

**BEFORE THE HON'BLE APPELLATE AUTHORITY FOR
ADVANCE RULING,
GOODS AND SERVICE TAX, UTTAR PRADESH
4, VIBHUTI KHAND GOMTI NAGAR LUCKNOW-006010
(Constituted under Section 99 of the Uttar Pradesh Goods
and Service Tax Act, 2017)**

Appeal Order No. 03/AAAR/-30/09/2022

Dated:30..09-2022

Before the Bench of:-

Shri Ashish Varma

Member, Central Tax

Smt. Ministhy S,

Member, State Tax

Legal Name of the Appellant	M/s KRBL Infrastructure Private Limited
Trade Name of the Appellant	M/s KRBL Infrastructure Private Limited
GSTIN Number of the Appellant	09AACK9643G1Z9
Registered address/Address provided while obtaining user ID (of the Appellant)	C-32, Sector-62, Noida, Gautam Buddha Nagar, Uttar Pradesh - 201301
Order of Advance Ruling Against which the appeal is filed	UP ADRG - 90/2021 dated 17.12.2021

[Signature]

**[Proceedings under Section 101 of the Central Goods and
Service Tax Act, 2017 and Uttar Pradesh State Goods and
Service Tax Act, 2017]**

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (here-in-after referred to as “ the CGST Act and UPSGST Act”) by M/s KRBL Infrastructure Private Limited(here-in-after referred to as the “ Appellant”) against the Advance Ruling Order No, . UP ADRG – 90/2021 dated 17.12.2021 issued by the Authority for Advance Ruling, Uttar Pradesh.


At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPSGST Act, are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean a reference to the same provisions under UPSGST Act, 2017 and the vice versa.

A. BRIEF FACTS OF THE CASE

The instant appeal has been preferred against Advance Ruling No. UP ADRG-90/2021 dated 17.12.2021 passed in the case of applicant i.e. M/s KRBL Infrastructure Private Limited. The Brief facts of the case are as under:

A.1The applicant is engaged in carrying out the activities such as renovation, alteration, repair & maintenance, fabrication, re-fabrication furnishing, re-furnishing interiors or civil works of existing building and other related activities for the purpose of letting out the building to different tenants on rental basis.

A.2The Appellant is also planning to undertake the activity of construction of a Commercial Complex at Plot 18, Block-C, Sector-153, Noida, Gautam Buddha Nagar for the purpose of renting out to prospective tenants and for this purpose, the appellant intends to procure various goods & services.



A.3The applicant has undertaken various services in the nature of 'Civil and Interior Works' at different floors of the building as per requirement of the customers and such cost incurred upon interior decoration is recoverable from the customer.

A.4The Appellant had submitted an application dated 14.09.2021 for Advance Ruling before the Authority of Advance Ruling for determination of following questions.

(a) "Whether the Appellant is eligible to take input tax credit in relation to expenditure incurred for 'Civil and Interior Works' as mentioned above in building located at C-32, Sector-62, Noida, Gautam Buddha Nagar, Uttar Pradesh at different floors, since the property is further used for letting out to different tenants on rental basis viz. for furtherance of business?"

(b) "Whether ITC on construction of commercial complex will be available to Appellant in case the said building will be used for the purpose of renting out?"

A.5The Authority for Advance Ruling vide Advance Ruling No. UP ADRG 90/2021 dated 17.12.2021 have pronounced that the Appellant is not eligible to take input tax credit. Being aggrieved by the aforesaid ruling the Appellant has preferred an appeal before the Authority for Advance Ruling on the following grounds.

(B) Grounds of appeal submitted by the appellant

Being aggrieved by the aforesaid ruling, the Appellant has preferred instant appeal passed by the Authority for Advance Ruling, as the Authority vide its Impugned Ruling (a) has denied the eligibility of the Appellant in terms of clause (c) and clause (d) of Section 17(5) of CGST Act, 2017 which restricts ITC in respect of works contract services and goods and services used towards construction of immovable property. and have ruled (b) that Input Tax Credit of GST paid in relation to 'Civil and Interior Works' in building located at C-32, Sector-62, Noida and on 'construction of Commercial Complex' located at plot No. 18, Block-C, Sector-153, Noida is not admissible.



In this regard the Appellant has made following submission as under-

B.1 Appellant wishes to know the admissibility of input tax credit in relation to expenditure incurred for 'Civil & Interior Works' as in the instant case the scope of work under 'Civil & Interior Works' entails the activities in the nature of Interior Decoration Work, Furniture and Fixture Fitments, Air Handling Units, Piping and Fitting, plumbing/sanitary ware, toilet accessories, modification work etc.

B.2 The Appellant has made necessary arrangements for letting out different furnished floors to the prospective tenants which amounts to supply of service under the CGST Act, 2017 and Appellant is liable to pay GST on the said rental income.

B.3 The Appellant has paid GST Rs. 25.89 lacs in respect of goods and services received for carrying out the 'Civil & Interior Works' in different floors of building since all the inward supplies received by the Appellant are taxable under GST.

B.4 Pursuant to Section 16(1) of CGST Act, 2017, every registered person is entitled to take credit of input tax charged on any supply of goods and services or both to him which are used for intended to be used by him in the course of furtherance of business.

B.5 The Appellant has submitted that there is not bar on availment of input tax credit under Section 16(2) of CGST Act, 2017 if following conditions are satisfied.

Section 16 of the CGST Act, 2017 provides for eligibility and conditions for taking the input tax credit. The Section is extracted hereunder for reference-

" Eligibility and condition for taking input tax credit

16.(1).....

"(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax credit in respect of any supply of goods or services or both to him unless,--



- a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;
 - aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;
 - b) he has received the goods or services or both;
 - c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of ITC admissible in respect of the said supply; and
 - d) has furnished the return under Section 39;
-”

B.6 Restrictions imposed on availment of ITC under Section 17(5) of the CGST Act, 2017---

“ (5) Notwithstanding anything contained in sub-section(1) of the Section 16 and section (1) of section 18, input tax credit shall not be available in respect of the followings; namely:-

- (c) Works Contract Services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation. For the purposes of clauses (c) and (d), the expression “Construction” includes re-construction, renovation, additions or alternations or repairs, to the extent of capitalization, to the said immovable property:

Explanation- For the purposes of this Chapter and Chapter VI, the expression “ Plant and Machinery” means apparatus,

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equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

- (i) Land, building or any other civil structures.
- (ii) Telecommunication Towers; and
- (iii) Pipelines laid outside the factory premises..

Appellant submits that in the light of aforesaid provisions no input tax credit shall be available in respect of-

- (i) Works contract services received for construction of an immovable property; and
- (ii) Goods and/or services received for construction of an immovable property

B.7 Appellant submits that on a plain reading of provisions of Section 17(5)(d) of CGST Act, 2017 it is clear that what it contemplates and provides for is a situation where inputs are consumed in the construction of an immovable property which is meant and intended to be sold. The sale of immovable property post issuance of completion certificate does not attract levy of GST. Consequently, in such situation tax chain breaks and denial of ITC is fully justified. However, the position in the instant case is entirely different and supply chain continues by way of letting out the property to tenants in the course of furtherance of business and the activity undertaken by the Appellant of letting out the floors of the building to prospective tenants amounts to supply as defined in CGST Act, 2017 and Appellant squarely gets covered under the definition of 'Supplier' in terms of Section 2(105) of CGST Act, 2017.

B.8 The Appellant also submits that the 'Civil and Interior Work' done by them in different floors of the building is for the purpose of letting out to prospective tenants on rental basis and collection of rent from them fulfills the definition of 'business' as defined under Section 2(17) of the CGST Act, 2017 and said activities/services are in course of furtherance of business.

C. Input Tax Credit on the construction of commercial complex:



C.1 The Appellant has submitted that they are planning to undertake construction of Commercial Complex in future for the purpose of renting it out to the customers and wishes to know the availability of input tax credit of the GST paid for construction of commercial complex.

C.2 Appellant submits that construction of Commercial Complex for the purpose of letting it out on rent is covered under the definition of 'supply' as provided under Section 7 read with paragraph 2(b) of Schedule II of CGST Act, 2017 and they are covered under definition of supplier as per Section 2(105) of CGST Act, 2017.

C.3 Appellant submits that in the case of construction of Commercial Complex for the purpose of letting it out on rent to the customers, the supply chain is not broken instead results into a fresh stream of GST revenue to Government as the rental income would be taxable under GST.

C.4 Appellant submits that in case the benefit of ITC under Section 16 of CGST Act is denied to them by invoking Section 17(5) (d) of the CGST Act, in that event, it would cause a sharp increase in the cost and they would be compelled to incur and recover it from the end consumer.

C.5 The Appellant has placed reliance upon the case of Hon'ble Orissa High Court in M/s Safari Retreats Private Limited Vs Chief Commissioner of Central Goods and Service Tax in W.P. (C) No. 20463 of 2018 vide order dated 17.04.2019. In this case Hon'ble Court held as under-

"The very purpose of the Act, is to make the uniform provision for levy collection of tax, intra state supply of goods and services both central and state and to prevent multi taxation. Therefore, the contention which has been raised by the learned counsel for the petitioners keeping in mind the provisions of Section 16(1)(2) where restrictions has been put forward by the legislation for claiming eligibility for input credit has been described in Section 16(1) and the benefit of apportionment is subject to Section 17(1) and (2)."

C.6 The Appellant submits that in case the input tax credit is denied on building meant and intended to be let out, it would

amount to treating the transaction as identical to a building meant and intended to be sold. Treatment of these two different type of transactions as one for the purpose of GST, is contrary to the basis principles regarding classification of subject matter of tax levy and therefore violative of Article 14 of the Constitution.

C.7. The Appellant submits that Section 17(5) of the CGST Act, 2017 and the respective state GST Acts have led to a paradoxical situations by denying credits, as the objective of the GST is free flow of credits when the output is in the course or furtherance of business.


C.8 The Appellant submits that input credit in relation to goods and services purchased/received for 'Civil & Interior Work' done in various floors of building and also in respect of ' Commercial Complex' intended to be let out on rent, shall be admissible to them as all these goods and services purchased/received for carrying out the 'Works' are taxable under the CGST Act and the And the Appellant has paid huge amount of GST on such purchase which will further be used for outward supply taxable under GST Act.

D. Reason behind manual filing of Appeal before the Appellate Authority for Advance Ruling.

D.1 The Appellant submits that Advance Ruling No. UP ADRG-90/2021 dated 17.12.2021 was served to them on 12.02.2022 pronouncing the ruling that they are not eligible for claim of ITC on the stated matters.

D.2 An appeal against the advance ruling order issued under Section 98(6) shall be made by an applicant on the common portal in form GST ARA-02 and shall be accompanied by a fee of Rs. 10000/- in the manner specified under section 49 of the act.

D.3 The Appellant were not able to file an appeal before the Appellate Authority for Advance Ruling as order was not uploaded on portal and status reflected as ' pending for order'. And they had filed a letter vide mail dated 11.02.2022 followed



by a reminder mail dated 08.03.2022 requesting to upload the order.

D.4 the Appellant submits that in absence of response from the Department they contacted to the Authority via phone and they were confirmed to file the appeal manually in absence of order on portal.

D.5 The Appellant was granted personal hearing on 28.09.2022... During the personal hearing in the additional submission in relation to appeal filed against the Advance Ruling order no. UPADGR 90/2021 dated 17-12-2021 the party reiterated the argument put forth in the written submission and told that they could not file the application in time due to original AAR order being not available on GST Portal.

D.6 The appellant made further written submissions dated 30-09-2022 in which they submitted that they could not find AAR order on GST Portal and hence were not able to file the appeal within time. They have also mentioned that they had mailed and talked to the officers but did not receive any response. They have claimed that the AAR member had informed them that appeal cannot be applied manually and GSTIN is responsible to upload the order on Portal not the authority. Again they have cited the case of Badal Chemical Ltd in which the Honorable Court allowed the petitioner filing of return without interest.

E- Discussion and Findings

E.1 We have gone through the submissions made by the Appellant and Revenue and all evidence on record. The Appellant had submitted application dated 14.09.2021 before the Authority of Advance Ruling for determination of following questions.

- (1) "Whether the Appellant is eligible to take input tax credit in relation to expenditure incurred for 'Civil and Interior Works' as mentioned above in building located at C-32, Sector-62, Noida, Gautam Buddha Nagar, Uttar Pradesh at different floors, since the property is further used for letting out to different tenants on rental basis viz. for furtherance of business?"



(2)“ Whether ITC on construction of commercial complex will be available to Appellant in case the said building will be used for the purpose of renting out ?”

E.2 The Authority for Advance Ruling vide Advance Ruling Order No. UP ADRG-90/2021 dated 17.12.2021 have pronounced the ruling that they are not eligible to claim Input Tax Credit on the stated matters. The Appellant being aggrieved from the aforesaid ruling has preferred this appeal before us on 07.07.2022. Before we go into the merits of the case, admissibility of the appeal filed by the Appellant has to be examined in the light of provisions laid down under Section 100 of CGST Act, 2017.

E.3 We find that the Appellant was given advance ruling by the Authority on 17.12.2021 and according to the Appellant the said order was communicated to them on 12.01.2022 as per their Form ARA- 02 (and as per annexure 2 para 6.1 of their grounds of appeal, it was served on 12.02.2022). Further, the Appellant also submits that they could not file an appeal on time as the said order was not uploaded on portal and they filed letter through mail on 11.02.2022 followed by reminder mail dated 08.03.2022 and ultimately they contacted the Authority via phone and they were confirmed that they could file an appeal manually in case the said order is not uploaded on portal.

E.4 After going through the provisions of appeal under Section 100 of the CGST Act, 2017 against an advance ruling order under Section 98(4) of the Act, we find that Section 100 stipulates as under:-

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

19/5/22

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Further, Rule 106 of CGST Rules prescribes the form and manner of appeal to the Appellate Authority for Advance Ruling which stipulates that-

(1) An appeal against the advance ruling issued under sub-section (6) of Section 98 shall be made by an applicant on the common portal in Form-GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

E.5 We also find that Rule 107-A of CGST Rules 2017 stipulates as under-

107A. Manual filing and processing. -- " Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules."

E.6 We find that as per Appellant's own version the Advance Ruling Order No. UP ADRG-90/2021 dated 17.12.2021 was served to them on 12.02.2022 and thus the last date of appeal against the said order was 14.03.2022 Further, in terms of

proviso to sub-section (2) of Section 100 of CGST Act, even if it is assumed that the Appellant was prevented by a sufficient cause for filing an appeal and a further period of 30 days were allowed for filing of appeal, the last date of filing appeal would have been 13.04.2022.

E.7 It is also evident on record that the Appellant paid fee of Rs. 1000/- vide Chalan No. HDFC22060900268860 dated 21.06.2022 and the remaining statutory fee amounting to Rs. 19,000/- was paid on 07.07.2022 and thus the statutory fee [Rs. 10000/- CGST + Rs. 10000/- SGST] as mandated under sub-section (3) of Section 100 of CGST Act, was finally paid on 07.07.2022. Accordingly, the actual date of filing appeal shall be 07.07.2022 i.e. the date when the Appellant has paid the statutory fee as mandated under law.

E.8 The Appellant has himself submitted that they were served the order on 12.02.2022. Moreover the AAR order was personally served upon the Appellant through the jurisdictional officer on 15-01-2022 itself. Further, since the Appellant had sought for advance ruling hence they were obviously well aware of the provisions of appeal against an order for advance ruling given by the Authority under Section 98(4) of CGST Act. We find that Rule 107-A of CGST Rules, stipulates the provision for manual filing of appeal against an order issued by the Authority for Advance Ruling and this option to file appeal manually was always available with the appellant and they have ultimately filed it manually without any glitch, whatsoever. The Appellant had sufficient time to file an appeal against the said advance ruling, however, they failed to comply with the time limit prescribed under law for filing an appeal against the concerned advance ruling order.

E.9 It would be pertinent to mention here the decision of Hon'ble Supreme Court in Writ Petition (C) No. 3 of 2020 dated 10.01.2020, wherein, the Hon'ble Apex Court has ordered for





extension of period of limitation due to COVID-19 led adverse circumstances as under-

“ in cases where limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.”

Keeping in view the aforesaid decision of Hon'ble Court, since the impugned order was served on 12.02.2022 to the Appellant, as admitted by the Appellant in their appeal, (though in the appeal form GST ARA-2, it is written as 12.01.2022), the last date for filing an appeal would have been 30.05.2022. Further, even if the added benefit of proviso to sub-section (2) of Section 100 of CGST Act is extended to the Appellant, by considering that the Appellant was prevented by a sufficient cause from presenting the appeal within the normal period and a further period of 30 days were allowed, even then the last date of filing appeal would be 29.06.2022. Therefore, in any foreseeable case, the last date for filing of appeal under law in the instant case was 29.06.2022. No appeal was filed by the Appellant till that date and it was finally filed only on 07.07.2022.

Accordingly, we hold that the appeal filed by the Appellant is not admissible in eye of law and therefore, it is dismissed on the ground of limitation itself without going into the merits of the case.


आशीष वर्मा
(Ashish Varma)
Member, AAAR
CGST


(Ministhy S)
Member, AAAR
SGST

To,

M/s KRBL Infrastructure

Private Limited, C-32 Sec-62

Nodia 201301 UP.

**APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND
SERVICE TAX UTTAR PRADESH**

Copy to-

1. The Chief Commissioner , CGST & Central Exise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Additional Commissioner, CGST & Central Exise , Audit Commissionerate, Lucknow, Member Authority for Advance Ruling.
- 4- The Commissoiner, CGST & CX, Gautam Buddha Nagar, Commissionerate UP.
5. Through the Additional Commissioner, Commercial Tax Gautam Buddha Nagar, Uttar Pradesh to jurisdictional tax assessing officers.