

### **Mere acceptance of joint custody of goods does not amount to supply**

The AAR, Madhya Pradesh in the matter of *M/S. Mohammad Arif Mohammad Latif (Advance Ruling Order No. 03/2021 dated June 17, 2021)* held that, that mere acceptance of joint custody of goods without rights, privileges of ownership of goods does not amount to supply.

#### **Facts:**

M/s. Mohammad Arif Mohammad Latif (“**the Applicant**”) is engaged, inter alia, in purchase of Tendupatta (“**the Goods**”) from the MP State Minor Forest Produce (Trading and Development) Cooperative Federation Limited (“**the Federation**”) for the purpose of trading of the Goods and the Applicant is required to pay for the lots of the Goods in instalments and obtain the Goods from the Federation to complete the sale and till that time it was to be kept in the godown of the Federation in joint custody. Further, the Goods were insured by the Federation. The insurance was obtained at the cost of the successful bidder in the joint name of the Federation and the Applicant

Due to a fire in the godown of the Federation, the Goods stored were destroyed and could not ultimately be delivered to the Applicant. Upon the fire, the claim for insurance was filed and the insurance proceeds were received by the Federation.

Thereafter, the Federation directed the Applicant to pay for the subsequent installments for the Goods that was destroyed in the fire, after appropriating the security deposit and adjusting the claim received from the insurance company while computing the amount to be paid by the Applicant, the Federation added GST, treating the goods destroyed in the fire to have been supplied in terms of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”).

#### **Issues:**

1. Whether mere acceptance joint custody of the goods without the rights and privileges of ownership of the goods amounts to supply under the CGST Act?
2. Whether the Applicant is liable to pay GST, where the goods are destroyed by fire before being delivered under an agreement to sell?

#### **Held:**

The Hon’ble AAR, Madhya Pradesh in *Advance Ruling Order No. 03/2021 dated June 17, 2021* held as under:

- Analysed Section 7 of the CGST Act and noted that, the definition of supply is an inclusive definition that includes all forms of supply or goods and it is an activity, including inactivity in case of supply of service, as per Schedule II to the CGST Act. Further, supply of goods

cannot happen without the movement of possession of the goods from one person to another. While a person has goods in his possession, he cannot be said to have supplied the goods to another.

- Further noted that, supply can only be of goods that are in existence. Although a contract may be entered into for supply of future goods and consideration also be received for such supply of future goods, non-existent or future goods cannot be supplied in terms of Section 7 of the CGST Act.
- Observed that, the delivery of the Goods was conditional on the payment of the due installment and since the installments due were not paid, there is no question of delivery of the Goods to the Applicant. The Goods were destroyed by fire and there cannot be any transaction in respect of such non-existent Goods after their destruction that would amount to supply. Therefore, neither the risk in the Goods nor the property in the Goods had passed to the Applicant as on the date of the fire. Clearly therefore, the Goods were also not delivered to the Applicant.
- Stated that, the risk in Goods and the property in Goods had not passed to the Applicant the terms of the agreement and the conduct of the parties to the agreement also show that the property in Goods and the risk thereof was with the Federation and not the Applicant. Also that the joint custody did not amount to the delivery of the Goods to the Applicant.
- Held that, taking joint custody of the Goods by the Applicant shall not amount to supply of the Goods, if the invoice of the said transection is not issued. Further held that, the Goods destroyed before sale, cannot form subject matter of supply within the meaning of Section 7 of the CGST Act after their destruction.

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