



MP AAR: Agreement to sell becomes supply only upon sale; Destroyed goods cannot be supplied

Madhya Pradesh AAR holds that ‘goods’ (tendupatta) which are destroyed in fire before being delivered under an agreement to sell, cannot form subject matter of “Supply” within the meaning of Section 7 after their destruction; Rules that supply u/s 7 can only be of goods in existence and taking joint custody of goods by Applicant shall not amount to supply if the invoice of the said transaction is not issued; AAR infers that under the GST Act, supply of goods cannot happen without the movement of possession of goods from one person to another and “while a person has goods in his possession, he cannot be said to have supplied the goods to another”; Explicates that the provisions for ascertaining 'Time of Supply' and 'Place of Supply' also corroborates that GST Act envisages delivery of goods, whether physically or constructively, by delivery of document of title of goods in the matter of goods supply; Highlights that the expression “agreed to be made” appearing u/s 7 “poses a serious problem if it is to be interpreted that mere agreement to sale,shall give rise to supply”; Drawing a distinction between treatment of advance for supply of goods and services, infers that, this phrase does not mean “agreement to sell” is also a supply as “Agreement to sell becomes a supply only upon the sale of the goods since the definition of Supply includes Sale”; On the matter of Federation being joint beneficiary on account of insurance pertaining to destroyed goods, explains “neither the risk in the goods nor the property in the goods had passed to the Applicant as on date of fire” and “the risk thereof was with the Federation and not the applicant”; Concluding that “joint custody did not amount to the delivery of goods to the applicant”, mentions that “Conduct of the parties to a transaction, prior to dispute between the parties is an all important aide to interpretation of the covenants in the agreement”; Clarifies “Destruction of goods in case of an agreement to sell plays a pivotal role in determination of the culmination of the transaction” and “agreement entered into by the applicant with the Federation after the goods were destroyed in fire, was merely an ‘avoidable agreement to sell’ and not sale”; Separately, on admissibility of advance ruling application, AAR clarifies that an Advance Ruling may also be about inward supply, provided it is in relation to an outward supply made or proposed to be made



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