



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

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar I.R.S., Additional Commissioner (Central Taxes)

A.R.Com/12/2023

Date:09.02.2024

TSAAR Order No. 05/2024

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Navya Nuchu, H.NO.1-1-19, Brindavan Colony, Near Bank of India, Malkajgiri, Hyderabad, Telangana-500047 (36ACPPN2902H1ZJ) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

- 4.1 They have entered into agreement with the Scheduled Castes Development Department, Hyderabad District, Government Welfare Departmental Hostels, Government Social Welfare College Boys Hostel (Govt SWCBH) to rent out the property to run Social Welfare College Boys Hostel)
- 4.2 Schedule Caste Development Department is providing hostel facility to Students of Scheduled Caste weaker sections an backward classes.
- 4.3 They are providing to the State Government pure services by way of any activity in relation to any function entrusted to a Municipality / Panchayat under the article 243W/243G of the constitution of India. The same is covered under the entry number 3 of Notification No. 12/2017, dt. 28-06-2017 and hence exempted under the GST Act, 2017.

5. QUESTIONS RAISED:

1. Whether rent received from the Govt. SWCBH is taxable or not?

6. PERSONAL HEARING:

The Authorized representative of the unit namely Smt P. Sumalatha, CA, attended the personal hearing held on 23.05.2023. The authorized representative reiterated averments in the application submitted

7. DISCUSSION & FINDINGS:

a. The applicant is providing building property on rent to schedule caste development department, Hyderabad district, Government welfare departmental hostels, Government social welfare college boys hostels (Govt. SWCBH.). The applicant is one the opinion that they are providing pure services by way of renting the building property to the Government and therefore the same is exempt under entry 3 of Notification 12/2017.

b. The exemption entry at serial no. 3 of notification 12/2017 reads as follows:

“Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution”.

It is seen from the contracts entered by the applicant that they are providing their buildings on rent to Government in urban areas buildings. Therefore, these pure services provided to the State Government shall be by way of any activity in relation to any function a Municipality under article 243W of the Constitution. The Article 243W of Constitution of India, municipalities may be entrusted with the responsibilities for:

Preparation of plans for economic development and social justice.

Performance of functions and implementation of schemes in relation to matters listed in 12th schedule.

Under the schedule 12 to Constitution of India, the functions and schemes are as follows:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and up gradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

The services of the applicant shall be provided in relation to the above listed items in order to be eligible for the exemption under serial no. 3 of Notification 12/2017.

The Hon'ble Supreme Court of India in the case of Doypack Systems Pvt. Ltd. vs. Union of India (UOI) and Ors. (12.02.1988 - SC) AIR 1988 SC 782 clarified the meaning of the expression "in relation to" as follows:

"In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 521 where it is stated that the term 'relate' is also defined as meaning to ring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to".

Similarly the Hon'ble Supreme Court of India in the case of Madhav Rao Jivaji Rao Scindia Vs Union of India AIR 1971 SC 530 observed that the expression "relating to" means to bring into relation or establish a relation. It was further clarified that there should be a direct and immediate link with a covenant and that there cannot be any independent existence outside such covenant.

Under serial no. 3 of Notification No. 12/2017 pure services provided "in relation to any function" entrusted to a municipality under Article 243W of the Constitution of India is eligible for exemption from GST. Clearly the exemption should be directly related to the functions enumerated under Article 243W of the Constitution of India i.e., those functions listed under 12th schedule. The Schedule 11 to the constitution of India contains "Education including primary and secondary schools" at serial no. 17. However the Schedule 12 does not contain such specific entry. Therefore the applicant is not eligible for this exemption.

The applicant is providing renting of buildings to GHMC and in municipalities and there is no direct relation between the services provided by the applicant and the functions discharged by the GHMC under Article 243W read with schedule 12 to the Constitution of India. Therefore these services do not qualify for exemption under Notification No. 12/2017.

8. In view of the foregoing, we rule as follows:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
Whether rent received from the Govt. SWCBH is taxable or not?	Yes. Taxable


(S.V. KASI VISWESWARA RAO)
(ADDL. COMMISSIONER (STATE TAXES))


(SAHIL INAMDAR)
(ADDL. COMMISSIONER (CENTRAL TAXES))

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

To
M/s. Navya Nuchu,
H.NO.1-1-19, Brindavan Colony,
Near Bank of India, Malkajgiri,
Hyderabad, Telangana-500047.

Copy submitted to :

1. The Commissioner (State Taxes) for information.
2. The Commissioner (Central Taxes), Secunderabad Commissionerate, 4th Floor, GST Bhavan, Hyderabad, Telangana - 500004.

Copy to:

3. The Joint Commissioner (State Tax), Malkajgiri Division, Malkajgiri N 1 Circle.