

Solatum – Finally

The Issue of **Solatum** has come to the forefront by the actions of the Goods and Service tax Dept in the state of Karnataka. Many assesses who had received solatium have received Notices for non-payment of GST on such receipts and proposed the penalty and Interest. Unfortunately, the Officers continued to complete the Assessment proceedings immaterial of the submissions and clarifications provided.

This article is an effort to deliberate on this aspect of GST on Solatium, particularly in the light of the recent admission of the Writ petition before the Hon High Court of Karnataka. [**Sri. Shamanna Lokesh Vs Commissioner of Commercial Taxes - WP No 8281 of 2025 dt 17-04-2025**] and also in **Smt. Asha R Vs. Assistant Commissioner and another – W.P.No.2552/2024 and connected matters** [again by Hon Karnataka High Court].

- **Definition of Solatium**

According to the Oxford Dictionary, solatium is defined as "a thing given as compensation or consolation." Therefore, solatium is clearly an additional component of compensation granted for land acquisition under relevant state or central statutes, affirming its role as a non-taxable form of recompense.

As interpreted by the Hon'ble Supreme Court in **Sunder v. Union of India (2001) 7 SCC 211**, solatium is defined as an additional compensation granted in cases of compulsory land acquisition, established legislatively rather than through negotiation. It represents compensation for the distress or loss endured due to the forced acquisition, as established in various judicial precedents.

Any amount received by a landowner from the government due to compulsory acquisition inherently retains the nature of "compensation for acquisition" and is inseparable from the broader compensation concept. Solatium, in this sense, remains part of the overall compensatory payment and holds no separate taxable value. As such, Solatium is covered under Schedule III of CGST Act 2017.

The Counter Argument – However, it was contended that, the Solatium received is covered under section 9 of CGST act and is very well taxable as outlined under Schedule II of the CGST Act, 2017.

It was argued that, “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5 (e) of Schedule II of SGST Act. And this is strikingly similar to the definition of contract in the Contract Act, 1872.

The Contract Act defines ‘Contract’ as a set of promises, forming consideration for each other. ‘Promise’ has been defined as willingness of the ‘promisor’ to do or to abstain from doing anything. ‘Consideration’ has been defined in the Contract Act as what the ‘promisee’ does or abstains from doing for the promises made to him. As such the solatium received is taxable under schedule II to CGST Act 2017.

Now, let us deliberate the taxability of Solatium under GST.

- **Legal Grounds Supporting Exclusion from GST and why it is to be covered under Schedule III of CGST Act.**
- **Absence of Consideration**

Solatium is awarded purely as a compensatory payment with no consideration element or exchange for goods or services. It serves as a remedy for losses caused by compulsory land acquisition, and thus it does not meet the definition of a supply of goods or services as outlined in Section 7 of the CGST Act, 2017.

- **Clarification in Schedule II Interpretation**

Amendments to Schedule II of the CGST Act, 2017, effective from 1st July 2017, clarify that inclusion in Schedule II alone does not determine if a transaction constitutes a supply. As compensation for compulsory acquisition, solatium does not fall within the scope of supply as defined in Section 7(1) of the CGST Act, 2017.

Schedule II specifies that transactions involving "consideration" qualify under GST provisions. It only categorizes an activity as a supply of goods or services

if it already qualifies as a supply under Section 7(1) of the CGST Act. As solatium lacks an exchange of consideration, its classification under Schedule II does not deem it a supply liable to GST.

Solatium aligns with the transactions listed in Schedule III of the CGST Act, 2017, which are categorized as neither supply of goods nor services and thus fall outside the scope of GST.

The payment against the Land acquired by the Govt, will be a packaged compensation meaning that, what is paid to the Land owners, is only a compensation, immaterial of the terminology used. Merely because the package compensation offered is split into various heads, the compensation offered under the designated head “Solatium”, cannot be construed or treated or understood, as solatium in the real sense of the term / expression - “solatium” – under various other acts. In other words, the package compensation offered categorising / describing various amounts, out of the total package offered under various heads including solatium, was for the limited / restricted purpose of offering package compensation only. It is an undisputed fact that, pursuant to the package compensation offered and which was accepted by the land owners, various documents including agreement, affidavit, indemnity bond, receipt etc., were executed by the land owners in favour of the Acquirer whereby the Land owners transferred, relinquished / abandoned and gave up their claim, right, title, interest, possession etc., in the lands in favour of Land acquirer for consideration offered.

It follows there from that though a particular component of the consideration offered is termed as solatium, in reality, the transaction essentially entered into, was in the nature of a sale / transfer of all rights in land of the Land owners which was directly and this is squarely exempted from levy of GST under Entry 5 of the Schedule – III of the CGST / CGST Act.

- **Judicial Guidance on Consideration**

This long pending issue was addressed conclusively in the recent case before Hon Karnataka High Court in the case of **Smt. Asha R Vs. Assistant Commissioner and another – W.P.No.2552/2024 and connected matters**

put most of the contentions to rest. Recently, this is followed in the case of **Sri. Shamanna Lokesh Vs Commissioner of Commercial Taxes - WP No 8281 of 2025 dt 17-04-2025.**

Also, the aspect of refraining to from to act or to tolerate an act is never to be considered as a consideration under GST provisions. That is, the Service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation etc is in itself a contractual agreement. This Contract, necessarily needs two parties, one of whom expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual agreement is an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration. In the absence of this nexus, the aspect of refraining to from to act or to tolerate an act can not be considered as Consideration. And an absence of Consideration will make the contract void ab initio.

The definitions of "consideration" and "immovable property" within the CGST Act, 2017, and the General Clauses Act further support that solatium, being a compensatory payment for compulsory land acquisition, does not constitute consideration for any supply of goods or services.

Another noteworthy decision came in case of Commissioner of Service Tax Vs. M/s Bhayana Builders, where the Supreme Court has emphasized that - for consideration to be taxable, there must be a clear connection with a supplied good or service. The amount charged should be “for such service provided”.

Section 67 of the Finance act 1994 [under erstwhile Service tax provisions] clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act.

By using the words “for such service provided” the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount “charged” by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined.”

Since solatium does not serve as consideration for any taxable supply, it is not subject to GST.

Also, it is worthwhile to consider the Circular No 177/09/2022 TRU dated 03-08-2022, which in no uncertain words state that, Sale of Land – immaterial of the stage of development – is covered under the provisions of Entry 5 of Schedule III of the GST Provision, and outside the purview of levy of GST.

Finally, the Hon Karnataka High Court in **Smt. Asha R Vs. Assistant Commissioner and another – W.P.No.2552/2024 and connected matters**, ruled that, the compensation categorized as "Solatium" received by landowners is not subject to GST under the CGST/KGST Act. The ruling confirms that compensation paid under the term "Solatium" is not liable for GST, reinforcing the distinction between land acquisition and taxable services. The Court recognized that matters of sale and acquisition of land fall under the State List II, indicating a clear legislative intent not to tax real estate under GST.

mentioned above sets a significant precedent for Assesseees involved in land acquisitions and the compensation received there on. It provides a clear basis for claiming exemption from GST on compensation received for land acquisition, particularly those designated as "Solatium." Assesseees can leverage this interpretation to ensure that similar transactions are correctly classified, avoiding unnecessary tax liabilities. Furthermore, this decision could influence future negotiations and agreements with state authorities, as parties may be able to advocate for clearer terms that explicitly exclude GST implications related to land acquisitions.

Land owners should document the nature of compensation agreements meticulously to uphold the legal distinctions made in this ruling, potentially fostering a tax-efficient framework when dealing with land-related transactions.