

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

- (1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)**

ARN No.	AD270121027462L
GSTIN Number, if any/ User-id	27AAHFR5520P1ZQ
Legal Name of Applicant	M/s. Gurunanak Romell LLP
Registered Address/Address provided while obtaining user id	101, Gharkul CHS, 1 st floor, Azad Road Vile Parle East Maharashtra, Mumbai 400057.
Details of application	GST-ARA, Application No. 70 Dated 29.01.2021
Concerned officer	MUM-VAT-C-515, Mumbai-010.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Service Provision
B	Description (in brief)
	M/s. Gurunanak Romell LLP having GSTIN 27AAHFR5520P1ZQ is engaged in real estate projects as a Developer and has its registered office at B wing, 101, Gharkul ChS, Azad Road, Vile Parle East, Mumbai – 400057.
Issue/s on which advance ruling required	<ul style="list-style-type: none"> Determination of the liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO. GST-ARA-70/2020-21/B- 79

Mumbai, dt. 08/06/2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s. Gurunanak Romell LLP**, the applicant, seeking an advance ruling in respect of the following question.

- Whether Entry No. 3(v) (da) of Notification 11/2017 Central Tax (Rate) dated 28/06/2017, as amended time to time, applies to the works contract service received from the contractors?**
- Whether the benefit of concessional rate would be available to construction of common amenities such as club house, swimming pool and amenities of like nature?**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

2.1 *M/s. Gurunanak Romell LLP (Applicant) having GSTIN 27AAHFR5520P1ZQ is undertaking certain Residential Real Estate Projects (RREP) primarily having residential apartments with a carpet area upto 60 sq. mts. Applicant wants to know whether Entry No. 3(v) (da) of Notification 11/2017-CT (Rate) dated 28/06/2017, as amended time to time, applies to the 'works contract service' received from its contractors.*

2.2 *As per the applicant, in the impugned project, more than 50% of Floor Space Index (FSI) is utilized towards construction of units (below 60 sq. mts.) and thus, the Project would qualify as an 'Affordable Housing Project' (AHP) which has been given 'Infrastructure Status' under the Notification F. No. 13/6/2009-INF, dated 30-3-2017 issued by Department of Economic Affairs. Applicant has placed reliance on certain rulings and submitted that concessional rate of GST will also be applicable, to the extent of area attributable to the affordable units for services from contractors and even for amenities.*

2.3 *In the additional submission dated 01.12.2021, applicant has submitted that, the word 'in relation to the supply of goods or services or both' in Section 95(a) of CGST Act, 2017, can be interpreted to include both inward & outward supply and the cogent reading of Sections 95(a) and 97(2) of the CGST Act, 2017, doesn't deny the application of AAR by the person who is receiving the goods or services or both as applicant to obtain the Advance Ruling. Moreover, the recipient only is paying the tax and the supplier merely collecting the tax from recipient and paying to the Government, as an agent for the recipient. Further, in the definition of Advance Ruling, the word mentioned as supply of goods or services or both, not as a supplier of goods or services or both means, both the inward supplier (that is recipient) and outward supplier (that is supplier).*

2.4 *Applicant submits that Even the West Bengal Advance Ruling Authority IN RE: PRIMARC PROJECTS PVT. LTD. [2020 (42) G.S.T.L. 536 (A.A.R. - GST - W.B.)] has provided Advance Ruling exactly on rate of tax applicable to works contractor.*

2.5 Further, the Notification entry is qua the supply and not qua the person and therefore once a project qualifies as an Affordable Housing Project, the benefit of concessional rate of tax would be available in respect of 'work contract services' pertaining to low-cost houses, irrespective of it being supplied by the Developer or the Contractor. Also, the impugned question is with respect to applicability of rate on the specified supply of works contract services in respect of affordable housing project and thus, the question is qua the supply than qua the person.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The officer has requested to decide the application as per provisions of law.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 12.10.2021. Applicant's Authorized representative, Shri. Pritam Mahure, CA was present. Jurisdictional Officer was absent. Application is admitted subject to condition that applicant will file/produce the written submission as to how the recipient can seek advance ruling.

Final e-hearing was held on 05.04.2022. Applicant's Authorized representative, Shri. Rajesh Pachori, CFA, was present. Jurisdictional officer Shri. Satish Sharma, STO, MUM-VAT-C-515, NODAL-10 was also present. Application is heard.

OBSERVATIONS AND FINDINGS:

5.1 We have perused and considered the submissions made by the applicant.

5.2 Section 95(a) of the CGST Act, 2017 reads as under:

95. In this Chapter, unless the context otherwise requires,—

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation **to the supply of goods or services or both being undertaken or proposed to be undertaken** by the applicant ;

5.3 The above underlined words are very clear. It is the supplier who is expected to ask the questions by way of filing of the Advance Ruling application. In the present case, both the questions asked are such that in these transactions, the applicant is the recipient and not the supplier. In the first question it is asked whether particular provisions of notification apply in respect of services received from contractor. Here, the contractor is the service provider and applicant is the recipient of service. In second question the applicant wants to

ask whether service contractor, who provides services in relation to construction of common amenities such as club house, swimming pool and amenities of like nature, whether on such supplies made by such contractor benefits of said provisions of said notification shall be available to such contractor. So, in both the questions nature of transactions is such that the applicant is the recipient and not the supplier.

5.4 In this context, we would also like to refer sub-section (1) of section 103 of the CGST Act, 2017, which reads as follows:

"Applicability of advance ruling.-

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only-

(a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;

(b) on the concerned officer or the jurisdictional officer in respect of the applicant."

The aforesaid sub-section, thus, categorically speaks that the ruling pronounced is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. If an application is filed by the recipient of goods or services or both on the taxability of his inward supply of goods or services and ruling is pronounced accordingly, such ruling shall be binding only on him and on the concerned officer or the jurisdictional officer of him. In no way, the ruling shall be binding on the supplier of such goods or services.

To illustrate, say M/s X of Maharashtra receives inward supply of goods from M/s Y (Location of M/s Y may be in Maharashtra or may be in other states). M/s. X files an application of advance ruling seeking the taxability of his inward supply. The Advance Ruling Authority may pronounce ruling declaring the supply to be an exempt supply. However, since the same is not binding on his supplier, the supplier may not follow the ruling and even find the supply as a taxable supply. In such a scenario, the ruling loses its relevance and applicability.

Any provisions of the Law, therefore, should not be interpreted in a way which defeats the very purpose of the objective and purpose of the legal provision. We are therefore of the view that in the subject application, the applicant cannot seek an advance ruling in relation to the supply where it is a recipient of services.

5.5 The applicant has mainly emphasized on the following two issues, viz.



(1) The word 'in relation to the supply of goods or services or both' in Section 95(a) of CGST Act, 2017, can be interpreted to include supply of both inward supply and outward supply.

(2) The inward supply or outward supply are specifically defined in the Act which are two parts of the supply.

However, since provisions of Sec 95 (a) are very clear and unambiguous that only a supplier can file application for advance ruling, hence, the contentions of the applicant are not accepted.

06. In view of the above, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1: - Whether Entry No. 3(v) (da) of Notification 11/2017 Central Tax (Rate) dated 28/06/2017 (hereinafter the Rate Notification), as amended time to time, applies to the works contract service received from the contractors?

Question 2: - Whether the benefit of concessional rate would be available to construction of common amenities such as club house, swimming pool and amenities of like nature?

Answer: - **No ruling can be given on above two Questions, since the applicant is recipient of services in respect of supplies involved in the aforesaid questions.**



**RAJIV MAGOO
(MEMBER)**

**T. R. RAMNANI
(MEMBER)**

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr.Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.