

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

**Advance Ruling No. KAR ADRG 33/2021**

**Dated : 09-07-2021**

Present:

1. Dr. M.P.Ravi Prasad  
Additional Commissioner of Commercial Taxes . . . . Member (State Tax)
2. Sri.Mashhood Ur Rehman Farooqui,  
Joint Commissioner of Customs & Indirect Taxes . . . Member (Central Tax)

1.	Name and address of the Applicant	M/s. B.G Shirke Constructions Technology Private Limited, 3 <sup>rd</sup> Floor,BEL Air Drive 09,Bellary Road,Gangenahally,Bengaluru-560032
2.	GSTIN or User ID	29AAACB7293D1ZM
3.	Date of filing of Form GST ARA-01	09-03-2021
4.	Represented by	Sri. B Mohan Babu Senior Manager of Finance and accounts
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Customs & Indirect Taxes, North GST Commissionerate.
6.	<b>Jurisdictional Authority - State</b>	ACCT, LGSTO-150,Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide Debit reference number DC2903210023075 dated 05.03.2021

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

1. M/s B.G Shirke Constructions Technology Private Limited, 3rd Floor, BEL Air Drive 09, Bellary Road, Gangenahally, Bengaluru-560032 having GSTIN number-29AAACB7293D1ZM have filed an application for Advance Ruling under



Section 97 of CGST Act, 2017, read with Rule 104 of the CGST Rules 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 registered person under the provisions of the Central Goods and Services Tax Act, 2017 as well as the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act" and the "KGST Act/SGST Act" respectively) engaged in construction of residential and commercial complexes.

3. The applicant has sought advance ruling in respect of the following question:

1. *What is the applicable GST rate on construction of AAI residential colony at Devenhalli, near Kempegowda International Airport, Bengaluru by the applicant for Airport Authority of India?*

4. **Admissibility of the application:** The question is about "determination of the liability to pay tax on any goods or services or both;" and hence is admissible under Section 97(2)(e) of the CGST Act 2017.

5. The applicant furnishes some facts relevant to the issue:

5.1 The applicant has been awarded contract by the Airport Authority of India and entered into agreement for the construction of residential colony at Devanahalli, near Kempegowda International Airport. The said residential colony is to be set-up / constructed for the employees / staff of Airport Authority of India.

5.2 The applicant contended that the Airport Authority of India is a statutory body (created through the Airports Authority of India Act, 1994) working under the jurisdiction of Directorate General of Civil Aviation, Ministry of Civil Aviation, Government of India is responsible for creating, upgrading, maintaining and managing civil aviation infrastructure in India. It provides Communication Navigation Surveillance / Air Traffic Management (CNS/ATM) services over Indian airspace and adjoining oceanic areas. AAI is currently managing a total of 137[1] Airports, including 23[1] International Airports, 10



Customs Airports, 81 Domestic Airports and 23 Civil enclaves at Defense Airfields. AAI also has ground installations at all airports and 25 other locations to ensure safety of aircraft operations.

5.3 In the instant case, the applicant is supplying construction services to Airport Authority of India. Airport Authority of India is a statutory body established vide Airport Authority of India Act, 1994. Section 12 of the Act provides for functions of the authority. It is, inter alia, provided that it shall be the duty of the Authority to manage airports and civil enclaves and aeronautical communication stations and to provide air traffic service and air transport service at all airports and civil enclaves. In *R.D.Shetty v International Airport Authority AIR 1979 SC 1628*, the Supreme Court held that International Airport Authority constituted under the International Airport Authority Act, 1971 was an authority and thus, 'state' within the meaning of Article 12 of the Constitution. Thus, AAI satisfies the first leg of the above definition.

5.4 The applicant submitted that the term "governmental authority" has been defined under Notification No.31/2017-CT(R) dated 13.10.2017. It defines governmental authority to mean an authority or a board or any other body which has been (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under Article 243G of the Constitution. A similar definition existed under Notification No.25/2012-ST dated 20.06.2012 under the erstwhile service tax law regime.

5.5 The applicant stated that Airport Authority of India was established as an entity of the Government for creating, upgrading, maintaining and managing civil aviation infrastructure in India. The employees of Airport Authority of India are employed for furthering the objectives of Airport Authority of India and carrying out the work entrusted on Airport Authority of India. It is for these employees that the residential structures are being constructed. Such construction is 'in relation' to the work entrusted by the Government on Airport Authority of India. The use of the term 'in relation to' means to bring into association or connection with. 'Relation to' is equivalent to or synonymous with



'concerning with' and 'pertaining to'. Judgment of the Supreme Court in Doypack Systems (P) Ltd Vs. Union of India 1988 (SC), therefore, the construction work carried out by the applicant is in the opinion of carried out works fall within the ambit of Notification No.31/2017-CT(R) dated 31.10.2017.

5.6 Further the applicant contended that the rate of tax on construction service as per Notification No.11/2017-CT(R) dated 28.06.2017 vide entry no 3

**clause (i)** of Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service) attracts tax at the rate of 9 % CGST and 9% SGST each

**Clause (ii)** of composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017 ) tax at the rate of 9 % CGST and 9% SGST each

**clause (iii)** of construction services other than (i) and (ii) above. attracts tax at the rate of 9 % CGST and 9% SGST each.

5.7 The applicant further argued that addition entry no 3 item number (iv) (c) has been inserted through Notification No.11/2017-CT(R) dated 28.06.2017 as amended by Notification No.24/2017-CT(R) dated 21.09.2017 stated that "*Any services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-*

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.



5.8 Further, Airport Authority of India is undertaking construction of residential buildings as per the terms of Twelfth Schedule of the Constitution of India read with Article 243W. It is the function of the municipality to provide urban amenities. The instant construction is being undertaken for employees of AAI. The same would be used as residence by the employees of Airport Authority of India. Hence, Airport Authority of India would be a "governmental authority" for the purposes of the notification. Consequently, finally the applicant is of the view that liable to pay GST @ 6% in terms of Notification No.11/2017 as amended by Notification No.24/2017-CT(R) dated 21.09.2017.

**VIRTUAL HEARING: / PROCEEDINGS HELD ON 15-04-2021**

6. Sri. B Mohan Babu Senior Manager of Finance and accounts along with Sandeep Gund, Duly Authorized Representative of the applicant appeared for virtual hearing proceedings held on 15-04-2021 and reiterated the facts narrated in their application.

**FINDINGS & DISCUSSION**

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing.

9. The applicant has been awarded the contract by Airport Authority of India, Bengaluru, vide F.NO.AAI/CHQ/ENGG/SR/ BLR/QTRS/2018 dated 20.03.2018 for the construction of residential colony for the staff and employees of Airport authority of India at Devanahalli, Near Kempegowda International Airport, Bengaluru.



9.1 The question before us is whether the transaction is covered under the Sl. No. 3(vi)(c) of the Notification No. 11/2017 – Central Tax dated 28.06.2017 as amended by Notification No.24/2017-CT(R) dated 21.09.2017.

9.2 Serial No. 3(vi)(c) of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by vide Notification No.24/2017-CT(R) dated 21.09.2017 the entries read as under:

Sl. No.	Chapter, Section, or Heading	Description of Services	Rate (per cent.)	Condition
3	Heading 9954 (Construction Services)	(i) . . . . .		
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017	9	-
		(iii) . . . . .		
		(iv) . . . . .		
		(v) . . . . .	6	-
		(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be



	employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017 Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities (inserted by Notification No.17/2018 - Central Tax (Rate) dated 26-07-2018.		
	(vii) . . . . .		
	(viii) . . . . .		
	(ix) construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above	9	-

As per this entry, which is relied upon by the applicant, composite supply of works contract as defined in section 2(119) of the CGST Act, 2017, provided to the Central Government/State Government/Union Territory/a local authority/a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation of a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017 is liable to tax at the rate of 6% under the CGST Act. Similar notification also exists under the Karnataka Goods and Services Tax Act and also under the Integrated Goods and Services Tax Act (wherein the tax rate is 12% IGST).

9.3 The applicant is undertaking works contract of construction of residential colony for the staff and employees of Airport authority of India at Devanahalli, Near Kempegowda International Airport, Bengaluru. As per the letters of Airport authority of India submitted by the applicant, it is clear that the applicant is engaged in construction of residential colony for the staff and employees of Airport authority of India at Devanahalli, Near Kempegowda International Airport, Bengaluru vide awarded contract



F.NO.AAI/CHQ/ENGG/SR/BLR/QTRS/2018 dated 20.03.2018. In this regard copy of letter dated 19.04.2021 issued by Deputy General Manager(E.C), Airport authority of India, Bengaluru Airport (HAL), Bengaluru-560017 certifies that proposed residential colony is exclusively used for the staff and employees of the Airport Authority of India, Bengaluru.

9.4 The Airport authority of India being recipient of service fulfils the parameters as mentioned in the Notification No.31/2017-CT(R) dated 13.10.2017 vide paragraph (iii) item number (ix) as "Governmental Authority". The said authority is a statutory body set up by an Act of Parliament vide Airport Authority of India Act, 1994. Section 12 of the said Act provides for functions of the authority. The said activity of the construction of residential colony for the staff and employees of Airport authority of India at Devanahalli, Near Kempegowda International Airport is covered under article 243 W of the Constitution.

9.5 An explanation has been inserted to the above entry by Notification No.17/2018 - Central Tax (Rate) dated 26-07-2018 which reads as under:

*"Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities"*

Even with this insertion, the activities or transactions undertaken by the Central Government, State Government and a Local Authority, in which they are engaged as public authorities alone are to be excluded from the scope of "business" for the purposes of this entry. This Explanation does not exclude a Government Entity and hence the situation remains unchanged even by the aforesaid insertion of explanation so far as the activity of the applicant is concerned.

9.6 The next issue is whether these works are meant predominantly for other than for commerce, industry, or any other business or profession In



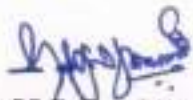


this regard, certified copy of letter dated 19.04.2021 issued by Deputy General Manager (E.C), Airport Authority of India, Bengaluru Airport (HAL) ,Bengaluru-560017 is verified and the said proposed construction of residential colony or residential complex service given by the applicant to Airport Authority of India as a government authority and predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017 as covered under Serial No. 3(vi) (c) of the Notification No.11/2017-Central Tax dated 28.06.2017 as amended by Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 liable to tax at 6% each under CGST as well as 6% under KGST Act.

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

**RULING**

*The construction of Airport Authority of India residential colony for self use or their staff/employees at Devenhalli, near Kempegowda International Airport, Bengaluru by the applicant for Airport Authority of India attracts tax at the rate of 12% as per Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (6% CGST + 6% KGST) as amended by Notification No.24/2017 - Central Tax (Rate) dated the 21.09.2017.*



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

**Member  
MEMBER**

Karnataka Advance Ruling Authority  
Bengaluru-560 009  
Place : Bengaluru,

Date : 09-07-2021



09.07.2021

**(Mashhood Ur Rehman Farooqui)**

**Member  
MEMBER**

Karnataka Advance Ruling Authority  
Bengaluru-560 009

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. The Principal Commissioner of Customs & Indirect Taxes, North GST Commissionerate
4. ACCT, LGSTO-150, Bengaluru.
5. Office Folder.