



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 B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

A.R.Com/29/2021

Date:14.07.2022

TSAAR Order No.38/2022

[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. Sri Bhavani Developers, Flat No 303, H NO 4-4-81/5/303, 3rd Floor, Spoorthi Homes, Veera Reddy Colony, Nacharam, Ranga Reddy, Telangana- 500076 (36ACYFS0973Q1ZW) 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/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted
4. **Brief facts of the case:**

M/s. Sri Bhavani Developers are into constructions of residential buildings and have opted for new tax scheme as per Notification No.3/2019, dt: 29.03.2019. The applicant submitted that, in a particular case they have entered into JDA with one Mr.Sadanda Chary for construction of residential units at Moulali.

The Joint Development agreement between land Owner and Builder was entered on 7 December 2017 and subsequently supplementary development agreement was entered on 17 December 2018 on area sharing basis. And that they have started the work however that they didn't have

any bookings as on 31-03-2019 and therefore they require clarification if they are falling into "other than Ongoing Projects" as per the notification No 3/19 and 4/19 and that they are left with GST@5% without ITC. Hence this application.

5. Questions raised:

1. Whether notification 4/2019 can be followed and GST be paid on RCM basis for the share of land lord as the project is falling under "other than On-going Projects" as it can be considered as new project?
2. Is RCM applicable to daily wages, Labour Charges and Contract Labour?
3. Whether there is any limit on the percentage of material to be used in project for Eg: cement 15%, sand 10% etc?
4. Whether Salaries, Incentives, Brokerage, Remuneration and interest on Working Capital are liable for RCM?
5. In a project of combination of affordable Flats (Carpet Area is less than 60Sq Mts), and Non affordable flats (Carpet Area is more than 60Sq Mts), can different rate of tax be adopted for different units, i.e., GST 1% in case of affordable Units and 5% in case of Non affordable units based on the Carpet area?
6. That, the customer is entering into two types of agreements at the time of selling the semi finished residential flat.
 - a) "SALE AGREEMENT" and
 - b) Completion of semi finished works called "WORK ORDER",In such case what is the rate of tax for:
 - a) For SALE DEED @ 5%
 - b) For WORK ORDER @ 18% or 12% or 5%.Whether they are eligible for ITC in case of 18% /12%?
What is the tax rate in case of affordable housing project in the above situation?

6. Personal Hearing:

The Authorized representatives of the unit namely Mahesh, Tax consultant and K. Pramod Kumar, Managing Partner attended the personal hearing held on 05-01-2022. The authorized representatives reiterated their averments in the application submitted and requested the AAR to dispose the case on merits based on their detailed submissions.

7. Discussion & Findings:

The submissions made by the applicant indicate that they as "developer-promoter" have entered into a joint development agreement (JDA) with the "land owner-promoter" on area sharing basis

for Residential Real Estate Project (RREP) in Dec' 2017. According to the statement of relevant facts having a bearing on the questions raised by the applicant, at Para 6(c) of agreement, the work on the project commenced in June 2018. Meanwhile the GST structure on real estate services was greatly altered with effect from 01.04.2019 through Notification No. 03/2019 and Notification No. 04/2019 dated: 29.03.2019.

The Notification No. 03/2019 makes a distinction between 'Ongoing project' in clause (xx) of Para 4 and 'Other than ongoing project' in clause (xxviii) of Para 4. Accordingly 'Other than ongoing project' means a project which commences on or after 01.04.2019. Therefore the project undertaken by the applicant does not fall under this definition as claimed by him in the statement of facts submitted separately on 21.12.2021.

This notification offers the promoter an option to shift to the new scheme or to continue under the earlier scheme.

Under the new scheme, for residential apartments, the developer promoter has to pay CGST as well as SGST @0.5% without ITC for affordable residential apartments and 2.5% without ITC for other residential apartments and reverse the input tax credit available in the credit ledger as on 31.03.2019. However if the developer promoter intends to continue under the old scheme and avail ITC, he has to submit a declaration before 20.05.2019 to the jurisdictional authority. In the case of the applicant, it appears they have not opted for the old scheme, hence they fall under new scheme and therefore have to pay tax @0.5% for CGST as well as SGST for affordable residential apartment and @ 2.5% CGST & SGST for other residential apartments without availing ITC.

Further as per the provisions contained in clause-2 of the 4th provision in the column-5 of Sl.No.3 of Notification No. 03/2019, dt: 29.03.2019 read with Sl.No. 41(a) & 41(b) of Notification No. 04/2019 the liability of the developer-promoter and land owner-promoter will be as follows for projects which have commenced prior to 01.04.2019:

- i) The applicant who is the developer-promoter shall pay CGST & SGST on the supply of construction of apartment to the land owner promoter.
- ii) If the land owner promoter further supplies such apartment to the buyers before the issuance of completion certificate he shall be liable to pay CGST & SGST on such supplies. However the land owner promoter shall be eligible for input tax credit of the taxes charged from him by the developer-promoter.

Therefore the tax on the portion of constructed area shared with the land owner-promoter has to be paid by applicant as his liability in the capacity of developer-promoter and not as Reverse charge mechanism. The land owner-promoter will claim such tax as ITC as described above.

Further the applicant is liable to pay tax on reverse charge mechanism under the following conditions as developer-promoter:

- i) Cement for the project must be purchased from registered supplier only even if total value of supplies received from unregistered suppliers is less than 80% and the

promoter is required to pay GST @28% under reverse charge if the purchase is from unregistered supplier.

- ii) Excluding cement, minimum 80% of the procurement of inputs and input services used in supplying the real estate project service shall be received from registered supplier only. For the shortfall from this requirement GST @18% is payable on value to the shortfall. This adjustment is to be done financial year wise and not project wise.
- iii) In case of capital goods procured from unregistered person, the promoter is liable to pay GST under reverse charge.
- iv) For residential apartments, GST is not payable on TDR, FSI or payment of upfront amount for long term lease of land if such supply takes place after 01.04.2019 and if residential apartment is sold before completion. However, for residential apartments remaining unsold after completion, proportionate GST is payable on TDS, FSI or long term lease of land by developer-promoter under reverse charge.

The law regarding services by an employee to the employer in the course of or in relation to his employment enumerated in Schedule III to CGST Act, 2017 remains unchanged. Therefore tax will not be attracted for labour engaged on daily basis or employees etc., if the service is rendered in the course of such an employment. However manpower supply or labour supply services by manpower supply agency falls under SAC 98519 and is taxable @18%. This tax has to be paid by the manpower supply agency.

Further the applicant has averred that they are entering into (2) different agreements with their prospective buyers, one for the semi-finished structure which is offered in the sale deed and other for the completion of semi-finished structure. In this connection it is informed that the Hon'ble High Court of AP in the case of M/s. Omega Shelters (P) Limited Vs Assistant Commissioner (LTU) Secunderabad, (2015) 83 VST 51 has considered similar facts and law positions and held that the rate of tax applicable is the same for the total consideration received for the initial agreement for the composite value of land and building irrespective of whether the value in the registered sale deed is lesser than this consideration. However if any further construction is to be made beyond the scope of the initial agreement such a contract will be an independent contract and will attract a different rate of tax. In view of this judge made law, if the initial contract for land and building, even if entered through (2) different un severable agreements, constitutes a single contract and hence will attract tax @0.5% for affordable housing and @2.5% for other housing under CGST & SGST respectively without ITC. However any other agreement which is beyond the scope of initial agreement and is a severable agreement vis-à-vis the initial agreement then the construction made under this contract will attract 9% tax under CGST & SGST each with ITC.

8. The ruling is given as below:

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

Questions	Ruling
1. Whether notification 4/2019 can be followed and GST be paid on RCM basis for the share of land lord as the project is falling under "other than On-going Projects" as it can be considered as new project?	According to the statement of relevant facts having a bearing on the questions raised by the applicant, at Para 6(c) work on the project commenced in June 2018. The Notification No. 03/2019 makes a distinction between 'Ongoing project' in clause (xx) of Para 4 and 'Other than ongoing project' in clause (xxviii) of Para 4. Accordingly 'Other than ongoing project' means a project which commences on or after 01.04.2019. Therefore the project undertaken by the applicant does not fall under this definition as claimed by him in the statement of facts submitted separately on 21.12.2021.
2. Is RCM applicable to daily wages, Labour Charges and Contract Labour?	No
3. Whether there is any limit on the percentage of material to be used in project for Eg: cement 15%, sand 10% etc?	No
4. Whether Salaries, Incentives, Brokerage, Remuneration and interest on Working Capital are liable for RCM?	No
5. In a project of combination of affordable Flats (Carpet Area is less than 60Sq Mts), and Non affordable flats (Carpet Area is more than 60Sq Mts), can different rate of tax be adopted for different units, i.e., GST 1% in case of affordable Units and 5% in case of Non affordable units based on the Carpet area?	Yes
6. That, the customer is entering into two types of agreements at the time of selling the semi finished residential flat. c) "SALE AGREEMENT" and d) Completion of semi finished works called "WORK ORDER",	If the initial contract for land and building, even if entered through (2) different un severable agreements, constitutes a single contract and hence will attract tax @0.5% for affordable housing and @2.5% for other housing under CGST & SGST respectively

<p>In such case what is the rate of tax for:</p> <p>c) For SALE DEED @ 5%</p> <p>d) For WORK ORDER @ 18% or 12% or 5%.</p> <p>Whether they are eligible for ITC in case of 18% /12%?</p> <p>What is the tax rate in case of affordable housing project in the above situation?</p>	<p>without ITC. However any other agreement which is beyond the scope of initial agreement and is a severable agreement vis-à-vis the initial agreement then the construction made under this contract will attract 9% tax under CGST & SGST each with ITC.</p>
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(S.V. KASI VISWESWARA RAO)
ADDL. COMMISSIONER(STATE TAX)

(B. RAGHU KIRAN)
ADDL. COMMISSIONER(CENTRAL TAX)

[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. Sri Bhavani Developers,
Flat No 303, H NO 4-4-81/5/303,
3rd Floor, Spoorthi Homes,
Veera Reddy Colony, Nacharam,
Ranga Reddy, Telangana- 500076.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Secunderabad Commissionerate, Room No. 813, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004.

Copy to:

1. The Superintendent (ST) Nacharam, Range. H.No.40-41/87/1,1st, 2nd,4th and 5th Floors, Navya Estates, Moula Ali, Hyderabad 500 040,

//t.c.f.b.o//

Superintendent (Grade-I)