

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34

2. Tmt. K.Latha., M.Sc., (Agri), Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 03/AAR/2022 DATED: 31.01.2022

GSTIN Number, if any / User id		33AAQPS8495K1ZO
Legal Name of Applicant		SHANMUGA DURAI
RegisteredAddress/Address provided while obtaining user id		No. 24/14, RAMANATHAN STREET, T.NAGAR, CHENNAI-600017
Details of Application		GST ARA- 01 Application Sl.No.30/2021/ARA dated:26.08.2021
Concerned Officer		Centre: Chennai Southcommissionerate State:Nandanam Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Provision of Service
B	Description (in Brief)	The applicant is the owner of certain properties and also the Managing Partner of a partnership firm. Properties owned by him are let out on rent for the businesses run by the partnership firm.
Issue/s on which advance ruling required		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 a goods or services

<p>Question(s) on which advance ruling is required</p>	<ol style="list-style-type: none"> 1. Whether GST liability does arise in respect of property of the partner used by the Partnership Firm to carry out the business by the firm at free of rent. 2. If so, what is the relevant section or rule or provision in GST law under which the partner of the firm is required to pay GST on notional rent? 3. Is it mandatory to execute rental deed between partner and Partnership firm, when there is no furtherance of business for that partner? 4. What is the applicable valuation rule, when consideration is not fixed and not received by the Partner?
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Tvl. SHANMUGA DURAI, No. 24/14, RAMANATHAN STREET, T.NAGAR, CHENNAI-600017(hereinafter called the Applicant) are registered under GST with GSTIN33AAQPS8495K1ZO.The applicant has sought Advance Ruling on the following questions:

1. Whether GST liability does arise in respect of property of the partner used by the Partnership Firm to carry out the business by the firm at free of rent?
2. If so, what is the relevant section or rule or provision in GST law under which the partner of the firm is required to pay GST on notional rent?

3. Is it mandatory to execute rental deed between partner and Partnership firm, when there is no furtherance of business for that partner?
4. What is the applicable valuation rule, when consideration is not fixed and not received by the Partner?

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that he is the Managing Partner in the partnership and firm having certain properties in his name. The firm in which he is partner is carrying out the business in those properties at free of rent. He has stated that under the Income Tax Act, it is clear that when the partner uses his property for business carried out by the firm, then deemed rent does not arise. The applicant has sought the Advance Ruling Authority to seek clarity under GST law for the above scenario.

2.2 On interpretation of law the applicant has referred to Schedule I of GST Act which includes activities to be treated as supply even if made without consideration. The applicant has stated that as per Sl.No. 2 of the Schedule supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course of furtherance of business, it is to be treated as Supply, however, in their case the applicant as a partner has no furtherance of business. Applicant has stated that he has not done anything in relation to business carried out by partnership firm to mean furtherance of business. The applicant has also referred to press release of CBIC dated 13.07.2017 wherein it is clarified that

“sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply.”

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 30.11.2021.

The Authorised Representative Shri.V. Narendran, Chartered Accountant appeared for the hearing virtually and stated that the owner has allowed the firm in which he is the Managing Partner, to function from the places owned by him. He referred to the submissions made, referred to Circular dated 13.07.2017 and stated that the property is used for the firm in which the owner is the Managing Partner and requested to clarify whether the activity amounts to 'Supply' and if so, what should be the 'Value to be adopted'. He stated that the owner has more than seven properties, the properties are used as godowns and retail shops and the owner is the Managing Director of the partnership firm. He stated that since no rent is collected, it is not accounted. The applicant was asked to give the following documents in a weeks' time.

- i. Details of the places in relation to which Ruling is sought
- ii. Details of activities carried on in such places
- iii. Details of EB, water charges in respect of such places
- iv. Copy of P&L statement and Balance sheet for two years
- v. Copy of partnership deed

3.2 The applicant vide their letter dated 15.12.2021 submitted the following facts:

- Details of the places in relation to which advance ruling is sought and the activities carried on each place:

No.7/10,12,13, Ranganathan street, T.Nagar, Chennai-17	Household Utensils showroom for own firm
No.17/3,174, Ranganathan street, T.Nagar, Chennai-17	Textile Showroom for own Firm
No.25/12,Ramanathan Street, T.Nagar, Chennai-17	Furniture & Home Appliances showroom for own firm
No.8/2,Ramanathan Street, T.Nagar, Chennai-17	Godown / warehouse for home appliances for own firm
No.4, Madley Road, T.Nagar, Chennai-17	Furniture & Home Appliances Showroom own firm
No.164/6, North Usman Road, T.Nagar, Chennai-17	Home Appliances Showroom for own firm
No.122/75 GN Chetty Road, T.Nagar, Chennai-17	Furniture & Home Appliances showroom for own Firm
No.7,9 Natesan Street, T.Nagar,	Ladies Hostel for the staffs of

Chennai-17	the own firm
No.34, Natesan Street, T.Nagar, Chennai-17	Gents Hostel for the staffs of own firm
No.71,72Ranganathan street, T.Nagar, Chennai-17	Gents Hostel for the staffs of own firm
No. 7,18/19, Madley Road, T.Nagar, Chennai-17	Gents Hostel for the staffs of own firm

➤ Details of EB Charges and water taxes paid for each places:

The applicant has submitted that the EB Charges and water taxes are paid by the Partnership Firm - Saravana Stores. There are lot of entries for such payment and therefore Ledger Extract of the Partnership Firm for three financial years (2016-17, 2017-18 & 2018-19) have been furnished.

➤ Copies of Profit & Loss Account and Balance Sheet for two years:

Individual financial statement for three years AY 2016-17, 2017-18 & 2018-19 have been furnished. The applicant has requested to note that in the financial year 2016-17, he didn't collect rent from the Partnership Firm, namely Saravana Stores, in which he is the Managing Partner. After introduction of GST the applicant had no intention to collect rent from own properties listed in (i) above, which are being used by his Firm, namely Saravana Stores. Due to lack of clarity in the GST Law and as a precautionary measure, the applicant has started collecting rent from the above properties including certain properties, which are used by the Firm's Staff as accommodation at free of cost. The applicant has stated that he and his Partnership Firm didn't collect any charges from the employees of the Firm in respect of the properties used by such staffs.

➤ Copy of Partnership Deed:

It is submitted that the Firm was started in the year 1976 and there were lot of Reconstitution Deeds from the inception till 30th September,2015. The Final Reconstitution Deed was executed on 1st of October-2015 which has been furnished and it is the final one during the relevant period.

4. The Centre Jurisdictional authority who has administrative control over the applicant has stated that there are no pending proceedings on the issue raised by

the applicant in the Advance Ruling application and has submitted the following comments on the issue raised in the application.

- According to Section 7 (1) (a) of CGST Act, 2017 the expression "Supply," includes all forms of supply of Goods or Services or both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Lease includes Tenancy, Premium, Rights to use, etc. Hence, renting out of immovable property for business is to be treated as supply of service as per section 7(1)(a) *ibid*.
- In the case on hand, the immovable property belonging to the partner of the firm is used by the partnership firm. As per Schedule I of supply of goods or services or both between related persons or between distinct persons as specified in sub section 4 of Section 25, when made in the course of furtherance of business is to be treated as supply even if made without consideration.
- Valuation is to be done as per Section 15 of the CGST Act, 2017. In cases where value cannot be determined under sub-section (1) of Section 15, GST Valuation Rules are to be applied. As per 28 of CGST Rules, 2017 when the consideration is not wholly in Money then the open market value of supply of the rental premises would have to be considered for payment of GST. Such notional income is 'consideration' in terms of Section 2(31) of CGST Act, 2017.
- For the foregoing reasons, it appears that the property of the partner used by the Partnership firm to carry out business by the firm would attract GST in terms of Section 2(31) of CGST Act, 2017 read with Rule 28 of CGST Rules, 2017 as it is considered as supply of service as per Section 7 of CGST Act, 2017.

5. The State Jurisdictional authority has stated that there are no pending proceedings in the applicant's case.

6. We have considered the application filed by the applicant and various submissions made by them as well as the comments of the State and Central Tax officers. The issues raised before us is regarding the GST liability on the rent related to the immovable properties of the applicant (as listed in the table at para

3.2 above) being used by the partnership firm, free of rent, for carrying out their business. Applicant and his wife are the partners in the partnership firm in which the applicant is the Managing Partner too. Applicant has stated that he has not collected rent for these properties in the financial year 2016-17 and has started collecting after introduction of GST as a precautionary measure. The EB charges and water taxes have been borne by the partnership firm. Applicant has not collected any rent or charges from the staff of the partnership firm for properties which were used in providing accommodation for such staff. Hence the application for the following questions has been filed by the applicant.

1. Whether GST liability does arise in respect of property of the partner used by the Partnership Firm to carry out the business by the firm at free of rent?
2. If so, what is the relevant section or rule or provision in GST law under which the partner of the firm is required to pay GST on notional rent?
3. Is it mandatory to execute rental deed between partner and Partnership firm, when there is no furtherance of business for that partner?
4. What is the applicable valuation rule, when consideration is not fixed and not received by the Partner?

On perusal of the questions, it is seen that Question 1, 2 & 4 requires ruling/clarification as to whether GST liability arises in respect of the property of the partner when used by the partnership firm free of rent/ on notional rent as per the applicable valuation rules which are falling under the ambit of Section 97(2) of the GST Act and are hence admitted and taken up for consideration on merits. Question No.3 seeking clarification about execution of rental deed is procedural and that part of the question is not answered. However the later part of the question seeking clarification on whether such renting is in furtherance of business for the applicant is taken up for consideration. Thus the questions taken up for consideration is whether (i) GST is liable to be paid when a partner rents his property to his partnership firm; (ii) the value to be adopted in such situation and (iii) such activity of renting is in furtherance of business for that partner.

7.1 Applicant has stated that the activity of letting his own properties to the partnership firm, wherein he is the Managing Partner and holds 2/3 of the shares is not in furtherance of business and that he has not done anything in relation to business carried out by the partnership firm to mean furtherance of business.

Though the term furtherance of business is not defined under GST law, the term business as defined under Sec 2(17) and the term person is defined under Section 2(84) of the GST Act as follows: -

Section 2(84) "person" includes-

(a) an individual;

(b)

(c)

(d) a firm;

From the above definition, the applicant is a "person" and the partnership firm in which the applicant is a partner is also a "person" and hence for the purposes of GST, the applicant and the partnership firm are separate persons. Further business as defined under Section 2(17) of the GST Act is as follows:-

"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 (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

On a combined reading of sub-clause (a) and (c) above, it is observed that any trade whether or not for pecuniary benefit and irrespective of the volume, frequency, continuity or regularity, is considered as Business. The Pecuniary benefit is nothing but the economic benefit accrued to the Service Provider in exchange for the said service provided, directly or indirectly and is corelatable with the service provided. In order to qualify, any service as in course of business, should be provided with the intention of deriving economic benefits. If it accrues directly or indirectly, then the same is treated as provision of service against consideration. From the submissions, the property of the applicant, who is also a partner in the firm along with his wife, is used for the businesses of the partnership firm, in which the applicant is the Managing Partner and the details of and the activities carried on in such properties is as follows:-

Address of the properties	Activities carried on
No.7/10,12,13, Ranganathan street, T.Nagar, Chennai-17	Household Utensils showroom for own firm

No.17/3,174, Ranganathan street, T.Nagar, Chennai-17	Textile Showroom for own Firm
No.25/12,RamanathanStreet, T.Nagar, Chennai-17	Furniture & Home Appliances showroom for own firm
No.8/2,Ramanathan Street, T.Nagar, Chennai-17	Godown / warehouse for home appliances for own firm
No.4, Madley Road, T.Nagar, Chennai-17	Furniture & Home Appliances Showroom own firm
No.164/6, North Usman Road, T.Nagar, Chennai47	Home Appliances Showroom for own firm
No.122/75,GN Chetty Road, T.Nagar, Chennai-17	Furniture & Home Appliances showroom for own Firm
No.7,9 Natesan Street, T.Nagar, Chennai-17	Ladies Hostel for the staffs of the own firm
No.34, Natesan Street, T.Nagar, Chennai-17	Gents Hostel for the staffs of own firm
No.71,72 Ranganathan street, T.Nagar, Chennai-17	Gents Hostel for the staffs of own firm
No. 7,18/19, Madley Road, T.Nagar, Chennai-17	Gents Hostel for the staffs of own firm

From the above, the properties are found to have been rented to the partnership firm for carrying on its activities such as Showrooms, Godowns/Warehouses and Hostels for their staff and also it is observed that the EB charges and water tax/charges are being borne by the partnership firm as evidenced by the ledger extracts of the partnership firm pertaining to such payments. For the years after introduction of GST, the applicant has stated to have collected rent from the firm in respect of the properties listed above which has been reflected as Income from Property in the Income Tax Returns of the applicant.

7.2 Further the applicant in the capacity of the property owner, allows the partnership firm, in which he is a partner and Managing Partner of the firm along with his wife to carry on their business. As observed from the partnership deed vide point No.2, the applicant has inherited the shares and rights of the deceased Partner and vide point no. 3, it is observed that the applicant is holding 2/3 share of profit or loss and his wife, 1/3rd. Thus it is seen that he enjoys the profit or loss of the partnership firm to a greater share. The properties even if rented free to the partnership firm would ease the burden of rent to be paid by the firm and thus

indirectly will reduce the expenditure towards rent which should have been borne by the firm. This results in reduced expenditure and consequently increased profit. Thus the rent free accommodation if so provided by the applicant indirectly accrues as profit for the firm which is enjoyed by the applicant as partner. So the economic benefit accrues to him and hence this supply is in the course of and furtherance of business only. Thus it is evident that the applicant in the course of furtherance of business has rented out the properties for commercial use to the partnership firm which is a separate person.

8.1 To decide on the liability of renting and whether it amounts to supply under the GST law, relevant legal provisions may be analysed as follows:-

*** Section 7. Scope of supply.-**

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

The property of the individual being rented out to the partnership firm is a "supply" under the GST Act. However when consideration for such renting is considered, Schedule I of the CGST Act, 2017 stipulates as below:

SCHEDULE I.
[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

(2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

'Related persons' for the purposes of this Act is defined in the Explanation to Section 15 as under

(a) persons shall be deemed to be "related persons" if-

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

Applying the above, in the case at hand the applicant is the owner of the properties. He also holds 2/3rd of the shares in the partnership firm in which the Managing Partner and controls the firm. Therefore, the applicant and the firm who are separate persons are "Related Persons" for the purposes of this Act. Therefore, as per the above schedule, the supply of service between such related persons i.e., the applicant and the partnership firm, when made in the course or furtherance of business, the same is a taxable supply even when rendered without consideration.

8.2 In this regard, the applicant has relied on the Press release of CBIC dt. 13.07.2017, wherein old gold sold by an individual to a seller has been held not to be in course or furtherance of business. The reliance placed is not acceptable in the instant case as the furtherance of business is established here by the direct and continuous accrual of economic benefit to the applicant out of renting these premises. The sale of old gold by an individual is one-off sale and there is no indirect accrual of economic benefit other than the sale proceeds. Hence these two transactions cannot be equated.

8.3 Further from the Financial Statements furnished by the applicant for the assessment year 2018-19, the Statement of Income as an individual reflects an amount of Rs.7,75,80,000/- as income from House property from the 7 properties which have been rented out to the partnership firm. Income statement for the Assessment year 2019-20 shows the income from House property for the same 7 properties as Rs.10,34,40,000/-. The claim of applicant that a notional rent is charged for the sake of GST is not acceptable as there is a rise in the income from the previous year to the next year. From this statement it is seen that the applicant has been charging rent and though they claim they have done for lack of clarity of GST provisions, the rent so charged cannot be held as notional as the same has been charged in actuality. Thus the rent free accommodation proposed to be provided by the applicant to the partnership firm in which he is major shareholding partner and Managing Partner is a supply without consideration in the course of and furtherance of business and is found taxable under Section7(1)(a) read with Schedule I of the CGST Act,2017.

9. Now we take up the question of applicable valuation provisions when consideration is said to have not been fixed and received. The relevant legal provisions are examined as under:-

Section 15. Value of Taxable Supply.-

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;.....

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation. - For the purposes of this Act,-

(a) persons shall be deemed to be "related persons" if-

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

Section 15(1) stipulates the transaction value as the value to be adopted in cases where the supplier and recipient are not related. In the present situation, the applicant and the firm are related persons. Therefore, the value to be adopted is to be arrived at following the Valuation Rules as per Section 15(5) of the Act. The relevant valuation rules are as follows:-

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 15 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

From the above, it is observed that where the supply is between related persons, the value of such supply shall be the open market value of such supply. Where the open market value is not available, the value of supply of goods or services of like kind and quality will be the taxable value. In the instant case, the property being rented and the supplier and recipient being related Rule 28 of CGST/TNGST Rules 2017 applies and the value should be arrived at accordingly for the purposes of GST.


10. To sum up, the activity of renting out the Immovable Properties owned by the applicant as an individual person to the partnership firm, another individual person in which he is a major shareholding partner and Managing Partner even without consideration is a taxable supply under Section 7(1)(a) read with Schedule I of the CGST Act, 2017. The value of taxable supply shall be as stipulated under Rule 28 of the CGST Rules, 2017.

11. In view of the above, we rule as under:-

RULING

1. GST is liable to be paid in respect of properties of the applicant rented out to the partnership firm to carry out the business of the firm even if it is free of rent as the activity is in furtherance of business and amounts to supply as per Section 7(1)(a) read with Schedule I of the CGST/TNGST Act, 2017.
2. The value to be adopted for the purposes of GST shall be as per Rule 28 of the CGST/TNGST Rules, 2017


Smt. K.LATHA
Member (SGST)


Shri T.G.VENKATESH
(Member CGST)



To
M/s. SHANMUGA DURAI
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// BY SPEED POST WITH ACK.DUE //

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