Court No. - 29

Case :- WRIT TAX No. - 1435 of 2018

Petitioner :- M/S Raj Kamal Healthcare Pvt. Ltd.
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Nishant Mishra,Vipin Kumar Kushwaha
Counsel for Respondent :- A.S.G.I.,Aditya Bhushan Singhal,C.S.C.

Hon'ble Pankaj Mithal,J.
Hon'ble Ashok Kumar,J.

The GST has been made applicable on premium paid on lease of property by virtue of Section 7 read with Schedule II of the Good and Service Tax Act, 2017 (in short of the Act). The two notifications no. 12 of 2017 and 32 of 2017 issued in exercise of powers under Section 11 (1) of the Act exempt service tax on one time upfront amount leviable in respect of service by way of granting long term (30 years or more) lease of industrial and other kind of plots.

In view of the above notifications, respondent no. 3 Yamuna Express Way Industrial Authority applied for Advance Ruling to the authority for Advancing Ruling U.P., as to whether the GST is applicable on upfront amount in respect of the service by way of granting of long term lease of 30 years or more for plots catering to public health care such as hospital, nursing home, diagnostic centeres etc.

The Authority for Advance Ruling, U.P. vide order dated 6.6.2018 ruled that GST is not applicable and the upfront amount on the lease as mentioned at serial no.41 of the notification no. 12 of 2017 as amended by notification no. 32 of 2017 is exempt.

Even though the aforesaid Advance Ruling is final and conclusive, respondent no. 3 has issued notice dated 24.8.2018 for payment of GST on the premimum for leasing out of the plot allotted to the petitioner for the purposes of hospital, nursing home, diagnostic centeres etc.

Sri Aditya Bhushan Singhal, learned counsel appearing for respondent no. 3 Sri C.B. Tripathi, Special counsel appearing for respondent 3 as well as learned counsel for Union of India and the learned Standing counsel for the State of U.P., all are directed to file counter affidavit within a month. Two weeks thereafter are allowed to the petitioner to file rejoinder affidavit.

List for admission/final disposal on the expiry of the above period.

Until further orders of this Court, in view of the Advance Ruling given by the Authority for Advance Ruling U.P., on 6.6.2018 no GST shall be demanded from the petitioner on the premium for leasing out land allotted for hospital, nursing home, diagnostic centeres etc.

Order Date :- 22.11.2018
SKS