in this regard.
- Furthermore, the above clarification shall have an overriding effect on all circulars / instructions issued on the subject, to the extent they are in conflict.

### **Dhruva Comments:**

Similar circular had been issued earlier and various judicial pronouncements have struck down the SCN if the same had been issued without any consultation with the assessee.

---

<sup>5</sup> Circular no. 1053/02/2017-CX dated March 10, 2017 ("Master Circular on Show Cause Notice, Adjudication and Recovery")





## ADDRESSES

### Mumbai

11th Floor, One World Centre,  
Tower 2B, 841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahladnagar, Corporate Road,  
Ahmedabad 380 015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart, Baner,  
Pune 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
U-Bora Tower 2, 11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel: + 971 56 900 5849

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
[dinesh.kanabar@dhruvaadvisors.com](mailto:dinesh.kanabar@dhruvaadvisors.com)

### Ritesh Kanodia

[ritesh.kanodia@dhruvaadvisors.com](mailto:ritesh.kanodia@dhruvaadvisors.com)

### Niraj Bagri

[niraj.bagri@dhruvaadvisors.com](mailto:niraj.bagri@dhruvaadvisors.com)

### Ranjeet Mahtani

[ranjeet.mahtani@dhruvaadvisors.com](mailto:ranjeet.mahtani@dhruvaadvisors.com)

---

Dhruva Advisors has been consistently recognised as the **“India Tax Firm of the Year”** at the ITR Asia Tax Awards in 2017, 2018, 2019 and 2020.

Dhruva Advisors has also been recognised as the **“India Disputes and Litigation Firm of the Year”** at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the **“Best Newcomer Firm of the Year”** at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a Tier 1 firm in **India’s ‘General Corporate Tax’** and **‘Indirect Tax’** ranking tables as a part of ITR’s World Tax guide. The firm is also listed as a **Tier 1 firm** for India’s **‘Transfer Pricing’** ranking table in ITR’s World Transfer Pricing guide.

## Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication

