



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)**

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweshwar Rao, Additional Commissioner (State Tax)

A.R.Com/30/2018

Date.19-07-2021

TSAAR Order No.03/2021

(Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order)

- 1.** M/s. Vajra Infracorp India Private Limited, A.S.Raju Nagar, Kukatpally, Hyderabad- 500 072, (GSTIN No. 36AADCV9356L1ZN) have filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules, seeking Advance Ruling seeking clarification.
- 2.** At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
- 3.** It is observed that the applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

4. Facts of the Case:

1. M/s. Vajra Infracorp India Private Limited are providers of taxable services of construction of residential complexes.
2. They have averred that they have entered into a supplementary agreement with land owner on 15.05.2017 duly fixing the total number of flats to be shared with the land owner. This was prior to the introduction of GST.
3. They also averred that the construction was expected to be completed by October/November 2018 i.e., after the introduction of GST.
4. The applicant has relied on **CBE & C circular no. 151/2/2012-ST dated 10.02.2012**, where in it is stipulated that the land owners share of flats are liable to service tax, but the date of possession or right in the property of said flats are transferred to the land owner by entering into the conveyance deed or any other instrument such as allotment letter. They also placed their reliance on **Notification No.4/2018 – Central Tax (Rate) dated 25.01.2018** also but stated as 'Constructed complex', where in the above stipulation of service tax was adopted in toto.

5. Clarification Sought:

5. At Para 14 the applicant sought advance ruling on the following questions:

Time of supply and point of taxation with respect to flats allotted to land owner by the builder by way of supplementary agreement on 15.05.2017(i.e., before GST regime) where as the construction will be completed during GST regime.

6. Further at Para 16(d) the applicant sought clarification on the following issues also:
 - a. Is this date to be concluded as the date of allotment for payment of service tax in respect of construction services provided to landlord ignoring the fact that the construction was continued subsequently from May, 2017 to November, 2018.
 - b. Will it be sufficient and adequate compliance, if the appellant complies law and remit entire service tax on the entire area earmarked to landlord.
 - c. Once the time of supply is clarified and ruled, the appellant will plan for remittance of tax accordingly on hearing from office.

- d. In the event the service tax is remitted based on the date of above supplementary agreement, will the appellant not required to comply with GST on the said value of service to land owner.
- e. Will this view in transitional period have any impact on the future projects to be explored by the applicant company.
- f. What is the 'Constructed complex' referred to in the notification.

7. Personal Hearing:

Accordingly, an opportunity of personal hearing was provided to the applicant on 29.06.2021. The applicant represented by his authorised representative Suresh, Cost Accountant (AR) appeared before the AAR. Authorised representative had reiterated the contentions raised in the application for the advance ruling and averred as follows:

- g. Whether the supplementary agreement entered by the developer with a land owner amounts to the allotment letter mentioned in Notification No.4 of 2018 Dated: 25.01.2018.
- h. If so whether the liability will be determined according to the existing law as on date of such agreement i.e., May 2017 and therefore exempt under the present law i.e., GST.

8. Discussion & Findings:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. Suresh, Cost Accountant, 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 TGST 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 TGST Act.

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri. Suresh, Cost Accountant appeared during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

- i. The applicant is engaged in construction of residential complexes as submitted by him at Para 15 of his application. He has entered into an agreement for sharing of constructed flats with the land owner on 15.05.2017.
- ii. According to the Notification No.4/2018 Dated:25.01.2018 the liability to pay central tax on supply of development rights to a developer, builder, construction company shall arise at the time when the said builder, developer, construction company or any other person as the case may be, transfers possession or the right in the constructed complex, building or civil structure to the person supplying development rights by entering into a conveyance deed or similar instrument (for example allotment letter).
- iii. A plain reading of the Notification makes it clear that
 - a. There shall be a constructed complex or a building or a civil structure in existence,
 - b. The possession or right in the above shall be transferred,
 - c. Such transfer of possession or right shall be affected by way of a conveyance deed or a similar instrument like an allotment letter.
- iv. It is seen from the submissions made by the applicant that he requires a clarification regarding his liability under the CGST & SGST Acts, in a situation where he has entered into an agreement with the land owner as a builder and later transferred the possession or right in the buildings so constructed. At the outset, the clarification for his liability must start from the question raised in the end of the application regarding the meaning of the phrase 'Constructed complex'. This necessitates the application of principle of literal construction of statutes.
- v. The Hon'ble Apex court in the case of Chandavarkar S R Rao Vs Ashalata S Gautam (1986) 4 SCC 477 held that, when the grammatical construction is clear and manifest without doubt, that construction must prevail unless there are strong and obvious reasons to the contrary. This view was declared as law by the Hon'ble Apex Court in a catena of cases while deciding on literal interpretation of taxation statutes.
Further, after the phrase 'Constructed complex' the words building or civil structure is used to convey the intention in the notification i.e., a constructed complex. So this entails application of the principle of noscitur a sociis.

The Hon'ble Apex Court of India in the case of – Godfrey Philips India Vs State of UP AIR 2005 SC 1103 held that when two or more words are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from and are qualified by each other, the meaning of the general word being restricted to a sense analogous to that of the less general. In this case, it was held that even in case of inclusive definition, principle of noscitur a sociis can be applicable. Therefore in light of catena of case law declared by the Hon'ble Apex Court of India, the phrase 'Constructed complex' is understood in its natural, ordinary and popular sense to mean a building.

- vi. From the above understanding of the phrase 'Constructed complex' it follows that such a complex, building or civil structure should first be in place so that its possession or the rights in it may be transferred by the developer to the person supplying development rights.
- vii. And such transfer of possession or transfer of right in the building shall be accomplished by a conveyance deed or similar instrument such as allotment letter.
- viii. It follows from the above that as per Notification No.4/2018 the time of supply to determine liability to pay tax on development rights by a land owner to a developer is the date on which the building or the rights in an existing building are handed over to the land owner by way of a conveyance deed or an allotment letter.
- ix. If the applicant has handed over the building after inception of CGST & SGST, then the liability to pay tax will arise under CGST & SGST.

ADVANCE RULING

9. In view of the observations stated above, the following rulings are issued:

| Question raised | Advance ruling issued |
|---|---|
| 1. Time of supply and point of taxation with respect to flats allotted to land owner by the builder by way of supplementary agreement on 15.05.2017(i.e., before GST regime) where as the construction will be completed during GST regime. | As per Notification No.4/2018 Dt:25.01.2018 the date of transfer of possession of the building or the right in it to the person supplying development rights will be the time of supply and the liability to pay tax on the said services shall arise on that day. The time of supply shall not be at any other time. |
| 2. Is this date to be concluded as the date of allotment for payment of service tax in respect of | No, the applicant has to pay tax as per the time of supply indicated at Point 1 above. |

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| construction services provided to landlord ignoring the fact that the construction was continued subsequently from May, 2017 to November, 2018. | |
| 3. Will it be sufficient and adequate compliance, if the appellant complies law and remit entire service tax on the entire area earmarked to landlord. | No, the applicant has to pay tax as per the time of supply indicated at Point 1 above. |
| 4. Once the time of supply is clarified and ruled, the appellant will plan for remittance of tax accordingly on hearing from office. | Not a question. |
| 5. In the event the service tax is remitted based on the date of above supplementary agreement, will the appellant not required to comply with GST on the said value of service to land owner. | Does not arise. |
| 6. Will this view in transitional period have any impact on the future projects to be explored by the applicant company. | Does not arise. |
| 7. What is the 'Constructed complex' referred to in the notification. | 'Constructed complex' refers to a building or a completed structure. |

10. The application filed by M/s. Vajra Infracorp India Private Limited is disposed accordingly.

Sd/-S.V. Kasi Visweshwar Rao
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghu Kiran
ADDL. COMMISSIONER (Central Tax)

To
M/s. Vajra Infracorp India Private Limited,
Flat No. 102, Plot No. 33 & 34,
Sai Kirshna Villa,
A.S.Raju Nagar, Kukatpally,
Hyderabad- 500 072.

Copy submitted to :

1. The Commissioner (State Tax) for information
2. The Chief Commissioner (Central Tax), Basheerbagh, Hyderabad.

Copy to all the Joint Commissioners (State Tax), in the State.