

**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 09/2022
Dated: 14-03-2022**

Present:

1. Dr.M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes . . . Member (State Tax)

2. Sri. T. Kiran Reddy,
Additional Commissioner of Customs & Indirect Taxes ... Member (Central Tax)

1.	Name and address of the Applicant	M/s. PANKAJ ENTERPRISES, Door No 29, Sharada Colony, 3 rd Stage, 4 th Block, 7 th "B" Main Road, Basaveshwaranagar, Bengaluru-560079
2.	GSTIN or User ID	292100000275ARY
3.	Date of filing of Form GST ARA-01	24-08-2021
4.	Represented by	Sri Paresh Shah ,Chartered Accountant and DAR
5.	Jurisdictional Authority - Centre	-
6.	Jurisdictional Authority - State	ACCT, LGSTO-70A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.2,500-00 each under CGST and KGST Act vide ICIC21082900322376 Dated 19-08-2021 and Rs.2,500-00 each under CGST and KGST Act vide ICIC21082900449361 Dated 23-08-2021

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s Pankaj Enterprises, Door No 29, Sharada Colony, 3rd Stage, 4th Block, "B" Main Road, Basaveshwaranagar, Bengaluru-5600791, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with



Rule 104 of the 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 an individual and is not registered under GST, but intends to start business as service provider in construction and sale of commercial immovable properties. The applicant has sought advance ruling in respect of the following question:

i. Determination of the taxable value under GST Act, 2017 of Immovable Constructed Commercial Property without any occupancy or Completion Certificate where the area of the land exceeds 500 square meters or the number of Apartments proposed to be developed exceeds 8 inclusive of all phases particularly when the actual Guidance value fixed by the Competent Government Authority is more than the Value of Sale Consideration stated in the absolute Sale Deed registered by the Builder in favour of the Purchaser.

3. **Admissibility of the application:** The question is about “determination of the time and value of the supply of the goods or services or both” and hence is admissible under Section 97(2)(c) of the CGST/KGST Act 2017.

4. **Brief Facts of The Case:** The applicant furnishes some facts relevant to the issue:

4.1 The applicant states that he intends to start a business as service provider in construction and sale of commercial immovable properties.

4.2 The applicant sought clarification with respect to determination of the taxable value of the commercial immovable property for the purpose of GST liability i.e. whether the sale consideration mentioned in the sale deed between the builder and the proposed purchaser should be considered as taxable value or Transaction value of the said immovable property or the guidance value fixed by the state government authorities for the purpose of the registration of such property.

4.3 This office has received the comments from the office of the Assistant Commissioner (Legal) Central tax vide reference number IV/16/32/2017 Legal West Dated 05-10-2021 as under:

“3. Shri Pankj Sharad Shah vide his application dated 24.08.2021 to the authority on Advance Ruling has sought clarification on the value to be adopted for payment of GST/Central Tax in respect of the construction and sale of commercial immovable property; whether the value to be adopted is the guidance value or sale consideration, particularly when the guidance value fixed by the local authority is more than the sale value.

4. As per Schedule II Para 5(b) of Sec.7 of CGST Act 2017, 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 issue of completion



certification is termed as "Supply of Service". Thus, construction and sale of complex or building or civil structure supplied on receipt of amount / advance before obtaining the completion certification / first occupancy constitute supply of service and the activity is a taxable event under the CGST Act, 2017. In the instant case supply construction and sale of residential complex with more than eight dwelling units or commercial property exceeding the area of 500 sq. Meter is taxable under CGST Act, 2017 and the person engaged in supply of the same is required to register under Sec 22 of CGST Act, 2017 and liable for payment of Central GST / IGST on the value of supplies under Sec. 15 of CGST Act, 2017.

5. As per Section 15(1) of CGST Act, 2017, the value of 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, including the non-monetary consideration, if any, where the supplier and the recipient of the supply are not related and the price is sole consideration for supply. Relevant portion of Section 15(1) of CGST Act, 2017 is reproduced below by verbatim;

Sec. 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;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount



of subsidy shall be included in the value of supply of the supplier who receives the subsidy.....

6. Further vide serial no. 3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended vide notification no. 1/2018 Central Tax (Rate) dated 25.01.2018, it has been specified that "Provisions of paragraph 2 of this notification shall apply for the valuation of the service. The extant provision of para 2 is reproduced below;

"2. In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value if transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. -For the purposes of this paragraph, "total amount" means the sum total of, - (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease."

7. Thus, from the above it is evident that transaction value in cases involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

8. Regarding the cases where the transaction value is less than the Guidance value prescribed by the Karnataka State Stamps and Registrations Department, it is to state that the Guidance Value is the minimum value below which no property transaction can be accomplished. It is the least value at which one can register a property. The Guidance Values are published by the Dept. of Stamps & Registration in Karnataka under the Stamp Act. Thus it has legal force.

9. Guidance Value is applicable to both plots and constructed properties. As per the law, even if the sale value of a property is lower than Guidance Value then the property has to be registered at Guidance value. However when the Sale value of a property is higher than Guidance Value then the property has to be registered at sale value. The government strives to keep Guidance Value as close to market value as possible. When



property guideline value is lower than its market value, it tends to a number of property deals where only the property guideline value is mentioned in the sale document and balances are made in cash. Generally, the market value of a property is higher than its guideline value, and the difference between market value and guideline value often ends up becoming the 'cash component' in the deal, which is considered as a source of black money generation.

10. Where a property is being sold at price lower than its guidance value or stamp duty value then not only the seller of the property but the buyer also will be at loss because of Section 56 (2) (vii)(b) of the Income Tax act. As per the provisions contained under the section 56(2)(vii)(b) *ibid*, if the stamp duty value (Guidance Value) of a property exceeds the purchase consideration (Sale Value) by more than Rs.50,000 then, the difference amount (between the Stamp Duty Value and the Purchase Consideration) will be treated as Income under the head "income from other sources."

11. In GST, the Guidance value being more than the transaction value may indicate payment of additional consideration, which is required to be looked into and if there is any evidence or no proper explanation from the taxpayer as to reason for lesser transaction value the same can be rejected. This is so when the Guidance value is prescribed by an Act of Government. Therefore in such situations, additional consideration in the transaction needs to be examined.

PERSONAL HEARING/PROCEEDINGS HELD ON 07.10.2021

5. Sri Paresh Shah, Chartered Accountant and Duly Authorized Representative of the applicant appeared for personal hearing proceedings held on 07.10.2021 before this authority and they reiterated the contentions made in the application and also explained the process in detail.

FINDINGS & DISCUSSION

6. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are *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.

7. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by the applicant and also their submissions made by their learned representative during the time of hearing.



8. The applicant has sought clarification about determination of taxable value of commercial immovable property for the purpose of GST liability i.e whether the sale consideration mentioned in the sale deed between builder and proposed purchaser or guidance value fixed by the state government authorities for the purpose of registration should be considered as taxable value for the purpose of GST liability.

9. Section 15 of CGST Act 2017 deals with “value of taxable supply” and the same is reproduced below:

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;

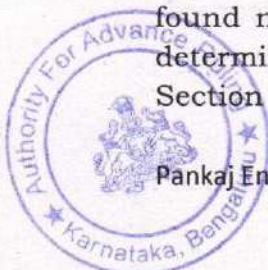
(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

10. From the above, it is clear that the GST Act contemplates to treat the transaction value as the value of supply unless the same is rejected and the value determined as per Section 15 of the GST Act. It does not contemplate to consider a guidance value prescribed under another legislation to be deemed to be the value of the supply, unless the transaction value itself is disputed and found not acceptable under Section 15 of the GST Act. In the latter case, the determination of the value of such supply shall be made as per the provisions of Section 15 of the GST Act.



11. However, in case of apartments, the land value is fixed at one third of the value of the apartment involving the transfer of land along with the building, in Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. In such cases, the value of land is calculated as per the above specification and no other value is acceptable for the said land value.

12. In view of the foregoing, we pass the following

RULING

The taxable value under the GST Act of construction of immovable plots without occupancy certificate needs to be determined as per the transaction value and such value if found to be not acceptable, has to be determined as per the principles laid down under Section 15 of the GST Act, 2017


(Dr.M.P.Ravi Prasad)

Member
MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru - 560 009

Date:


(T. Kiran Reddy)

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 Assistant Commissioner of Commercial Taxes, LGSTO-070 A, Bengaluru
4. Office Folder.

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