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**THE GOA APPELLATE AUTHORITY FOR ADVANCE RULING FOR
GOODS AND SERVICES TAX**

Vikrikar Bhavan, Old High Court Building, Panaji, Goa, Pin Code 403001.

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(constituted under Section 99 of the Goa Goods and Services Tax Act, 2017)

ORDER NO. GOA/AAAR/01/26-3/2018-19 **4591**

Date: **22/3/19**

BEFORE THE BENCH OF

Shri Dipak M. Bandekar, Member

and

Shri Vasa Seshagiri Rao, Member

GSTIN Number	30AAACG7220K1Z0
Legal Name of Appellant	M/s Goa Tourism Development Corporation
Registered Address	3rd Floor, Paryatan Bhavan, Patto, Panaji – Goa.
Details of appeal	Appeal No. GOA/GST/AAAR/01/2018-19 Dated: 05.11.2018
Appeal against	Advance Ruling No. Goa/GAAR/4 of 2018-19/2429 dated 02.10.2018
Jurisdictional Officer	State – STO Panaji Center – Range II

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Goa Goods and Services Tax Act, 2017)

Unless mention is specifically made, reference to provisions under Central Goods and Services Tax Act, 2017 would also mean as a reference to the same provisions under Goa Goods and Services Tax Act, 2017.

The present appeal has been filed under Section 100(1) of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017 hereinafter referred to as GST Act by 'Goa Tourism Development Corporation Ltd, registered vide GSTIN **30AAACG7220K1Z0**, (hereinafter referred to as the Appellant) against the Advance Ruling No. GOA/GAAR/4 of 2018-19/2429 dated 02/10/2018.



GOA TOURISM DEVELOPMENT CORPORATION LTD.

PARYATAN BHAVAN

2ND FLOOR

PATTO, PANAJI - GOA

Handwritten signature and date 22/3/19

Brief Facts of the case

The Appellant is registered under the GST Act, 2017 and hold GSTIN: **30AAACG7220K1Z0**. The Appellant sought an Advance Ruling in respect of the question whether GST is applicable on one time concession fees charged by the appellant in respect of their property at Anjuna, Goa, which is given to M/s Myrayash Hotels Pvt. Ltd for a long term lease of 60 years for development of infrastructure for financial business or private investment made on DBFOT (Design, Build, Finance, operate and Transfer) providing exclusive right, license and authority to construct, operate and maintain the project.

2. The Appellant claimed exemption as per Sr. No.41 of the Notification No 12/2017 – Central Tax (Rate), dated 28/06/2017 as amended by Notification No. 32/2017 – Central Tax (Rate), dated 13/10/2017.

3. The Authority for Advance Ruling, Goa vide its Order no. Goa/GAAR/4/2018-19/2429 held that the service provided by the Appellant, does not satisfy the criteria mentioned at Sr. No.41 of the Notification No. 12/2017 (CGST (Rate) dated 28/06/2017) as amended by Notification No. 32/2017 (CGST (Rate) dated 13/10/2017). Therefore, they are not entitled for the benefits of the said Notification (as amended) and the activity of long term lease is liable for levy of GST.

4. Aggrieved by the said Advance ruling, the Appellant has filed the present Appeal before this Appellate Authority.

Grounds of Appeal

5. In appeal, the Appellants aver that:-

- (i) The order is not warranted on the facts and circumstances of the case and is opposed to equity, law and justice.
- (ii) The AAR-Goa failed to appreciate the fact that the exemption notification is wide enough to cover the transaction as exempt.
- (iii) The AAR-Goa failed to consider that the transaction is that of upfront one time premium and not merely a periodic lease rental collected in advance.
- (iv) The AAR-Goa has wrongly restricted the exemption to those entities notified in the Goa Industrial Development Act, 1965 which is not envisaged in the exemption notification.
- (v) The AAR-Goa wrongly applied the cases that are different from the facts of their case.
- (vi) The AAR-Goa wrongly applied the facts of the case which in fact when applied correctly shows that their case is very much eligible for the exemption.

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6. The Appellant further made additional submissions that the cases of 1) Greater Noida Industrial Development Authority and 2) Builders Association of Navi Mumbai and Anr are currently in appeal in Honorable Supreme Court.

7. Personal Hearing was held on 30/01/2019. Shri Parimal Kulkarni, of M/s PGK & Co., Chartered Accountants, attended the hearing on behalf of the appellant and submitted their written contention. He sought time to make additional submissions which was granted. He was asked to make his additional submissions by 31/01/2019. Shri Parimal Kulkarni has argued based on the Notification no 32/2017 – Central Tax – (Rate) dated 13/10/2017. Shri Kulkarni was heard.

Discussion and Findings:

8. The short issue for decision is whether, the appellant is entitled for the benefit of the Sr. No. 41 of the Notification No. 12/2017 (CGST (Rate) dated 28/06/2017) as amended by Notification No. 32/2017 (CGST (Rate) dated 13/10/2017.

9. The relevant text of amended Notification No.12/2017 (CST (Rule)) dated 28/06/2017 reads as below:-

*"Upfront amount (called as premium, salami, cost, price development charges or by any other name) payable in respect of service by way of granting of **long term lease** of thirty years, or more) of **industrial plots or plots for development of infrastructure for financial business**, provided by the State Government Industrial Development Corporation or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union Territory to **the industrial units or the developers in any industrial or financial business area.**"*

10. The following issues are carefully examined to understand the legislative intent.

(i) The event in the Notification deals with grant of, *"long term lease of thirty years, or more."*

(ii) The lease should be *"of industrial plots or plots for development of infrastructure for financial business."*

(iii) The lease should be provided by, *"the State Government Industrial Development Corporation or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union Territory"*.

(iv) The lease should be provided to, *"the industrial units or the developers in any industrial or financial business area."*

11. Before, discussing the merit of the appellant's contention, the concession agreement between M/s. Goa Tourism Development Corporation and M/s. Myrayash Hotels Private Limited

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was perused. The Para 2.1.1. & 2.1.2 of the said agreement have sketched the brief details of the purpose of the agreement, which reads as below;

2.1.1 (a) *Design, Build, Finance, Operate and Transfer towards Redevelopment of the GTDC Anjuna Property as 5 star Hotel cum wedding destination.*

(b) *Build all Permanent and Temporary Project Facilities as mentioned in Schedule 2: Project Facilities and Schedule 3: Construction Requirements*

(c) *Operate and Maintain the permanent Project Facilities as per the standards set out in Schedule 4: Operation and Management Requirements*

2.1.2. *The Concessionaire would design, procure, finance, construct, operate and maintain the project during the concession period on a design, build, finance, Operate and Transfer (DBFOT) Concession basis. The project would be transferred back to the Authority at the end of the Concession Period.*

12. Further, para 2 of the Schedule II of the CGST Act, 2017 (Section 7) has treated following activities as supply of goods or services;

2. Land and Building

(a) *any lease, tenancy, easement, licence to occupy land is a supply of services;*

(b) *any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*

A careful reading of the impugned agreement between M/s. Goa Tourism Development Corporation and M/s. Myrayash Hotels Private Limited, leads one to the only conclusion that the long term lease in question is well covered within the criteria of supply as specified in the Schedule II of the CGST Act, 2017.

13. In the present case, the lease period is 60 years and the lessor i.e. M/s. GTDC is an undertaking of Govt. of Goa. Therefore conditions laid by the exemption notification regarding 'lease period' and 'lessor being a Government entity' are fulfilled. The disputed issues before this authority are regarding remaining two conditions i.e.

(i) *Whether the subject lease is for the industrial plots or plots for development of infrastructure for financial business?*

(ii) *Whether Lessee M/s. Myrayash Hotels Private Limited is any industrial unit or developer in any industrial or financial business area?*

14. A careful perusal of the Notification reveals that it does not intend to extend a general exemption to all kinds of long-term lease by any Government Authority. If that were the case, then the statute would not have used a specific term **"...industrial plots or plots for development of infrastructure for financial business."**

15. Therefore, to decide the issue, it is essential to understand what is an 'industrial plot' and 'financial business.' As the term "industrial plot" has not been defined in the GST Act, an inference must be drawn from the common meaning of the said term. Accordingly, this authority

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examined this issue in general parlance. An Industrial area in Goa is statutorily defined by the Goa Industrial Development Act, 1965. So it is evident the primary agency entrusted for development of industrial plots in Goa is the Goa Industrial Development Corporation and not the Appellant.

16. The Appellant and its concessionaire i.e. M/s Myrayash Hotels Pvt. Ltd. are planning to construct a Hotel on the empty land for providing services covered by entry No. Heading No. 9963 (Accommodation, food and beverage services). It could have also utilized the same plot for extending its activity to provide these services. Instead it has leased the plot for development of same asset which will again be utilized for providing the services of accommodation and other allied services by the lessee M/s Myrayash Hotels Pvt. Ltd. M/s Myrayash Hotels Pvt. Ltd. is again an entity which will take up the project on DBFOT basis. Thus, the appellant is not the authority primarily involved in developing or leasing any industrial plots / other plots for Financial Business.

17. To consider the Appellant's entitlement to exemption, the Lessee should be the entity involved in the activity of developing a land / particular mass of area into multiple industrial plots which in turn would be allotted to different potential industrialists. However, in the instant case, the Lessor is not the entity involved for development of any Industrial or Financial Business area but for promotion of tourism and allied activities simply. It has leased one of its properties to a Lessee who is a single beneficiary and not the developer who in turn would develop and transfer plots to many industrial aspirants or others involved into Financial Business Area. The Lessee would develop the property into a project which in turn will be providing the accommodation services and hence the property is a 'Commercial property' not an 'Industrial Plot'. Thus, Lessor being not involved in the activity of allotting industrial space and Lessee being the entity not involved into developing multiple industrial plots, the benefit of the said Notification is not applicable to the Appellant.

18. Coming to the ratio of the decisions cited by the Appellant, the judgment in the case of Greater Noida Industrial Development Authority referred by the Advance Ruling Authority relates to the pre-GST period and the judgment has discussed only about taxability of long-term lease. The activity of leasing has been considered as a service in both the pre-GST and GST regime. Further, no relevant statutory change has taken place which might have changed the taxability of the impugned activity of the appellant in the GST regime from the service tax regime of taxation except for expanding the scope of the exemption Notification to include the plots for development of Financial Business and also developer of Financial Business area. Therefore, taking reference to the judgment of Pre-GST case in the instant case is not barred by the law. As in the case of *Leukoplast vs State of Goa case, 1988 (36) ELT 369A (Bom)*, Hon'ble Bombay High Court has held that if the context was the same, definitions could be lifted from one Act and used for interpretation in another. However, the Appellant has completely ignored the observation made by Hon'ble High Court in this judgment. The Hon'ble High Court has clearly upheld the taxability of leasing of the land.

19. Regarding Hon'ble Bombay High Court's judgment in the case of *Builders Association of Navi Mumbai and Neelsidhi Realities Vs. Union of India and Others (WP. No. 12194 of 2017)*, the claim of the appellant is legally incorrect as that matter is identical to the present issue. In the said case City Industrial and Development Corporation of Maharashtra Limited had

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allotted plots to the various entities on long lease of 60 years for *residential-cum-commercial* constructions and three/four star hotel in Panvel and Navi Mumbai and collected one-time lease premium amount from them. The said writ petition was filed to challenge the demand of GST on this one-time lease premium. However, the Hon'ble High Court has considered this upfront amount taxable for GST as consideration for supply of service and dismissed the petition.

20. Further, the order of the **Uttar Pradesh Advance Ruling authority** in the case of **Yamuna Expressway Industrial Development Authority** referred by the appellant is not applicable to the facts of the impugned case.

21. Adverting back to the Notification as discussed at para 10 supra, there are certain conditions that require to be met.

(i) The event in the Notification deals with grant of, ***"long term lease of thirty years, or more."*** In the present case, the lease is for more than 30 years, hence the condition is fulfilled.

(ii) The lease should be ***"of industrial plots or plots for development of infrastructure for financial business."*** The plot is not an industrial plot either for development of infrastructure or for financial business. It is restricted solely to be used by M/s Myrayash Hotels Private Limited for their own business. M/s Myrayash Hotels Private Limited are not a developer but are themselves benefitting from the lease. It is not the case of the Appellant that M/s Myrayash Hotels Private Limited were required to develop an infrastructure that could be put to use by providing the same to other entities either for development of infrastructure or for financial business. Thus, this condition is not fulfilled.

(iii) The lease should be provided by, ***"the State Government industrial Development Corporation or Undertakings or by any other entity having 50 per cent or more ownership of Central Government, State Government, Union Territory"***. This condition is being met as the Appellant is an undertaking / entity having more than 50% ownership of State Government though no involved in industrial development and also is not a developer of area either for Industry or Financial Business.

(iv) The lease should be provided to, ***"the industrial units or the developers in any industrial or financial business area."*** This condition is also not met as M/s Myrayash Hotels Private Limited is neither an industrial unit nor are they developers in industrial or financial business area.

22. It is an established and settled position of law that the conditions of the Notifications are required to be strictly interpreted. As the Appellant does not meet all the requirements stipulated in the Notification, the benefit of the said Notification will not be available to them.

23. The Hon'ble Supreme Court (Larger Bench) in the case of Union of India V/s M/s Dharmendra Textile Processors cited at 2008 (231) E.L.T. 3 (S.C.) held that

Interpretation of statutes - Principles therefor - Court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous - A statute is an edict of the legislature - Language employed in statute is determinative factor of legislative intent. [para 13].

24. The Hon'ble Supreme Court in the case of Novopan India Ltd. V/S Collector of C. Ex. and Customs, Hyderabad [1994 (73) E.L.T. 769 (S.C.)] held that

Interpretation of statute - Exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State.

25. On a careful reading of the correct position of the statute vis-à-vis the appellant's contention, it clearly emerges that the language employed in the statute as discussed in para 10 (i) to (iv) above are plain and unambiguous and it amply conveys the legislative intent. The appellant does not satisfy the criteria laid down in Sr. No. 41 of the Notification No. 12/2017 (CGST (Rate) dated 28/06/2017) as amended by Notification No. 32/2017 (CGST (Rate) dated 13/10/2017).

26. The decisions cited by the appellant are not relevant to the facts of the present case.


27. The decision of the AAR Goa in the present case is consistent with the extant statute and hence requires to be maintained as legal and proper.


28. In view of the above discussion and observation, this Appellate Authority passes the following order:-

ORDER

(Under Section 101(1) of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017).

For the reasons as discussed above, the Ruling given by AAR-Goa being consistent with the extant statute is maintained. The appeal is rejected.


Dipak M. Bandekar
Member


Vasa Seshagiri Rao
Member