

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 42 / 2021
Dated : 30-07-2021

Present:

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

1.	Name and address of the applicant	M/s. Starworth Infrastructure and Construction Limited, No.130/1, Ulsoor Road, Bengaluru-560 042.
2.	GSTIN or User ID	29AANCS0437M1ZT
3.	Date of filing of Form GST ARA-01	19-02-2021
4.	Represented by	Sri Dayanand, Chartered Accountant & Duly Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Bengaluru East GST Commissionerate East Division-2, Bengaluru (RANGE-EED2)
6.	Jurisdictional Authority - State	ACCT, LGSTO-45, 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 & Rs.5,000-00 under SGST Act vide CIN ICIC21022900063078 dated 08/02/2021

ORDER UNDER SECTION 98(4) OF CGST ACT, 2017
AND UNDER SECTION 98(4) OF KGST ACT, 2017

M/s. Starworth Infrastructure and Construction Limited, No.130/1, Ulsoor Road, Bengaluru-560042 having GSTIN 29AANCS0437M1ZT, 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 private limited company 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) engaged in the business of executing construction contracts.

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

i. *Whether the construction service provided by the Applicant to M/s. Provident Housing Limited under the project "Provident Neora & Provident Capella" & to M/s. Puravankara Limited under the project "Provident Parksquare," qualifies for application of lower rate of CGST @ 6% and SGST @ 6% as provided in Sl.No.3-Item (V)-sub item (da) vide Notification No.11/2017-CT (Rate) dated 28-06-2017?*

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

BRIEF FACTS OF THE CASE:

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

5.1 The applicant states that they are engaged in the business of civil works contract (construction of residential apartments). Further they have entered into a contract agreement with Provident Housing Limited and Puravankara Limited ('Developer') for construction of residential apartment project.

5.2 The applicant is the main contractor to M/s. Provident Housing Limited and M/s. Puravankara Limited (developer), who is developing the project which is having low-cost houses up to a carpet area of 60 square metres per unit and qualifies as affordable housing project which has been given infrastructure status vide Notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017.

5.3 The applicant has undertaken three projects, one from M/s Puravankara Limited in the name of "Provident Parksquare" and two projects from M/s Provident Housing limited in the name of "Provident Neora" & "Provident Capella" & details are as under.

Sl No	Name of the Project	No of Apartments	Carpet Area of the project/each apartment	Date of Commencement of the Project
1	Provident Neora	763	Less Than 60 Square meter	November 2018 Onwards
2	Provident Capella	249	Less Than 60 Square meter	October 2019 onwards
	Provident Parksquare	2070	Some of them are less than 60 sq. mtr. and some are more than 60 sq mtr	



6. Applicant's Interpretation of Law:

6.1 The applicant is of the view that the projects qualify as affordable housing project since more than 50% of the units are less than 60 square metres.

6.2 The applicant contended that Provident Neora, Provident Capella, Provident Parksquare qualifies as Low-cost housing project with the infrastructure status in terms of entry number 3 (v) (da) of the Notification No 11/2017 – (Central Tax rate) dated 28-06-2017 as amended read with notification of the Government of India, Ministry of Finance, Department of Economic affairs, vide F.No 13/6/2019 -INF, dated 30-03-2017.

6.3 As per entry number 3 (v) (da) of the Notification No 11/2017 – Central Tax (Rate) dated 28-06-2017 “Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 [other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above], supplied by way of construction, erection, commissioning, or installation of original works pertaining to (da) low-cost houses upto a carpet area of 60 square metres per house in an affordable housing project **which has been given infrastructure status vide Notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017.**

6.4 The applicant explained the definition of affordable housing as per the Notification No.13/6/2009-INF, dated the 30th March 2017 and has stated that infrastructure status has been accorded to the affordable housing. Affordable housing means a housing project using at least 50% of the Floor Area Ratio (FAR) / Floor Space Index (FSI) for dwelling units with a carpet area of not more than 60 square metres. Therefore, the said projects fall within the infrastructure status as per the above notification.

6.5 By relying on the above entry, any person providing the composite works contract would be eligible to apply the rate of tax of CGST 6% and SGST 6% irrespective of whether he is the developer, main contractor or sub-contractor since no such restrictions have been envisaged in the said entry.

6.6 The applicant is of the view that the supply made by them does not fall under entry (i), (ia), (ib), (ic), (id), (ie) and (if) since they are not developers and not selling the units to the customers. Hence, this requirement is also fulfilled.

6.7 The applicant has also given inference of the advance ruling passed in the case of M/s Yash Nirman Engineers and Contractors, the learned Advance Ruling Authority has ruled the rate of tax at 12% on the similar facts.

6.8 In view of the above, the applicant is of the view that the contract executed by them is eligible for reduced rate of tax under Entry Sl.No.3-Item (v)-sub item (da) vide Notification No.11/2017-CT (Rate) dated 28-06-2017.



PERSONAL HEARING / PROCEEDINGS HELD ON 30-06-2021

7. Sri Dayanand, Chartered Accountant and Duly Authorised Representative of the applicant appeared for personal hearing proceedings held on 30-06-2021 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 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 as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issues involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

10. On verification of the records, it is observed that the applicant has been awarded a project from M/s Puravankara Limited in the name of "Provident Parksquare" and two projects from M/s Provident Housing limited in the name of "Provident Neora" & "Provident Capella".

11. The applicant desires to know whether his services supplied to the developer is covered under Entry No. 3(v)(da) of **Notification 11/2017 Central Tax (Rate) dated 28/06/2017** (hereinafter the Rate Notification), as amended from time to time.

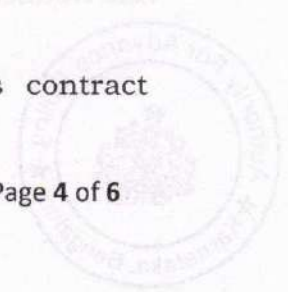
11.1 The entry 3(v)(da) reads as under:

*"(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works **pertaining to**, -*

(da) low cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017."

11.2 The three conditions to be satisfied for any service to be covered under the above entry are as under:

(a) The services supplied by the applicant should be a works contract services under the section 2(119) of the CGST Act.



- (b) Whether the service provided by the applicant is pertaining to the project in (c) and is an original work.
- (c) The project should be an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017.

12. The above contract is verified and found that the applicant has entered into a contract for construction of a housing project which is an immovable property. Section 2(119) of the CGST Act, 2017 reads as under:

"2(119) "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;"

Since the contract is for construction of an immovable property, the same is covered under works contract as per section 2(119) of the CGST Act, 2017.

13. Secondly, coming to the meaning of the term "original works", clause (zs) of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 provides for the meaning of "Original works" as under:

"(zs) "original works" means- all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Though the above definition is in relation to Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017, the same can be used for the interpretation of the term "original works" in respect of entries in Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017.

13.1 The contract is for construction of new apartments and hence is covered under the definition of "original works" and hence second condition is also satisfied.

14. Regarding the condition whether the project is an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017, the applicant has not provided any evidence in support of his claim that the above projects are covered under the said notification.



14.1 If the above projects are affordable housing projects and are given the infrastructure status as per notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017, the contract of supply by the applicant would be covered under the Entry No. 3(v)(da) of Notification 11/2017 Central Tax (Rate) dated 28.06.2017 and liable to tax at the rate of 6% under the CGST Act, 2017 and at 6% under the SGST Act.

14.2 In case the projects are not an affordable housing projects and are not given the infrastructure status as per notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017, the contract of supply by the applicant would not be covered under the Entry No. 3(v)(da) of Notification 11/2017 Central Tax (Rate) dated 28.06.2017, but covered under Entry No. 3(xii) of Notification 11/2017 Central Tax (Rate) dated 28.06.2017 and liable to tax at the rate of 9% under the CGST Act, 2017 and at 9% under the SGST Act.

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

RULING

The construction service provided by the applicant to M/s. Provident Housing Limited under the projects "Provident Neora and Provident Capella" and to M/s. Puravankara Limited under the project "Provident Parksquare," are liable to tax at the rate of 6% under the CGST and at the rate of 6% under KGST Act as provided in Sl.No.3-Item (v)-sub item (da) of Notification No.11/2017-CT (Rate) dated 28-06-2017, if the projects are affordable housing projects and are given the infrastructure status as per notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No.13/6/2009-INF, dated the 30th March, 2017, else, the services will be liable to tax at the rate of 9% under the CGST Act and at the rate of 9% under KGST Act as provided in Sl.No.3-Item (xii) of Notification No.11/2017-CT (Rate) dated 28-06-2017.


(Dr. M.P. Ravi Prasad)
Member
Karnataka Advance Ruling Authority
Place : Bengaluru - 560 009
Date : 30-07-2021


(Mashhood Ur Rehman Farooqui)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,
The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Customs & Indirect Taxes, Bangalore East GST Commissionerate,
4. The Asst. Commissioner of Commercial taxes, LGSTO-4, Bengaluru.
5. Office Folder.

