

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

Advance Ruling No. KAR ADRG 59/ 2019

Dated: 20th September, 2019

Present:

1. Sri. Harish Dharnia,
Addl 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	Mrs. Poppy Dorothy Noel, M/s THE POMMELS, No.231, 9 th Main, Kalyannagar, I Block, H.R.B.R Layout, Bengaluru 560043
2.	GSTIN or User ID	29ABRPN8421E1ZA
3.	Date of filing of Form GST ARA-01	14.08.2018
4.	Represented by	Sri Eldho Oommen John, Authorised Representative
5.	Jurisdictional Authority - Centre	Pr Commissioner of Central Tax, Bangalore-East, Domlur
6.	Jurisdictional Authority - State	LGSTO-55, Kalyannagar, 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 2017 & Rs.5,000/- under KGST Act 2017 vide CIN HDFC18082900093472 dated 13.08.2018

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

1. Smt. Poppy Dorothy Noel, Proprietrix, M.s The Pommels, (called as the 'Applicant' hereinafter), having GSTIN number 29 ABRPN8421E1ZA, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of 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 Proprietary concern and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

Mrs. Poppy Dorothy Noel



Whether the IGST at 0% is applicable for the invoices raised to the SEZ Units, even if the accommodation services were rendered outside the SEZ Zone?

3. The applicant furnishes some facts relevant to the stated activity:
 - a. The applicant states that she is in the business of providing accommodation services to various corporates in Bengaluru and they include certain SEZ Units. However, "The Pommels" is located in Kalyannagar, Banaswadi which is outside the SEZ Zone.
 - b. The applicant is providing accommodation services to the SEZ Unit employees for which the SEZ Unit had advised them to raise invoices with IGST at 0% as per section 16 of the IGST Act, 2017.
 - c. The applicant states that as per Section 12(3) of the IGST Act, which determines the place of supply, since the supply has taken place outside the SEZ Zone, they are not entitled for IGST at 0%, but need to be charged IGST @ 18%.
4. Sri Eldho Oommen John, Operations Manager and Son of the Proprietrix and also the duly authorized representative of the applicant appeared before the Authority and reiterated the above points. He was heard.

5. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the assertions made by Sri Eldho Oommen John during the personal hearing. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. 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.

5.1 The transaction of the applicant is verified and found that the applicant is providing accommodation services to the employees of the SEZ Company and invoices are raised to the Company. The booking for accommodation is also made by the SEZ Company who is responsible for making the payment of the consideration.

5.2 As per clause (93) of section 2 of the Central Goods and Services Tax Act, 2017, the "recipient" is defined as under:

"(93) "recipient" of supply of goods or services or both, means -

(a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that

consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;”

5.3 In the present transaction under reference, the consideration for the accommodation services provided is payable by the company which is an SEZ Unit and hence as per clause (93) of section 2 of the CGST Act, 2017, the SEZ Unit would be the recipient of service and the supplier being the applicant.

5.4. Sub-section (5) of section 7 of the Integrated Goods and Services Tax Act, 2017 states as under:

“(5) Supply of goods or services or both, -

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone Unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.”

5.5 Since the above transaction of the applicant is a supply made to the SEZ Unit, it would be covered under clause (b) to sub-section (5) of section 7 of the IGST Act and would hence be treated as an inter-State supply of services.

5.6 Circular No. 48/22/2018 - GST dated 14.06.2018 issued by the Central Board of Indirect taxes and Customs has clarified this issue and the same is reproduced for reference:

“Issue 1: Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

Clarification:

1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ



developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.”

5.7 Hence it is clear that the provisions in Section 7(5)(b) of the IGST Act, 2017 overrides the provisions in Section 12(3)(c) of the IGST Act, 2017 and hence the transaction of the applicant is an inter-State supply of services, provided that the supply of services made to the SEZ Unit is an authorized operation under the SEZ Act.

5.8 The applicant has also provided the copy of the Circular No.2/2014 dated 25.07.2014 issued by the Development Commissioner, Office of the Zonal Development Commissioner (Kerala and Karnataka Special Economic Zones) to all Developer, Co-Developers and Units of SEZs located in Kerala and Karnataka, in which it is stated that the Accommodation Services are added to the list of services to enable the SEZ Units to avail service tax benefits for their authorized operation. In view of the above, if the SEZ Unit is procuring the accommodation services for their authorized operation, the same would be covered under “supply to SEZ Units” and hence would be inter-State supplies and would be a “zero-rated supply” under sub-section (1) of section 16 of the IGST Act, 2017.

5.9 In case of services provided to the SEZ Unit is not for authorized operations, then they would not be treated as supplies to SEZ Units and would not be covered under the zero-rated supplies but still would be a transaction covered under the IGST Act, 2017 and taxable at 18% with the place of supply being the provision of such services.

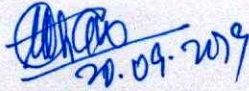
6. In view of the foregoing, we pass the following

RULING

The supply of accommodation services to the SEZ Units is an inter-State supply under clause (b) of sub-section (5) of section 7 of the Integrated Goods and Services Tax Act, 2017 and if it is for

- (a) authorized operations, then it is covered under “zero-rated supplies” under Section 16(1) of the Integrated Goods and Services Tax Act, 2017
- (b) non-authorized operations, then it would be not covered under “zero-rated supplies” under Section 16(1) of the Integrated Goods and Services Tax Act, 2017 and hence liable to tax at 18% IGST with the place of supply being the provision of such services.




20.09.2019

(Harish Dharnia)
Member


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

Place : Bengaluru,

Date : 20.09.2019

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Pr. Commissioner of Central Tax, Bangalore-East, BMTC Bus Stand Building, Domlur, Bengaluru.
4. The Asst. Commissioner, LGSTO-55, Kalyannagar, Bengaluru.
5. Office Folder.