

Supply of services by Co-venture to the business attracts GST

The AAR, Kerala, in the matter of ***M/s Choice Foundation [Advance Ruling No. KER/10/2023 dated March 10, 2023]*** ruled that supply of services to assessee to its own joint venture would attract GST as per Notification No. 11/2017 Central Tax (Rate) dated June 28, 2017 (“**the Service Rate Notification**”) since, the assessee and the joint venture are 2 different ‘person’ for the taxation laws.

Facts:

M/s Choice Foundation (“**the Applicant**”) is a charitable society possessing experience in operating educational institutions in the state of Kerala. The Applicant proposes to enter into a joint venture agreement with M/s Choice Estates and Constructions Pvt. Ltd. (“**CECPL**”) to jointly operate an educational institution from the property owned by CECPL.

As per the joint venture agreement, the revenue generated from the operation of the educational institution will be shared between the Applicant and CECPL in a fixed ratio which would be decided subsequently.

The Applicant filed an application before the AAR, Kerala, seeking the clarification regarding the taxability of revenue generated from educational institution in the hands of assessee.

Issue:

Whether the Applicant’s share in revenue generated by collecting fees from students of educational institute would attracts GST?

Held:

The AAR, Kerala, in ***Advance Ruling No. KER/10/2023*** ruled as under:

- Noted that the arrangement among the Applicant and CECPL is not an independent contract between both parties since the parties will share the risk/revenue/profit/loss/liability of the joint venture by joining hands for mutuality of interest and share common risk/ profit together.
- Further noted that, when two or more individual, independent entities enter into an agreement with an understanding to share revenue/ profits, a new entity emerges, distinct from its constituents. As the new entity acquires the character of 'person', the transaction between it and other entities namely the Applicant and its counterpart can be a taxable service also wherever applicable.
- Stated that, the agreement between the Applicant and its counterpart is in the nature of a joint venture where both parties have got together to carry out a specific economic venture on a revenue sharing model.
- Since, the Applicant would be providing input services to the educational institution and in consideration will get share in profit. The said service is covered under SAC code 9983- Other professional, technical and business services which is taxable @ 18% as per the service rate notification.
- Held that, the supply of educational services by the Applicant to the educational institution would be liable to GST.

Our comments:

In the present case, since the Applicant entered into an agreement to share the risk/revenue/profit/loss/liability making the Applicant owner of the educational institution. The services rendered by the owner to the business entity is not equivalent to the services rendered by the third party since, the share in profit hold by owner is in the nature of actionable claim which is neither supply of goods nor supply of service. Thus, the share of profit received by the Applicant should not attract GST.

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