

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

Advance Ruling No. KAR ADRG 104/2019

Dated:30th 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	M/s TEAMVIEW DEVELOPERS LLP No.48, Hitananda-II, 3 rd Floor, Lavelle Road, Bengaluru 560001
2.	GSTIN or User ID	29AAJFT8554F2ZM
3.	Date of filing of Form GST ARA-01	24.04.2019
4.	Represented by	Sri U.M.Sunil Rao, Chartered Accountant
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore-North
6.	Jurisdictional Authority - State	LGSTO-020, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN ICIC19042900373347 dated 22.04.2019 2. Rs.5,000-00 under KGST Act vide CIN ICIC19042900373347 dated 22.04.2019

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

1. M/s Teamview Developers LLP, No.48, Hitananda-II, 3rd Floor, Lavelle Road, Bengaluru 560001, (called as the 'Applicant' hereinafter), having GSTIN number 29AAJFT8554F2ZM, has filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST

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Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

2. The Applicant is a Limited Liability Partnership and is registered under the Goods and Services Act, 2017. The applicant states that in the recent recommendation of GST Council in its 34th meeting held on 19.03.2019 regarding the construction service, new rates of taxes were made available, 1% without ITC on construction of affordable houses and 5% without ITC on construction of –

- a) All houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019.
- b) All houses other than affordable houses in new projects
- c) Commercial apartments such as shops, offices, etc. in a residential real estate project in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

In the light of the above, applicant has sought advance ruling in respect of the following questions:

1. Whether the above rates are applicable to constructions comprising entirely of construction of commercial space. If not, what is the rate of tax applicable both with ITC and without ITC?
 2. In the instant case can the applicant, the service provider of construction of commercial space utilise the ITC relating to the construction activity on supply of other goods and services?
 3. Can input tax paid on inputs relating to construction activity i.e. on construction of buildings / built up space be utilised against the output tax payable on letting out of the same space?
 4. Is providing residential accommodation as paying guest to students outside the premises of the University / College / School campus taxable under GST? If yes, what is the rate of tax applicable?
3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that they are in the business of building, developing, constructing and trading in immovable properties and TDSs, providing construction or real estate or property development related services.
 - b. The applicant has entered into a Joint Development Agreement on 11.02.2019 to develop commercial space on land measuring 57,974



sq.ft. at Whitefield, Bangalore with 60:40 share, the LLP being entitled to 60% and the owners of the land to 40% of the built up area.

4. The applicant is of the view that the new rates of taxes recommended for housing projects are also available to their project of developing commercial complex.

4.1 The applicant, as a construction service provider, is eligible to utilise the ITC relating to the construction activities against the output tax payable on renting of commercial space.

4.2 The applicant states that they are providing accommodation to students. The lodging or boarding services provided by the educational institutions is exempted from GST. The paying-guest accommodation is provided exclusively to students and it is a service related to education of the students. Hence the applicant is of the view that he is also eligible for exemption from GST on the paying guest accommodation charges.

4.3 The applicant, at the time of hearing, requested to ignore the last question as there is no residential accommodation property sought to be developed and hence the question is ignored.

5. FINDINGS & DISCUSSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri Sunil Rao, CA, during the personal hearing. We 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 examined and found that the applicant has entered into a joint development agreement with the landowner for developing a purely commercial property. There is a supply of development rights to the applicant by the landowner and there is a supply of construction service in the form of works contract service by the applicant to the landowner.

4.2 The following points are observed from the agreement entered between the applicant and the landowners:

(a) That the land belongs to the landowners and the same is offered to the applicant for development of a commercial property

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- (b) The applicant shall construct the project in the property
- (c) The landowners shall be entitled to 40% of the built area with 40% share in the land and they are entitled to hold or sell, lease or otherwise dispose of their share of the built area along with 40% of the undivided interest in the property
- (d) The applicant who is the developer, shall be entitled to 60% of the built area with 60% share in the land and is also entitled to hold or sell, lease or otherwise dispose of their share of the built area along with 40% of the undivided interest in the property.
- (e) The entire cost of construction of the property shall be borne by the applicant and the landowners shall not be required to contribute any amount for the purpose of construction
- (f) The landowners shall convey/ transfer 60% of the undivided share in land comprised in the constructed building to the applicant or its nominees upon completion of construction. The applicant may enter into construction agreements in respect of the project, to execute one or more deed or deeds of sales in respect of the applicant's allocation.
- (g) All taxes and liabilities with respect to the construction of the project, the requisite GST as may be applicable to the same shall be borne by the owners and applicant in their respective sharing ratio. The applicant shall be liable to bear and pay the GST (as applicable) on the applicant's share. The applicant can recover the same from its buyers /third party purchasers as per the rules applicable thereof. The Owners shall be liable to bear and pay the GST (as applicable) and any other tax as may be applicable with respect to the Owner's share to the Authorities as per prevailing laws and the applicant shall not be held liable or responsible to pay the same on behalf of the owners.

4.3 It is clear from the above that the landowners are transferring the development rights of the land in lieu of construction service to the applicant and the applicant is providing construction services to the landowners to the extent of the value of the rights in land.

4.4 Hence the applicant is involved in the following supplies-

- (a) The supply of works contract construction service to the landowner to the extent of construction of building of the landowner share
- (b) The supply of works contract services to the prospective purchasers of constructed building with land in case he desires to supply the constructed building before completion to the prospective purchasers

The applicant is also receiving the supply of development rights from the landowners.

4.5 Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, as amended by Notification No.3/2019 – Central Tax (Rate) dated 29.03.2019, is examined and the following points emerge:

(a) The subitem (ib) of item 3 of the Notification is not applicable to the applicant as the project is not a Residential Real Estate Project.

(b) The subitem (if) of item 3 of the Notification is applicable on the “Construction of a complex, building, civil structure or a part thereof, including:

(i) commercial apartments (shops, offices, godowns, etc.) by a promoter in a Real Estate Project other than Residential Real Estate Project, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above, intended for sale to the buyer, wholly or partly, except where the consideration is received after the issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier”.

4.6 In the light of the above, the supplies of the applicant needs to be verified and on verification it is observed that the applicant is not intending to supply the constructed commercial apartments to any prospective buyers and himself capitalizing the same and intends to use it for leasing/ renting. Since no resale of the constructed portion is intended, the project is not covered under the definition of a real estate project.

In this regard, it is pertinent to note the definition of a “real estate project” which is defined in clause (xviii) of paragraph 4 in the said notification as under:

“(xviii) the term ‘Real Estate Project (REP)’ shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);”

Clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) defines the “Real Estate Project” as under

“(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”



Since the applicant is not intending to sell any of the said commercial area, the project undertaken by the applicant cannot be covered under a "Real Estate Project" and hence cannot be covered under subitem (if) of item 3 of the Notification.

4.7 Hence in view of the above, as the activity of providing construction services to the land owner is concerned, the same is not covered under any specified subitems of serial no.3, the same is covered under sub-item (xii) which reads as under:

"(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above"

and the same is liable to tax at 9% under the CGST Act.

5. As far as the second question is concerned, the applicant is capitalizing his portion of the building as an immovable property and as per section 17(5)(d) of the CGST Act, 2017, the applicant is not eligible to claim input tax credit on the inputs and input services to the extent used for such construction. The provision reads as under:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business."

6. Regarding the third question raised by the applicant, since the input tax credit is not available relating to his portion of the constructed building, the same is not available for utilization of it against the output tax payable on letting out of the same space.

7. In view of the foregoing, we rule as follows

RULING

1. The tax rate applicable on the supply of construction service to the land owner in lieu of transfer of development rights to the promoters portion is liable to tax at 9% under CGST and 9% KGST under entry no. 3(xii) of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.3/2017-Central Tax (Rate)




dated 29.03.2019. The applicant is eligible for input tax credit on the same.

2. Since the applicant is capitalizing his portion of the building as an immovable property, the applicant is not eligible to claim input tax credit on the inputs and input services to the extent used for such construction as per section 17(5)(d) of the CGST Act, 2017.
3. Since the input tax credit is not available relating to his portion of the constructed building (as answered in 2 above), the same is not available for utilization of it against the output tax payable on letting out of the same space.
4. This is not answered as the applicant has withdrawn the question.

Similar treatment has to be provided under the provisions of the Karnataka Goods and Services Tax Act also.




30-09-2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,
Date: 30.09.2019

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore-North
4. The Asst. Commissioner, LGSTO-020, Bengaluru
5. Office Folder