

**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 28 / 2023

Dated: 24.08.2023

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri Kiran Reddy T
Additional Commissioner of Customs & Indirect Taxes Member (Central)

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| 1. | Name and address of the applicant | M/s. Vinod Kumari Goyal, No. 579, 14 th Cross, J P Nagar, Phase I, Bengaluru - 560 078 |
| 2. | GSTIN or User ID | 29AEOPG0891F1ZA |
| 3. | Date of filing of Form GST ARA-01 | 04-05-2023 |
| 4. | Represented by | Sri Sanjay Dhariwal, Chartered Accountant |
| 5. | Jurisdictional Authority - Centre | The Principal Commissioner of Central Tax, Bengaluru South GST Commissionerate, South Division-6, RANGE-DSD6, Bengaluru |
| 6. | Jurisdictional Authority - State | ACCT, LGSTO-090, 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 of Electronic Cash Ledger Reference No. DC2905230014345 Dated 03-05-2023 |

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

M/s. Vinod Kumari Goyal, No. 579, 14th Cross, J P Nagar, Phase I, Bengaluru - 560 078 (hereinafter referred to as 'The applicant'), having GSTIN 29AEOPG0891F1ZA have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of 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 proprietary concern registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The applicant is the owner of land and has entered into a joint development agreement (JDA) with M/s.

Total Environment Building Systems Private Limited, Bengaluru for development of residential apartments.

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

- i. *Whether Applicant being land owner not executing construction work, is liable to pay tax in respect of agreements to be entered with customers for sale of apartments (other than affordable) belonging to the Applicant's share before issuance of Completion Certificate in a project under JDA, area sharing model, where construction work is executed by developer and the developer is liable to pay tax on the portion of apartments to be handed over to the Applicant on or before issuance of Completion Certificate?*
- ii. *If Applicant is liable for tax, applicable rate of tax on sale of apartments before issuance of completion certificate?*
- iii. *If Applicant is liable for tax, whether Applicant can claim credit of tax charged by developer on the portion of apartments belonging to the Applicant where developer has opted for payment of tax under old scheme i.e., 18%?*
- iv. *If Applicant is liable for tax, whether Applicant can claim input tax credit on other expenses, other than tax charged by Developer for supply of apartments?*

4. Admissibility of the application: The question is about the “admissibility of input tax credit of tax paid or deemed to have been paid” and “determination of the liability to pay tax on any goods or service or both” is admissible under Section 97(2)(d) and 97(2)(e) of the CGST Act 2017.

5. BRIEF FACTS OF THE CASE: The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they are the owner of land measuring 5 Acres 39 Guntas at survey no. 32/1 and 33/2 situated at Talaghattapura, Uttarahalli Hobli, Bengaluru South Taluk. They have entered into a joint development agreement(JDA) on 30.03.2007 and Supplementary Agreement on 12.05.2008 with developer M/s. Total Environment Building Systems Private Limited, Bengaluru, in respect of 5 Acres of land for development of residential apartments.

5.2 The applicant has stated the important terms and conditions of JDA as below:

- (i) Cost of construction shall be borne by Developer;
- (ii) Both the parties have agreed to share the apartments in the ratio of 32% (for Applicant): 68% (for Developer);
- (iii) Apartments belonging to their share shall be the sole and absolute properties of the Applicant and Developer respectively;
- (iv) In consideration of the Applicant permitting the Developer to develop the property, the Developer has agreed to pay refundable deposit of Rs.4,50,00,000/-



- (v) The Applicant has agreed to pay the applicable tax on Applicant's share of construction activity, which is liable to pay tax in the hands of developer at the time of handing over apartments;
- (vi) The Applicant has also agreed to pay the statutory deposits and fees payable to the statutory authorities / local authorities i.e., BESCO & BWSSB etc., in respect of Applicant's share of apartments.

5.3 The applicant states that the Project is developed under the name "The Magic Faraway Tree Phase 2 & Phase 2A" on phase-wise basis. Project is registered under RERA, bearing registration number PRM/KA/RERA/1251/310/PR/171015/000424. Presently the developer is constructing phase II and it is in closure stage. The developer is in the process of seeking closure certificate from Local Authority (BBMP). The developer has commenced the project during pre-GST regime by obtaining Commencement Certificate from Bruhat Bengaluru Mahanagara Palike vide Certificate No. 15/2015-16, Dated: 02/03/2016. The developer is registered under the GST Law, having GSTN - 29AABCT9452F1Z2, registered office at No. 78/1, ITPL Main Road, Imagine Campus, EPI Zone, Whitefield, Bengaluru.

5.4 The applicant states that with effect from 01.04.2019 onwards GST structure on real estate services relating to residential apartments has been altered by giving an option to the dealers to continue with old rate of tax with ITC for an ongoing project and new rate of tax i.e., 1% (for affordable residential apartment) / 5% (other than affordable residential apartments) without ITC. Developer has exercised an option to pay tax under old scheme i.e., 18% with ITC as envisaged under Notification No.3/2019 dated: 29.03.2019.

6. Applicant's Interpretation of Law:

6.1 Applicant's view on question 1- The applicant submits that Section 7 deals with 'Scope of Supply' which inter alia include transactions in the nature of barter or exchange. The said provisions read as under:

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;

6.1.1 The applicant submits that the transaction under JDA falls under the terms barter or exchange, where applicant being land owner transfers development rights to the developer and the developer constructs apartments to the land owner. Both the supplies, i.e., transfer of development right and construction activity have been classified as supply of service under GST.

6.1.2 The applicant submits that as per Notification No.11/2017-CT(R) dated 28.06.2017 as amended by Notification No.3/2019 CT(R) dated 29.03.2019 and based on GST Council recommendations, new tax structure has been implemented for construction services with effect from 01/04/2019. As per the new tax structure system, for an

ongoing project an option was given either to opt for continuation of tax rate with old scheme i.e., 18% with ITC or new scheme i.e., 1.5% or 7.5% without ITC. Accordingly, developer has opted with old scheme (18% with ITC).

6.1.3 The applicant submits that under GST, the activity of construction of apartments to the extent of applicant's share in lieu of transfer of development right by the Applicant to the developer amounts to supply of service, which attracts tax in the hands of developer on or before the issuance of Completion Certificate in terms of Notification No. 6/2019, Dated: 29/03/2019.

6.1.4 The applicant submits that the above transaction falls under the definition of 'Works Contract' as defined under section 2(119) of the Act, which is classified as supply of service.

6.1.5 The applicant submits that one of the essential requirement for a transaction to fall under the definition of works contract is "transfer of property in goods (whether as goods or in some other form) involved in the execution of such contract". In other words, a contract for building or construction of an apartment should involve transfer of property from one person to another.

6.1.6 The applicant submits that in the present case, developer who is executing work for construction of an apartment, is the person who transfers property in goods (whether as goods or in some other form), therefore the transaction between developer and Applicant amounts to 'Works Contract' which attracts tax under GST Law in the hands of developer in terms of Notification No. 6/2019, Dated: 29/03/2019 on or before issuance of Completion Certificate in respect of apartments to be handed over to the Applicant.

6.1.7 The applicant submits that, once the transaction is liable to tax in the hands of developer the same transaction cannot be made taxable in the hands of applicant when applicant sells the apartment to his customer even if agreements are entered with customers before issuance Completion Certificate which sans transfer of property in goods (whether as goods or in some other form) from Applicant to the prospective customers.

6.1.8 The applicant is of the view that, in case of construction of building or apartments, transfer of property in goods happens only once and not on multiple times. In other words, during execution of work by the developer, goods are incorporated in the building, therefore there is a transfer of property in goods from the developer to the Applicant. Thereafter, there is nothing left to the Applicant to transfer goods to the prospective customers. Therefore, the subsequent transactions cannot be taxed once again in the hands of Applicant, which runs contrary to the definition of 'Works Contract' as defined under section 2(119) of the CGST & KGST Act, 2017.

6.1.9 The applicant submits that, in the absence of transfer of property in goods (whether as goods or in some other form) in the execution of contract, transaction cannot be termed as "Works Contract", therefore Applicant is not liable to pay tax on sale of



apartments to the customers belonging to her share even if such sale happens before issuance of Completion of Certificate.

6.2 Applicant's view on question 2 - The applicant submits that, without prejudice to the view expressed at issue 1, Notification No.3/2019, dated: 29.03.2019 has provided a onetime option for **registered person** to opt for payment of tax either with old scheme (i.e., 18% with ITC) or with new scheme (i.e., 7.5% without ITC).

6.2.1 The applicant submits that, conditions mentioned at column no. 5 of Notification No. 3/2019 at item (ie) & (if) specifically mention that, an option to choose rate of tax was provided up to 20th May 2019. If such option was not exercised it shall be deemed that, registered person has opted the rate under new scheme i.e., 7.5% without ITC.

6.2.2 The applicant submits that, during the time of implementing the new scheme, applicant was not registered under GST Law, hence applicant could not able to exercise an option.

6.2.3 In view of the above legal premise, the applicant is of the view that, if their transaction i.e., sale of residential apartments (other than affordable) to the prospective customers before issuance of Completion Certificate, attracts tax, the rate of tax shall be 7.5% as prescribed at item (ia) Sl.No. 3 of 11/2017 (Central Tax Rate) Dated: 28.06.2017 as amended vide Notification No. 3/2019 (Central Tax Rate) Dated 29/03/2019.

6.3 Applicant's view on question 3- The applicant submits that, under new scheme input tax credit is restricted to the developer but not for land owner. Therefore, they are eligible to claim credit of tax charged by the developer.

6.3.1 In this regard, applicant states conditions mentioned at column 5 of Notification No.3/2019, which reads as under

Explanation. -

(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,

(ii) "landowner-promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

(iii) the landowner-promoter shall be eligible to utilise the credit of tax charged to him by the developer-promoter for payment of tax on apartments supplied by the landowner promoter in such project.

6.3.2 On perusal of the above provisions, the applicant is of the view that land owner is eligible to claim input tax credit charged by developer, irrespective of whether developer had opted for payment of tax under old scheme or new scheme.

6.3.3 The applicant submits that the recommendations of 43rd GST Council Meeting, makes clear that the intention of the Legislature was to avoid multiple taxes on the same

transaction, therefore land owner has been allowed to claim and utilize the input tax credit which is charged by developer to the Applicant.

6.4 Applicant's view on question 4 - The applicant submits that they will be incurring expenses towards brokerage, marking and furnishing etc., for sale of apartments. As per input & input service definition U/s. 2(59) and 2(60) of the CGST & KGST Act, 2017, these are the goods or services used or intended to be used in the course or furtherance of business.

6.4.1 The applicant submits that, as per section 17(1) & (2) of the Act, on the essential condition for claiming input tax credit is "use or intended to be used in the course of furtherance of taxable business".

6.4.2 Without prejudice to the submissions made at issue 1, the applicant submits that, if sale of apartments to the prospective customers, before issuance of completion certificate is liable for tax, Applicant fulfils the essential conditions prescribed U/s. 17(1) & (2) of the CGST & KGST Act, i.e., "use or intended to be used in the course of furtherance of business" which is taxable in nature, hence they would be eligible to claim input tax credit on expenses to be incurred towards brokerage, marketing and furnishing etc.,

PERSONAL HEARING / PROCEEDINGS HELD ON 18.05.2023

7. Sri Sanjay Dhariwal, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 18.05.2023 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. 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.

9. 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 their authorized representative and also their submissions made during the time of hearing.

10. The first question is taken into discussion first and the same reads as under:

Whether Applicant being land owner not executing construction work, is liable to pay tax in respect of agreements to be entered with customers for sale of apartments (other than affordable) belonging to the Applicant's share before issuance of Completion Certificate in a project under JDA, area sharing model, where construction work is executed by developer & developer is liable to pay tax on the portion of apartments to be handed over to the Applicant on or before issuance of Completion Certificate?

10.1 The applicant is a landowner and he has entered into an agreement with the developer and getting the construction services done of his share of the developed property. The landowner wants to know that whether GST is attracted if the apartments of his share of developed property so being constructed are entered into agreement for sale before the completion certificate is issued. This issue is examined.

10.2 Supply is defined under Section 7 of the CGST Act, 2017 as under:

"7. Scope of Supply

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

*(a) all form 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;
...*

"works contract" is defined in clause (119) of section 2 of the CGST Act as under:

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

In the pertinent question, the point to be noted is that it is a contract for construction of an immovable property where in the transfer of property in goods is involved in the execution of such contract by the applicant to the prospective purchaser of apartment and hence is a works contract.

10.3 Entry No. 6 of Schedule II to the CGST Act clearly states as under:

"6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2; and

(b)

Further entry no.5 of Schedule II to the CGST Act also clearly states as under:

"5. Supply of services

The following shall be treated as supply of services, namely:



(a)

(b) *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 the issuance of completion certificate, where required, by the competent authority or after its first occupancy, whichever is earlier.*

. . . .”

10.4 From the above, it is clear that the activity on which the applicant has sought ruling is related to construction of a complex or building or a part thereof, and the same is made more clear by the inclusive portion of the above sub-entry i.e., a building intended for sale to a buyer. The exclusion for this is only where the entire consideration has been received after the issuance of completion certificate or after its first occupancy, whichever is earlier. Since in the present case, the applicant states that the agreement for sale of an apartment is going to be made before the receipt of completion certificate and a part consideration is going to be received at the time of agreement, the activity is a service as per entry 5 (b) and also entry 6(a) of Schedule II to the CGST Act.

10.5 The contention of the applicant is that once the transaction is liable to tax in the hands of the developer, the same transaction cannot be made taxable in the hands of the applicant when the applicant sells the apartment to his customers even if agreements are entered with customers before issuance of completion certificate which sans transfer of property in goods from applicant to the prospective customers is incorrect. The developer is providing construction services to the applicant and the applicant is providing again the construction services to the prospective customers. Hence there are two supplies involved, first from the developer to the applicant and the second from the applicant to the prospective customers.

10.6 It is also pertinent to note that the agreements for supply of constructed apartments with the prospective purchasers are entered by the applicant which is a supply of service as per section 7 of the CGST Act and there is no direct supply of construction services to the prospective purchasers by the developer. The developer is only providing services to the applicant and not to the prospective purchasers.

10.7 The applicant is acting as a supplier of works contract service to the prospective purchasers of apartments and hence he is a supplier under Section 7(1) of the CGST Act, 2017 liable to pay tax under Section 9(1) of the CGST Act, 2017.

11. Regarding the second question, whether the applicant, if liable for tax, what is the applicable rate of tax on sale of apartments before issuance of completion certificate, the following is noted:

11.1 Notification No.3/2019- Central Tax (Rate) dated 31.03.2019, item (i) of entry No.3 states as under:



| Sl. No | Chapter, Section or Heading | Description of Service | Rate (per cent.) | Condition |
|--------|---|--|------------------|---|
| 3 | Heading 9954 (Construction services) | <p>(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019, or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p> | 0.75% | <p>Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;</p> <p>Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that the registered person shall pay, by debit in the electronic ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> |
| | | <p>(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April 2019, or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where</p> | 3.75 | <p>Provided also that where a registered person (landowner-promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer-promoter) against consideration, wholly or partly, in the form of construction of apartments, -</p> <p>(i) the developer-promoter shall pay tax on supply of construction of apartments to the landowner-promoter, and</p> <p>(ii) such landowner-promoter shall be eligible for credit of taxes charged from him by the</p> |



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| | <p>required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p> | | <p>developer-promoter towards the supply of construction of apartments by the developer-promoter to him, provided the landowner-promoter further supplies such apartments to his buyers before the issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.</p> |
| | <p>(ib) Construction of commercial apartments (shops, offices, godowns, etc.) by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p> | 3.75% | <p>Explanation.-</p> <p>(i) "developer-promoter" is a promoter who constructs or converts a building into apartments or developer a plot for sale,</p> <p>(ii) "landowner-promoter" is a promoter who transfers the land or development rights or FSI to a developer-promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.</p> <p>Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges, etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;</p> <p>Provided also that inputs and inputs services on which tax is</p> |
| | <p>(ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1st April 2019, or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer,</p> | 0.75% | |



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| | <p>wholly or partly, except where the entire consideration has been received after the issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p> | | <p>paid on reverse charge basis shall be deemed to have been purchased from registered person;</p> <p>Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 percent, tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;</p> |
| | <p>(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP, which commences on or after 1st April 2019, or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p> | 3.75% | <p>Provided also that notwithstanding anything contained hereinabove, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying tax in relation to such supply of cement;</p> <p>(Please refer to the illustrations in annexure III)</p> <p>Explanation.-</p> <p>1. The promoter shall maintain project wise account of inward</p> |



supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by the end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.

3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No.4(D)(2)]

(ie) Construction of an apartment in an ongoing project under any of the schemes specified in 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 (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item.

6%

Provided that is case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th May, 2019;

Provided also that where the option is not exercised in Form at Annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as



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| | <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p> | <p>the case may be, shall be deemed to have been exercised;</p> <p>Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May, 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised;</p> |
| | <p>(if) Construction of a complex, building, civil structure or a part thereof, including,-</p> <p>(i) commercial apartments (shops, offices, godowns, etc.) by a promoter in a REP other than RREP.</p> <p>(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id), and (ie) above 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.</p> <p>Explanation.- For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to</p> | |



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| | | <p><i>conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</i></p> | | |
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11.2 With respect to the supply of works contract services i.e. construction services provided in the supply of apartments to the prospective purchasers of apartments, the applicable tax rate is to be determined by the entries from (ia) to (id) depending on the project whether the apartment is a

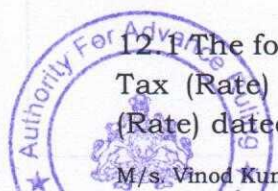
- (a) affordable residential apartments in a Residential Real Estate Project or
- (b) residential apartments other than affordable residential apartments in a Residential Real Estate Project, or
- (c) commercial apartments (shops, offices, godowns, etc.) in an Residential Real Estate Project, or
- (d) affordable residential apartments in a Real Estate Project other than Residential Real Estate Project, or
- (e) residential apartments other than affordable residential apartments in a Real Estate Project other than a Residential Real Estate Project, or
- (f) commercial apartments in a Real Estate Project other than a Residential Real Estate Project.

11.3 The question of the applicant to opt for the taxation as an ongoing project in Annexure IV of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.3/2019- Central Tax (Rate) dated 29.03.2019 does not arise as he was not registered at the time allowed for filing of such option and the option is only for the registered person. The claim that the developer has opted for such a scheme does not entitle the applicant for that scheme, as the developer is a different person from the applicant.

11.4 Hence the applicant is liable to pay tax as per entries 3(i) to 3(id) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.3/2019- Central Tax (Rate) dated 29.03.2019 depending on the nature of the apartment, whether it is a residential or commercial apartment; if the apartment is a residential apartment, whether it is affordable category or not and whether the project is a residential real estate project or a real estate project other than residential real estate project.

12. Regarding the third question: if the applicant is liable to pay tax, whether applicant can claim credit of tax charged by the developer on the portion of apartments belonging to the applicant where developer has opted for payment of tax under old scheme i.e. 18%?, the following are observed:

12.1 The fourth proviso to the entries 3(i) to 3(id) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.3/2019- Central Tax (Rate) dated 29.03.2019 reads as under:



“Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer-promoter) against consideration, wholly or partly, in the form of construction of apartments –

- (i) the developer-promoter shall pay tax on supply of construction of apartments to the landowner-promoter, and
- (ii) such landowner-promoter shall be eligible for credit of taxes charged from him by the developer-promoter towards the supply of construction of apartments by the developer-promoter to him, provided the landowner-promoter further supplies such apartments to his buyers before the issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.

Explanation:

- (i) “developer-promoter” is a promoter who constructs or converts a building into apartments or developer a plot for sale,
- (ii) “landowner-promoter” is a promoter who transfers the land or development rights or FSI to a developer-promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.”

12.2 From the details provided by the applicant that he shall be further supplying the apartments to his buyers before the issuance of completion certificate or first occupation, whichever is earlier and developer promoter is charging the tax towards the supply of construction of apartments by the developer-promoter to him, the applicant is eligible to claim the input tax credit provided that the applicant pays tax on the supply of apartments which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter. Since the applicant is liable to tax at an amount which is lower than the amount of tax charged by the developer promoter, the applicant is not eligible to claim the input tax credit on the amount of tax charged by the developer to the applicant.

12.3 Further, Section 16(1) of the CGST Act stipulates that only a registered person shall be eligible to claim the input tax credit and the applicant is registered only from 13.01.2023, the eligibility of the claim of input tax credit only depends on the date of the invoice (i.e. time of supply of services) by the developer to the applicant.

12.4 Hence the applicant is eligible to claim input tax credit on the tax charged by the developer for supply of construction services subject to the two conditions

- (a) he is a registered dealer on the date the time of supply of construction services falls
- (b) the amount of tax payable by the applicant for his supply of apartments is more than the amount of tax charged by the developer from the applicant for the supply of construction services.



13. Regarding the fourth question, if the applicant is liable for tax, whether the applicant can claim input tax credit on other expenses, other than tax charged by developer for supply of apartments? the following points are observed:

13.1 The first proviso to entries 3(i) to 3(id) clearly mentions that the central tax shall be paid in cash, that is, by debiting the electronic cash ledger only.

13.2 Further, the second proviso clearly mentions that the credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in case of REP other than RREP and in Annexure II in the case of RREP.

13.3. It is also stated in the third proviso that the registered person shall, pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP.

13.4 All the above, point out to the fact that input tax credit is not eligible to be claimed on any of the expenses other than the tax charged by the developer for the construction services subject to its eligibility if all other conditions are satisfied.

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

RULING

1. *The applicant is acting as a supplier of works contract service to the prospective purchasers of apartments and hence he is a supplier under Section 7(1) of the CGST Act, 2017 liable to pay tax under Section 9(1) of the CGST Act, 2017.*
2. *The applicant is liable to pay tax as per entries 3(i) to 3(id) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.3/2019- Central Tax (Rate) dated 29.03.2019 depending on the nature of the apartment, whether it is a residential or commercial apartment; if the apartment is a residential apartment, whether it is affordable category or not and whether the project is a residential real estate project or a real estate project other than residential real estate project.*
3. *The applicant is eligible to claim input tax credit on the tax charged by the developer for supply of construction services subject to the two conditions*
 - (a) *he is a registered dealer on the date the time of supply of construction services falls*
 - (b) *the amount of tax payable by the applicant for his supply of apartments is more than the amount of tax charged by the developer from the applicant for the supply of construction services.*



4. *Input tax credit on other expenses, other than tax charged by developer for supply of apartments, is not eligible to be claimed.*

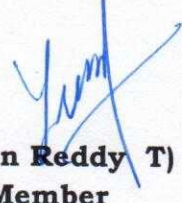


(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru - 560 009
Date: 24.08.2023



(Kiran Reddy T)

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 Central Tax, Bengaluru South GST Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-090, Bengaluru.
5. Office Folder.

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