

**BEFORE THE AUTHORITY FOR ADVANCE
RULINGS FOR THE STATE OF UTTARAKHAND
(Goods and Services Tax)**

समक्ष अग्रिम विनिर्णय प्राधिकारी उत्तराखण्ड (माल और सेवा कर)

Present:

Shri Vipin Chandra (Member)

श्री विपिन चन्द्र (सदस्य)

Shri Amit Gupta (Member)

श्री अमित गुप्ता (सदस्य)

The 09th day of January, 2020

Ruling No: 10/2019-20

अग्रिम विनिर्णय संख्या.

In

Application No: 09/2019-20

आवेदन संख्या. 09/2019-20

1	Applicant आवेदक	M/s Rajeev Bansal & Sudershan Mittal, 789-1 st Floor, Awas Vikas, Ranipur More, Hardwar, Uttarakhand
2	Jurisdictional Officer अधिकारिता अधिकारी	Assistant Commissioner, Khand-4, SGST- Haridwar
3	Present for the Applicant आवेदक की ओर से उपस्थित	Shri. Himanshu Sharma (CA) Shri Amrit Aswal (CA)
4	Present for the Jurisdictional Officer अधिकारिता अधिकारी की ओर से उपस्थित	None
5	Concerned Officer	Shri Manish Mishra (DC), SGST, Uttarakhand
6	Date of receipt of application आवेदन प्राप्ति की तिथि	05.12.2019
7	Date of Personal Hearing सुनवाई की तिथि	19.12.2019

Note : Under Section. 100(1) of the Uttarakhand Goods and Services Tax Act, 2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section- 99 of the Uttarakhand Goods and Services Tax Act, 2017, within a period of 30 days from the date of service of this order.

नोट : इस अग्रिम विनिर्णय की प्राप्ति के 30 दिन के अन्दर उत्तराखण्ड माल और सेवा कर अधिनियम 2017 की धारा- 99 के अन्तर्गत गठित अग्रिम विनिर्णय अपील प्राधिकारी के समक्ष धारा- 100(1) के अन्तर्गत अपील दायर की जा सकती है।

**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTARAKHAND**

RULING

1. This is an application under Sub-Section (1) of Section 97 of the CGST/SGST Act, 2017 (herein after referred to as Act) and the rules made thereunder filed by M/s Rajeev Bansal & Sudershan Mittal, 789, 1st Floor Awas Vikas Ranipur More, Hardwar, Uttarakhand seeking an advance ruling on whether "Business Transfer Agreement" as a going concern which consists of transferring under-construction project is covered under serial no. 12 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (herein after referred to as "said notification") and thus exempted from the applicability of GST.
2. Advance Ruling under GST means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in sub section (2) of section 97 or sub section (1) of section 100 in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
3. As per the said subsection (2) of Section 97 of the Act advance ruling can be sought by an applicant in respect of :
 - (a) Classification of any goods or services or both
 - (b) Applicability of a notification issued under the provisions of this Act,
 - (c) Determination of time and value of supply of goods or services or both,
 - (d) Admissibility of input tax credit of tax paid or deemed to have been paid
 - (e) Determination of the liability to pay tax on any goods or services or both
 - (f) Whether the applicant is required to be registered
 - (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term
4. In the present case applicant has sought advance ruling on applicability of exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 on "Business Transfer Agreement" as a going concern which consists of transferring under-construction project. Therefore, in terms of said Section 97(2)(b) of Act, the present application is hereby admitted.
5. Accordingly opportunity of personal hearing was granted to the applicant on 19.12.2019. Shri Himanshu Sharma (CA) and Amrit Aswal (CA), on behalf of the applicant appeared for personal hearing on the said date and submitted that the written submissions to be taken on record.
6. From the record we find that applicant is registered in Uttarakhand with GSTIN bearing no. 05AARFR4816L2ZO. The submissions of the applicant are summarized as under:

- (i) That the applicant is a partnership firm engaged in the business of constructing residential/commercial complexes.
- (ii) That the firm was formed for constructing and selling a residential/commercial building at village- Manoharpur, Jwalapur, Hardwar.
- (iii) That the applicant got the map approved from the competent authority.
- (iv) That the covered area was around 1.25 lakhs sq feet. A total carpet area of 85 thousand sq feet was constructed up to the date of transfer.
- (v) That M/s Ronav Infrastructure (buyer) engaged in the same business, approached the applicant to take over this incomplete project to further carry out the business of constructing and selling the said building.
- (vi) That the applicant entered into an agreement with M/s Ronav Infrastructure for transfer of the business as a "going concern". The main asset of the business being the land, the incomplete flats constructed on the land and the approved map. A separate sale deed was executed for transfer of flats as required under the state law for Rs. 21.80 crores on 24.10.2019.

7. In the present case we are not deciding any wider question but restricting our conclusion to the facts and circumstances which was filed for our consideration in the application. Now we proceed as under:

7.1 Whether "Business Transfer Agreement" as a going concern which consists of transferring under- construction project, is exempted from the levy of GST in terms of serial no. 12 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. We have gone through the said notification and we find that the issue in hand pertains to serial no. 2 of the notification and not to serial no. 12 of the said notification as mentioned by the applicant in their application and accordingly we reproduce the relevant portion of the said Notification as under:

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
2	Chapter 99	Services by way of transfer of a going concern, as a whole or an independent part thereof	Nil	Nil

7.2 On perusal of serial no. 2 of the said notification we find that the services by way of transfer of a going concern, as a whole or an independent part thereof is to be treated as supply of service and covered under chapter 99 of the Service Code (Tariff) and is exempted from GST.

7.3 On perusal of “sale deed dated 24.10.2019” we find that

- a. The applicant has sold the said premises situated at village-Manoharpur, Pargana-Jawalapur, Dist-Hardwar to M/s Ronav Infrastructure for a amount of Rs. 21.80 Crores;
- b. “Assets” include 105 flats, basement, ground floor, 1 to 6 floors of a residential complex covering super area of 84988 sq foot;
- c. The building is under-construction;
- d. The purchaser can use and sell the flats as per his will;
- e. The purchaser has a right to construct other building/floor in the premises;
- f. The purchaser cannot demolish the said existing flats;
- g. The purchaser has a right to replace the name of seller in the records of Nagar Nigam;
- h. The purchaser has to follow the procedures/provisions of law issued by the competent authority time to time.

7.4 We find that the term “business” has been defined in sub clause 17 of Section 2 of the Act and the same is reproduced as under:

*Section 2(17) of the Act “business” includes— (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit; (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a); (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction; (d) **supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;** (e) provision by a club, association, society, or any such body (for a subscription or any other*

consideration) of the facilities or benefits to its members; (f) admission, for a consideration, of persons to any premises; (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation; (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

7.5 From the above definition of the "business" we find that the acquisition of goods/services for commencement of business is covered under the said definition. We observe that a transfer of a business as a going concern is the sale of a business including assets. In terms of financial transaction 'going concern' has the meaning that at the point in time to which the description applies, the business is live or operating and has all parts and features necessary to keep it in operation. Thus 'Transfer of a going concern' in a simple way can be describe as transfer of a running business which is capable of being carried on by the purchaser as an independent business. We further find that internationally accepted guidelines (applicable to the case in hand) issued by His Majesty's Revenue & Customs (HRMC) to treat transfer of business as a going concern are as under:

- a. The assets must be sold as part of a 'business' as a 'going concern'
- b. The purchaser intends to use the assets to carry on the same kind of business as the seller
- c. Where only part of a business is sold it must be capable of separate operation
- e. There must not be a series of immediately consecutive transfers

7.6 From the record we find that the applicant is carrying on the business of constructing residential/commercial complexes and selling thereof and the applicant firm come into existence particularly for the said project. Further on perusal of the sale deed dated 24.10.2019, we find that the applicant has sold the under-construction building, as a whole, situated at village- Manoharpur, Pargana-Jwalapur, District-Hardwar with its all assets and transfer the rights of the same to the buyer including the approved map from the competent authority. The buyer has purchased the under-construction building/business to carry on the same kind of business as the purchaser themselves engaged in constructing residential/commercial complexes and selling thereof . Further as on date we find that there is no series of immediately consecutive transfers of the said business.


7.7 In view of the above we thus observe that the applicant has transfer the business as a going concern to M/s Ronav Infrastructure and it may treated as supply of services and as per serial no. 2 of the Notification No.

12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time), the same is exempted from levy of GST as on date.

RULING

In view of the above discussion we hold that transfer of Business in question shall be treated as a going concern and is exempted from GST as on date in terms of serial no. 2 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended from time to time).


VIPIN CHANDRA (MEMBER)


AMIT GUPTA (MEMBER)

To,

M/s Rajeev Bansal & Sudershan Mittal,
789, 1st Floor Awas Vikas
Ranipur More, Hardwar, Uttarakhand


**AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX: UTTARAKHAND
OFFICE OF THE COMMISSIONER, SGST, UTTARAKHAND
LADPUR RING ROAD, UPPER NATHANWALA, DEHRADUN**

F. No. : 09/ST&C Tax - UKD / GST / Sec 97 / DDH / 2019-20 / 6742
Dated: 09/01/2020

Copy to :

1. The Chief Commissioner, CGST, Meerut Zone, Meerut for review.
2. The Commissioner, CGST, Commissionerate, Dehradun for review.
3. The Commissioner, SGST, Commissionerate, Uttarakhand for review.
4. The Assistant Commissioner, CGST Division, Hardwar for review.
5. The Assistant Commissioner, SGST, Hardwar for review.
6. The Concerned officer, SGST, Dehradun.
7. The Registrar -Appellate Authority for Advance ruling
8. Guard File.

o/c


Anvita
15/01/2020