

April 2025



GST not applicable on subsequent sale of under-construction property in absence of construction services: Karnataka High Court

The Karnataka High Court, in the matter of **M/s Rohan Corporation India Pvt. Ltd. vs. UOI & Others** (W.P. No. 12700 of 2023) held that no GST is payable on sale of an under-construction immovable property, when no construction activity is undertaken by the seller subsequent to sale.

In this case, the Petitioner purchased an under-construction shopping mall in Mangalore from the liquidator pursuant to proceedings under the IBC, 2016. The sale was executed via a registered sale deed, and stamp duty was duly paid. However, the liquidator insisted that the purchaser pays GST claiming it to be a supply of service under Entry 5(b) of Schedule II to the CGST Act. The Petitioner resisted payment of GST on the premise that sale of a partially completed building is not a supply of service under Entry 5 of Schedule III. The Petitioner, however, paid the GST under protest and subsequently filed a refund application under Section 54 of the CGST Act. This refund application was rejected by the GST authorities.

High Court Ruling

The Hon'ble bench of Justice S. R. Krishna Kumar observed that in absence of a construction agreement between the seller and the buyer and in absence of any **consensus ad idem** for the liquidator to render any construction or work contract services to the Petitioner, there exists no "supply" under Section 7 of the CGST Act.

As per the Court, the activity or the transaction covered under Entry 5(b) of Schedule II (as contended by the GST department) was the activity of construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer. Entry 5(b) classifies construction services as "supply of service," only where there is a contractual arrangement for construction between the service provider (builder) and the recipient (buyer). The same being absent, in

the present case and the asset sold on an "as-is" basis with no service component, renders Entry 5(b) inapplicable.

Further, the Court rejected the plea of the GST department regarding the completion certificate w.r.t to Entry 5(b) of Schedule II on the ground that the completion certificate neither applies nor gets attracted to a sale transaction when a constructed immovable property (whether fully constructed or partially constructed) is sold without providing any construction service or without any service element or goods element being contemplated in the said agreement or sale deed.

Thus, the transaction of sale of partially completed building on "as is where is" basis via a sale deed falls under Entry 5 of Schedule III to the CGST Act, is not a supply of services.

Key Takeaways

- Clarity for transactions involving the sale of partially completed or under-construction immovable property, particularly where no construction or value addition is performed subsequent to the sale.
- Distinction between "supply of construction services" and mere sale/transfer of immovable property, reiterating that GST is a tax on supply, and not on the sale/transfer of immovable property unless services are rendered.
- Precedent for ongoing disputes where GST has been levied merely due to the absence of a completion certificate, without factoring in the absence of a construction contract or any supply of service.

Applicability

This ruling is important for builders/ real estate developers who have acquired properties under similar circumstances and paid GST under protest may now rely on this judgment to file refund claims or pursue remedial action.



Refund cannot be withheld u/s 54(11) CGST Act in the absence of pending appeal/proceedings: Delhi High Court

Section 54(11) provides GST department power to withhold refund application filed by the assessee

On April 03, 2025, Delhi High Court in matter of **Shalender Kumar vs. Commissioner Delhi West CGST Commissionerate & Others** (WP. 3824/2025) held that refund cannot be withheld u/s 54(11) of the CGST Act merely based on an opinion and twin conditions, as mentioned under the GST regulations, must be satisfied.

As a background, the Petitioner filed a refund application u/s 54 of the CGST Act, which was rejected by the adjudicating authority. On preferring an appeal, the Appellate Authority held in favour of the Petitioner and allowed the refund. The GST Department filed a review of the Appellate Authority's order and also gave an internal opinion under Section 54(11) of the Act that processing the refund now would be prejudicial to the interest of the revenue.

High Court Ruling

The Hon'ble bench of Justice Prathiba M. Singh and Justice Rajneesh Kumar Gupta while examining section 54(11) of the Act observed that power of the Commissioner to withhold the refund is primarily based on satisfaction of two conditions; **firstly** order directing refund is a subject matter of proceedings pending in appeal or any other proceedings under this Act and **secondly** opinion by the Commissioner that such grant of refund is likely to adversely affect the revenue.

As per the High Court, in the current case, the Appellate Authority's order was not challenged or set aside by any forum and thus, it still stands valid. The Court further held that the Commissioner's opinion cannot be relied upon on a standalone basis i.e., in the absence of an appeal or any other pending proceeding under the Act and no order in review being passed, the GST Department cannot hold back the refund permitted by the Appellate Authority. Hence, the refund ought to be processed in accordance with the order passed by Appellate Authority.

Key Takeaways

- The opinion formulated by the department u/s 54(11) of the Act without any pending appeal or proceeding is insufficient to withhold refund.
- The appellate refund order is enforceable unless the same is stayed or has been appealed against.
- The benefit of an order allowing refund cannot be denied by the department merely citing intent to file a review or an appeal against the said order.
- The refund amount is payable with interest for any delayed period in paying refund by the department.

Applicability

This ruling is applicable to all taxpayers who has refunds pending with the GST authorities and where there are no appeals preferred and pending at any forums.

Please feel free to address any further questions or request for advice to:

Mihir Deshmukh

Partner
mihir.deshmukh@AMSShardul.com

Abhijeet

Principal Associate
abhijeet@AMSShardul.com

Garima Mehra

Senior Associate
garima.mehra@AMSShardul.com

Shamik Gupte

Associate
shamik.gupte@AMSShardul.com

Jai Totlani

Associate
jai.totlani@AMSShardul.com

Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.