



केन्द्रीय कर के प्रधान आयुक्त का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL TAX,
विशाखापट्टणम केन्द्रीय वस्तु एवं सेवाकर आयुक्तालय
VISAKHAPATNAM CENTRAL GST COMMISSIONERATE,
पत्तन क्षेत्र, विशाखापट्टणम 35
Port Area, Visakhapatnam-35



C.No. IV/16/11/2020-21-RTI

Date- 28.09.2020

Order-in-Appeal No. 01/2020-21

(Order passed by Shri G. Shiril Saroj, First Appellate Authority/ Additional Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate, Visakhapatnam)

प्रस्तावना/PREAMBLE

1. यह आदेश आर.टी.आई अधिनियम 2005 की धारा 19 के अंतर्गत जारी किया गया है।
This Order-in-Appeal is issued under Section 19 of the Right to Information Act, 2005.
2. यदि आप इस आदेश से संतुष्ट न हो, तो आप केन्द्रीय सूचना आयोग, पुराने जेएनयू कैंपस, ब्लॉक 4, 5वीं मंजिल, नई दिल्ली -110067 के समुख आर.टी.आई अधिनियम, 2005 की धारा 19 की उप-धारा (3) के अंतर्गत एक अपील दायर कर सकते हैं।
An appeal against the Order can be preferred to the Central Information Commission, Old JNU Campus, Block 4, 5th Floor, New Delhi-110067 under Sub-section(3) of Section 19 of the Right to Information Act, 2005.
3. इस आदेश की प्राप्ति की तारीख से 90 दिनों के भीतर अपील दायर किया जाना चाहिए।
An Appeal against this order must be filed within 90 days from the date of receipt of this order.
4. कृपया अपील की प्रक्रिया से संबंधित अधिक जानकारी के लिए : <http://cic.gov.in> में देखें।
For further information regarding procedure of appeals, please visit, <http://cic.gov.in>.

Sub: Right to Information Act, 2005- Appeal filed by Shri E.S.N. Raju - Decision under Section 19(1) of the RTI Act, 2005 - Communicated - Regarding.

This is an appeal filed by Shri E.S.N.Raju, (herein after referred to as the "Appellant"), Plot No. 2-41-5, Sector -11, 5th Floor, Dr. Padma - Satya Tower, M.V.P Colony, Opposite Alwar Das Ground, Visakhapatnam-17A.P, vide letter dated 31.08.2020 against non furnishing of information without showing sufficient cause under RTI Act by CPIO(Assistant Commissioner of Central Tax), Visakhapatnam Central GST Commissionerate. The appeal was received in this office on 01.09.2020.

BRIEF FACTS OF THE CASE:

2. Earlier, the appellant filed an RTI application with the CPIO, Hqrs, CentralTax, Visakhapatnam GST Commissionerate, vide letter dated nil

(. 07.2020), under the RTI Act, 2005, seeking issue of authoritative letter certifying:

- (i) "Whether myself as owner allotted with my share of three floors by the builder is liable or not liable to pay GST to the GST Authorities as per rules.
- (ii) Whether the builder only is liable to pay GST for both owner's share and builder's share flats and
- (iii) Whether the builder, as claimed by him, had paid GST in my name for my share of three flats as per rules"

3. Further, to the above, the CPIO (Assistant Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate) vide letter C.No.IV/16/07/2020-21-RTI dated 04.08.2020, in respect of point (i) and (ii) stated that as per Item No.5(b) of Schedule-II of GST Act, 2017 construction of complex is a "service". Section 9 of CGST Act/SGST Act and Section 5 of IGST Act are the Charging Sections for the purposes of levy of GST. CGST and SGST shall be levied on all intra-state supplies of goods and/or services and IGST shall be levied on all inter-state supplies of goods and/or services respectively, and therefore as per the above provisions, in the instant case, the Taxable person i.e., Builder is liable to pay service tax on the construction service rendered to the individual buyers (builder share) and also to the land owner. As GST is value-added tax levied on supply of goods and / or services for domestic consumption. The GST is paid by consumers, but it is remitted to the government by the supplier of goods and / or services. In the instant case, the builder may get the reimbursement of GST paid on land owner share depending upon the terms of agreement between the builder and the land owner. In respect of Point (iii) it was replied that the Department cannot ascertain the same just basing on the challan payment made by the builder.

4. Aggrieved by the reply furnished by the CPIO, the applicant Sri E.S.N.Raju has filed the present appeal vide letter dated 31.08.2020 and requested to issue him a fresh letter.

PERSONAL HEARING:

5. On the request of the applicant a personal hearing through video conferencing was granted to the applicant, in accordance with Central Board of Indirect Taxes (CBIC), New Delhi's decision to comply with various guidelines and instructions issued by the Government and public health authorities with a view to contain the spread of Covid-19.

.08.2020

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DISCUSSIONS AND FINDINGS:

6. I have carefully gone through the appellant's RTI application filed vide letter dated nil (.07.2020, reply from the CPIO (Assistant Commissioner of Central Tax, Visakhapatnam Central GST Commissionerate vide letter C.No. IV/16/36/2018-RTI/1947 dated 18.12.2019 and the appeal filed by the applicant vide letter dated 31.08.2020 and the related documents.

7. As seen from the RTI application filed by the appellant Shri E.S.N.Raju, vide letter dated nil (.07.2020) the applicant stated that he E.Satyanarayana Raju, aged 84 years, has given his own site at Sector-11, MVP Colony, Visakhapatnam to Mr. Subramanyam, B.V.S.R Constructions as per agreement 29.9.2018 and as per the Development agreement the builder constructed five floors, allotted three to him as owners share and retained two floors as builder's share and he sold his two floors in June 2019 and December 2019 without obtaining Completion certificate but he, Sri E.S.N.Raju retained his share of three floors for his own family purpose and not sold to anyone and that the builder demanded the applicant to reimburse the GST amount which he had paid vide challan dt 31.01.2020, and stopped payment of Rs. 63,00,000/- of the applicant's compensation money since December 2019, in breach of his trust and cheating him.

8. Therefore, the applicant sought information pertaining to whether (i) He as owner allotted with his share of three floors by the builder is liable or not liable to pay GST to the GST Authorities as per rules, (ii) Whether the builder only is liable to pay GST for both owner's share and builder's share flats and (iii) Whether the builder, as claimed by him, had paid GST in my name for my share of three flats as per rules.

9. As per Section 3 of the RTI Act, 2005 all citizens have right to information. A personal hearing in virtual mode was granted to the applicant as per his request on 16.09.2020 at 11.00AM. The applicant joined the video conference and stated that the CPIO vide his reply letter dated 04.08.2020 at point 2, mentioned that in the instant case, as per Section 9 of CGST Act/SGST Act and Section 5 of IGST Act, being charging sections, builder is liable to pay service tax on the construction service rendered to the individual buyers (builder share) and also to the land owner, however the separate assertion made by the CPIO that the builder may get reimbursement of GST landowner share depending on the terms of agreement between the builder and the landowner is not supported by any GST Rule. He wanted to know whether he was liable or not liable to pay GST as per rules, as the same was not mentioned in the reply and was of the opinion that he was not liable to pay GST for his share of three flats but the builder only is liable to pay GST in this name as per GST Rules as also for all the five floors constructed by him.

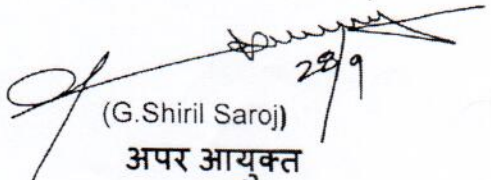
10. In view of the above findings, I proceed to pass the following order:

ORDER

The appeal filed by the applicant Sri E.Satyanaryana Raju vide his application dated .07.2020 against the CPIO Hqrs, Central GST Commissionerate, Visakhapatnam, is allowed.

As per Item No.5(b) of Schedule-II of GST Act, 2017 construction of complex is a "service". Section 9 of CGST Act/SGST Act and Section 5 of IGST Act are the Charging Sections for the purposes of levy of GST. CGST and SGST shall be levied on all intra-state supplies of goods and/or services and IGST shall be levied on all inter-state supplies of goods and/or services respectively.

In terms of the above provisions it is hereby intimated that builder is liable to pay tax on the construction service rendered to the individual buyers (builder share) and also in respect of the land owner's share.


(G. Shiril Saroj)
अपर आयुक्त
ADDITIONAL COMMISSIONER
FIRST APPELLATE AUTHORITY

To,
Shri E.S.N.Raju, 2-41-5,
Sector-11, 5th floor,
Dr. Padma-Satya Tower. MVP Colony,
Opposite Alwardas ground,
Visakhapatnam-17,

Copy Submitted to:
The Principal Commissioner of Central Tax, CGST Commissionerate, GST Bhavan, Visakhapatnam - 530035.

Copy to:
1. The CPIO/Assistant Commissioner of Central Tax, Vizianagram CGST Division, Vizianagram.
2. The Superintendents (Systems) - for uploading into Departmental Website.