



**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

**Advance Ruling No. KAR ADRG 17/ 2019
Date : 25-07-2019**

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes . . . Member (State Tax)

1.	Name and address of the applicant	M/ s Durga Projects & Infrastructure Private Limited, 1st Floor, No.125/1-18,G.K.Arcade, T Mariyappa Road, 1stBlock, Jayanagar,Bangalore-560011.
2.	GSTIN or User ID	29AACCD5554H1ZI
3.	Date of filing of Form GST ARA-01	25.04.2018
4.	Represented by	Sri Sanjay M Dhariwal, CA Authorised representative
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate, CR buildings, Queens Road, Bengaluru-560001
6.	Jurisdictional Authority - State	LGSTO-90, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.10,000/- (Rs.5,000/- each under CGST Act & KGST Act) vide CIN SBIN18042900399964 dated 25-04-2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017

1. M/s Durga Projects & Infrastructure Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AACCD5554H1ZI have filed an application for Advance Ruling under Section 97 of CGST Act,2017 read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the KGST Rules 2017, in FORM GST

ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a company incorporated under the Companies Act 1956 and is registered under the Goods and Services Act, 2017. The Applicant has sought advance ruling in respect of the following question:

Whether Applicant is liable for GST towards work executed under JDA on land owner's portion where work commenced during pre-GST and continued under GST Law. If tax is applicable the valuation for payment of tax?

3. The applicant company furnishes the following facts relevant to the stated activity:

3.1 The Applicant is engaged in construction and sale of residential apartments and residential complexes under joint development agreements.

3.2 The Applicant have executed projects under JDA with Land Owners for an agreed ratio of built-up area. Construction was commenced during pre-GST regime and continued under GST regime. Substantial portion of the work has been sub-contracted to another registered person.

3.3 The Applicant submits, their interpretation / understanding of law and consequently their view point, on the issue raised by them, that the Joint Development Agreement (JDA) is an agreement between a land owner and developer, where land owner contributes land and developer develops the property with the condition to share the developed properties whereby land owner transfers undivided interest in land to the Developer's share of flats and developer agrees to construct buildings on the land belonging to the land owner.

3.4 The Applicant further submits that in terms of Hon'ble High Court of Karnataka's remand order in the case of Vaswani Estates Developers Pvt. Ltd., the Tribunal held that transaction falling under JDA between land owner and developer does not fall under the definition of sale or works contract but barter and not liable for tax under KVAT Act 2003 on the ground that JDA sans monetary consideration. However, in terms of Section 7 of CGST Act 2017 supply includes barter also if it is in the course of furtherance of

business. Further in terms of Section 2(31) of the CGST Act 2017 consideration in relation to supply includes money or otherwise. Hence the supply for the consideration other than money also squarely falls under the definition of "Supply". Therefore construction of a building by developer for land owner in exchange of undivided interest in land falls under the definition of "Supply" and attracts tax under GST.

3.5 The Applicant, with regard to **valuation for the purpose of payment of GST on land owner's built up area** submits that tax shall be levied under Section 9 and the value be determined under Section 15 of the CGST/KGST Act 2017. The applicant, quoting Section 15 of the CGST/KGST Act 2017, stated that the contractual understanding between the supplier and recipient is essential in order to impose tax under GST and in terms the said understanding only the provisions of supply and determination of consideration are governed. Therefore GST can't be imposed in the absence of a contractual agreement. The land is the consideration for the work executed to the land owner and hence there exists '**quid pro quo**'. Further, Rules 27 to 35 of CGST Rules 2017 are the relevant rules to determine the value of supply. The applicant, quoting the said rules and applicability of the same to their case, further submits that the value of work executed for land owner shall be the value of land as on the date of entering into JDA.

3.6 The applicant further submits that the work executed under GST alone shall be made applicable in terms of Section 142 of CGST/KGST Act 2017 and Sub-sections (10) & (11) of the said section provide for applicability of tax under earlier law and GST law. The applicant concludes that tax is leviable under earlier law to the extent of work executed under earlier law and not under GST law. In other words, tax shall be applicable under GST law, only on the portion of work executed under GST law.

PERSONAL HEARING: / PROCEEDINGS HELD ON 21.05.2018.

4. Sri. Sanjay M Dhariwal, Chartered Accountant, M/s Dhariwal & Sreenivas, Bengaluru, on authorization issued by Sri Navneet Jhunjhunwala, Director of the Company, appeared as Authorised representative of the company for personal hearing proceedings on 21.05.2018 and reiterated the facts narrated in their application. The

applicant also submitted copies of the following documents during personal hearing.

- (a) Commencement certificate issued by local authority (BBMP)
- (b) Copy of completion certificate containing status of project i.e. percentage of completion obtained from Chartered Engineer.
- (c) Copy of application filed before the local authority (BBMP) seeking issuance of Occupancy Certificate.
- (d) Copy of Hon'ble Karnataka High Court decision in State of Karnataka Vs Mahaveer Willow [2014] 78 Kar.L.J 305 (HC) (DB).
- (e) Copy of Hon'ble Karnataka High Court decision in State of Karnataka Vs Vaswani Estates Developers Private Limited [2014] 78 Kar.L.J 310 (HC) (DB)
- (f) Copy of Hon'ble Karnataka High Court decision in State of Karnataka Vs Krishvi Projects Private Limited [2014] 78 Kar.L.J 307 (HC) (DB)
- (g) Copy of Hon'ble Tribunal decision in Vaswani Estates Developers Pvt. Ltd.,
- (h) Copy of Hon'ble Apex court decision in Regional Provident Fund Commissioner Vs Shiv Kumar Joshi 2000 (1) SCC 98
- (i) Copies of some Joint Development Agreements

5. FINDINGS & DISCUSSION

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Sanjay M Dhariwal, Chartered Accountant and 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.

5.2 At the outset, we would like to make it clear 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.

5.3 The Applicant seeks advance ruling in respect of the following question:

Whether Applicant is liable for GST towards work executed under JDA on land owner's portion where work commenced during pre-GST and continued under GST Law. If tax is applicable the valuation for payment of tax?

5.4 It is an admitted fact that the applicant had executed projects under Joint Development Agreements with various Land Owners for an agreed ratio of built-up area. Construction was commenced during pre-GST regime and continued thereafter. It is apparent from the aforesaid question that the applicant seeks advance ruling on the taxability of their service and if so, the value of the said service. Further the applicant contends that Section 142 of CGST Act 2017 is applicable to their case and the said service is taxable under the earlier law to the extent of work executed under earlier law and GST is applicable to the extent of the remaining work executed under GST Law. Therefore the applicant is apparently drawing reference to the time of supply.

5.5 In view of the above, the question before us to decide is whether the activity / supply of the applicant is liable for GST, if so, the value of the said supply and the time of supply.

GST LIABILITY ON SUPPLY INVOLVED:

5.6 The applicant provides the service of construction of flats, in lieu of the development rights given by the land owner. In other words the supply of construction service provided by the applicant to the land owner is in the nature of **barter**. Section 7 of the CGST Act 2017 defines "Supply", inter alia including all forms of supply of goods or services or both, such as sale, barter etc., that are made or agreed to be made for a consideration by a person in the course of furtherance of business. Further Section 2(31) of CGST Act 2017 defines "Consideration" in relation to the supply of goods or services or both as any payment made or to be made, whether in money or otherwise. In the instant case the applicant received the consideration in the form of development rights which is other than money and qualifies to be "consideration". Therefore in the instant case the supply is in the form of barter and the consideration is in the form of development rights and is in the course of furtherance of business. Hence the activity squarely falls under "Supply" under CGST Act 2017.

5.7. Section 9 of the CGST Act 2017 is the charging section and deals with levy of CGST on a supply. In this regard we draw reference to relevant Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, which notifies the following classes of registered persons, namely:-

- a) Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- b) Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

5.8. In the instant case the applicant, a registered person, is supplying the construction service of building / civil structure to supplier of the development rights (the land owner) against consideration in the form of transfer of development rights. Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, at para (b), stipulates that the supplier of construction service is liable to pay GST for the service provided to the land owner in lieu of development rights.

VALUE OF SUPPLY

5.9. The applicant is liable to pay GST, as discussed in Para 5.8 supra. The value for levy of tax is to be determined in terms of para 2 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, which is appended as under:

2. *In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer*

of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation .- For the purposes of paragraph 2, "total amount" means the sum total of,-

- a) consideration charged for aforesaid service; and*
- b) amount charged for transfer of land or undivided share of land, as the case may be.*

TIME OF SUPPLY:

5.10. The applicant, drawing reference to Section 142 of CGST Act 2017, contends that the tax is leviable under earlier law to the extent of work executed under earlier law and GST is leviable under GST Law on the work executed under GST Law. In this regard we draw reference once again to the Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, which stipulates that the Registered persons, who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, in whose case the liability to pay tax on supply of the said services, on the consideration received in the form of development rights, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

5.11. In the instant case it is apparent from the advance ruling application filed by the applicant and also an admitted fact that the construction commenced during pre-GST regime and continued thereafter also. Further the applicant has not furnished any information as to whether the applicant has transferred the possession of the land owner's share of flats or not. Hence it is inferred that the possession of the land owner's share of flats has not been given to the land owner. Therefore the said possession obviously would happen during the GST regime and hence

would attract applicable GST. In terms of Notification No.4/2018-Central Tax (Rate) dated 25.01.2018 the time of supply would fall under the purview of GST law. Therefore the tax liability arises not partly under the earlier law and partly under the GST law, but entirely under the GST law.

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

RULING

The Applicant is liable to pay GST towards work executed under Joint Development Agreement on Land owner's portion, on the value to be arrived at in terms of para 2 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 at the time of transfer of possession of the land owners' portion of the flats.


(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : 25-07-2019

To,

The Applicant

Copy to :

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

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore South Commissionerate,
CR Building, Queens Road, Bengaluru-560001(Jurisdictional Office)

The Asst. Commissioner, LGSTO-90 Bengaluru

