

T. No-369/2019-20

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 08/ 2020

Date : 10-03-2020

Present:

1. **Dr. Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
2. **Sri. Mashhood ur Rehman Farooqui,**
Joint Commissioner of Central Tax Member (Central Tax)

1.	Name and address of the applicant	M/s Vikram Traders, Subramanyapura, Uttarahalli, Bengaluru-560 061, Karnataka
2.	GSTIN or User ID	29AAAFV7242B1ZB
3.	Date of filing of Form GST ARA-01	17.10.2019
4.	Represented by	Sri. Sanjay Dhariwal Mandal, C.A., & Authrorised Representative.
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore West Commissionerate.
6.	Jurisdictional Authority - State	LGSTO - 60, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN SBIN19102900014446 dated 03.10.2019.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s Vikram Traders (called as the 'Applicant' hereinafter), Subramanyapura, Uttarahalli, Bengaluru-560 061, Karnataka, having GSTIN number 29AAAFV7242B1ZB, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act 2017 and the KGST Act 2017.

2. The applicant is engaged in the business of renting of immovable property apart from manufacture and supply of fabric, registered under GST law and procured the following inward supplies that are attributable for renting of immovable property.

Vikram Traders

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- a) Inward supplies relating to construction of building (i.e. construction service provided by builders, developers & contractor)
- b) Inward supplies relating to goods & services, which are directly used for construction of building.
- c) Inward supplies relating to expenses in the form of repairs & maintenance, additions, alterations etc., which are capitalized in the books of accounts; and
- d) Inward supplies relating to expenses in the form of repairs & maintenance, additions, alterations etc., which are not capitalised in the books of accounts.

3. In view of the above, the applicant sought advance ruling in respect of the following question:

“Eligibility to claim input tax credit on inputs attributable to the renting of immovable property”

4. Applicant’s interpretation of Law:

4.1 The applicant, quoting Section 9 of CGST Act 2017, the charging section, states that renting of immovable property is a taxable service and attract 18% of GST and Section 16 of the CGST Act 2017 specifies the eligibility and conditions for taking input tax credit.

4.2 The applicant quotes definitions of ‘input’ u/s 2(59), ‘input service’ u/s 2(60), ‘capital goods’ u/s 2(19), ‘input tax’ u/s 2(62), ‘input tax credit’ u/s 2(63) and also Section 41 of the CGST Act 2017 which deals with claim of input tax credit and provisional acceptance thereof, states that a taxable person who is liable to pay output tax is eligible to set off available input tax credit on inputs which are used or intended to be used in the course of or furtherance of business subject to restrictions specified u/s 17 of the said Act.

4.3 The applicant further quotes section 17(5) of the said Act and states that Section 17(5)(c)&(d) stipulates that input tax credit is not eligible on inputs attributable to the construction of an immovable property, which are not sold or intended for sale before issuance of completion certificate. However, this restriction is not applicable where the immovable property is constructed for the purpose of letting out of the same, as the tax chain is not broken and, on the contrary, the construction of the building will results in a fresh stream of GST revenue to the exchequer on the rentals generated by the building. The denial of ITC in such a situation would be completely arbitrary, unjust and oppressive and would be directly opposed to the basic rationale of GST itself, which is to prevent the cascading effect of multi-stage taxation and the inevitable increase in costs which would have to be borne by the customer.

4.4 The applicant further states that denial of ITC in respect of a building meant & integrated to be let out would amount to treat it as identical to a building which is meant & intended to be sold. Differentiating ITC for two different types of building as one for the purpose of GST as itself contrary to the basic principles regarding classification of subject matter for the levy of tax and, therefore violative of Article 14 of the Constitution, which specifies that laws inconsistent with or derogation of the fundamental rights shall, to the extent of such inconsistency, be void.

4.5 Applicant submits that denial of ITC is also violative of fundamental right to carry on business under Article 19(1)(g) of the Constitution, that all citizens shall have right to practice any profession, or to carry on any occupation, trade or business. The restriction of said ITC would impose a wholly unwarranted and unreasonable and arbitrary restriction which would render building constructed for letting out uncompetitive, by imposing the burden of double taxation of GST on such buildings i.e. firstly, on the inputs consumed in the construction and thereafter on the rentals generated by the building.

5. The applicant intend to rely on the decision of the Hon'ble Orissa High Court in the case of M/s Safari Retreats Pvt. Ltd., wherein at paras 19, 20 & 21 it is held that *"the provisions of Section 16(1)(2) where restriction has been put forward by the Legislation for claiming eligibility for ITC has been described in Section 16(1) and the benefit of apportionment is subject to Section 17(1) and (2). While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. Further, the petitioner would have paid GST if it disposed of the property after the completion certificate is granted and in case the property is sold prior to completion certificate he would not be required to pay GST. But here he is retaining the property and is not using for his own purpose but he is letting out the property on which he is covered under the GST, but still he has to pay huge amount of GST, to which he is not liable."*

In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, in as much as keeping in mind the language used in (1999) 2 SCC 361 [supra], the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the ITC on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.

6. In view of the above, the applicant states that the principle laid down by the Hon'ble Court (supra) squarely applies to the instant case and prays for advance ruling in respect of the questions raised by them.



PERSONAL HEARING / PROCEEDINGS HELD ON 02.01.2020.

7. Sri Sanjay Dhariwal Mandal, C.A., and duly authorised representative of the applicant appeared for personal hearing proceedings held on 02.01.2020 & reiterated the facts narrated in their application.

8. FINDINGS & DISCUSSION:

8.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Sanjay Dhariwal Mandal, C.A., & duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

8.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

8.3 The applicant contends that they are engaged in the business of renting of immovable property and is discharging the GST on the rental income under the "Renting of Immovable Property" service. They procured different types of inward supplies for construction, repair & maintenance, alterations etc., of the said immovable property. In view of this, they seek advance ruling on "*Eligibility to claim input tax credit on inputs attributable to the renting of immovable property*".

8.4 The applicant, though admitting the fact that the "Input Tax Credit" is subjected to restrictions under Section 17 of the CGST Act 2017, contends, on placing reliance on the decision of Hon'ble High Court of Orissa in the case of **Safari Retreats Pvt. Ltd.**, that the principle laid down by the Hon'ble High Court in the case mentioned supra is squarely applicable to the instant case; the non availability of input tax credit, under Sections 17(5)(c) & (d) of the Act, is not applicable to the instant case and hence they are entitled for the Input Tax Credit.

8.5 It is pertinent to mention here that the Department has filed an appeal under SLP No.26696/2019 before the Hon'ble Supreme Court of India, against the order of the Hon'ble High Court of Orissa supra. Thus the issue is pending before the Hon'ble Supreme Court and therefore the said issue is subjudice. Therefore the instant application is liable for rejection under Section 98(2) of CGST Act 2017.

9. In view of the foregoing, we pass the following

R U L I N G

The application is hereby rejected as the issue is pending before the Hon'ble Supreme Court of India and hence is sub-judice.


(Dr. Ravi Prasad.M.P.)
Member


(Mashhood ur Rehman Farooqui)
Member

Place : Bengaluru,

Date : 10-03-2020

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore West Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-60, Bengaluru

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