

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.207, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI-600 006

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

Members present:

Shri. Balakrishna. S, I.R.S., Additional Commissioner/ Member (CGST), Office of the Commissioner of GST & Central Excise, Audit II Commissionerate, Chennai - 600 034.	Shri. B. Suseel Kumar, B.E, MBA., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.
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Advance Ruling No. 18 /ARA/2025 Dated: 09.05.2025

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.

GSTIN Number, if any / User id		33AAACR4003K2ZR
Legal Name of Applicant		M/s. RARE SS PROPERTIES INDIA PRIVATE LIMITED
Registered Address / Address provided while obtaining user id		No. 159, Saravana Stores, GST Road, Chrompet, Chennai – 600 044.
Details of Application		GST ARA – 01 Application Sl. No. 20/2024/ARA, dated 27-09-2024.
Jurisdictional Officer	State Division: Chengalpattu Zone: Tambaram Circle: Chrompet Centre Commissionerate: Chennai Outer. Division: Pallavaram. Range: Tirumudivakkam.	
Other Officer		
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	<p>M/s. Rare SS Properties India Private Limited ('the Applicant') are providing Rental or leasing services falling under 997212. The services are provided to M/s. Saravana Stores, a partnership firm. The applicant is lending the property for lease under lease agreement with a monthly rent of Rs.23000000/- on which GST is paid @ 18%. As per the agreement the applicant, for providing infrastructural arrangements, procuring various goods and services. As the goods and services are procured for providing output supply of rental services, the applicant is availing the tax amount paid on procurement of input goods and services as Input tax credit (ITC) and utilizing the same for payment of GST on rental services. The department has blocked the ITC under Section 17(5)(d) of the CGST/TNGST Act, 2017 (the Act).</p> <p>The applicant have constructed the building for the purpose of letting out the</p>

		premises for furtherance of business. The applicant is making certain basic amenities and infrastructure facilities such as partition walls, lift equipment, gen-set facilities etc., which are required to run the business in the premises. The applicant is procuring several goods and services to make the building suitable for letting out for rent. The goods and services procured include various materials and other inputs in the form of Cement, Sand, Steel, Aluminum, Wires, Plywood, paint, lifts, escalators, Air-conditioning plant, Chillers, electrical Equipments, special façade, DG Sets, transformers, building automation system etc., and also services in the form of Consultancy, architectural, legal & professional, engineering and other services. In other words, the applicant claim that all the said inputs and services are for providing the output service of Renting of immovable properties.
Issue/s on which advance ruling required		Admissibility of input tax credit of tax paid or deemed to have been paid.
Question(s) on which advance ruling is required		Whether the input tax credit is available on construction of building, purchase of interiors, purchase of furniture, Lift, Air-conditioners, generators and other miscellaneous goods and services which are given to provide output service of rental business. The applicant furnished the list of goods and services on which he wished to take ITC.

1.0 At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *pari materia* and have the same provisions in like matters and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2.0 M/s Rare SS Properties India Pvt. Ltd, (hereinafter '**the Applicant**') has made a debit in their Electronic Cash Ledger dated 13-09-2024 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

3.0 STATEMENT OF FACTS AS NARRATED BY THE APPLICANT:

- M/s. Rare SS Properties India Private Limited ('the Applicant') are providing Rental or leasing services falling under 997212.
- The services are provided to M/s. Saravana Stores, a partnership firm. The applicant is lending the property for lease under lease agreement with a monthly rent of Rs. 23000000/- on which GST is paid @ 18%.
- As per the agreement, the applicant, for providing infrastructural arrangements, are procuring various goods and services.
- As the goods and services are procured for providing output supply of rental services, the applicant is availing the tax amount paid on procurement of input goods and services as Input tax credit (ITC) and utilizing the same for payment of GST on rental services.
- **The department has blocked the ITC under Section 17(5)(d) of the CGST/TNGST Act, 2017 (the Act).**
- The applicant have constructed the building for the purpose of letting out the premises for furtherance of business.
- The applicant is making certain basic amenities and infrastructure facilities such as partition walls, lift equipment, gen-set facilities etc., which are required to run the business in the premises.
- The applicant is procuring several goods and services to make the building suitable for letting out for rent.
- The goods and services procured include various materials and other inputs in the form of Cement, Sand, Steel, Aluminum, Wires, Plywood, paint, lifts, escalators, Air-conditioning plant, Chillers, electrical Equipments, special façade, DG Sets, transformers, building automation system etc., and also services in the form of Consultancy, architectural, legal & professional, engineering and other services.
- In other words, the applicant claim that all the said inputs and services are for providing the output service of Renting of immovable properties.

4. STATEMENT CONTAINING APPLICANTS INTERPRETATION OF LAW:

- Quoting the provisions of Section 16(1) and Section 16(2), the applicant contended that they are provider of renting of commercial property service and that they have received the goods and services; they are in possession of invoices raised by the suppliers on them; that the GST on the lease rent has been paid to the government periodically.
- The building constructed is used for furtherance of business.
- The department had blocked the movable and immovable ITC of Rs. 32,86,38,830/- availed between May, 2021 and Mar, 2023 under Section 17(5)(d) of the Act.
- Quoting Section 17(5)(d) of the Act, the applicant contended that the goods and services procured by them are not intended for constructions of building for sale. It is used to provide Renting of Immovable Property Service.
- The Act was introduced with main object of avoiding the cascading effect of various indirect taxes so as to reduce its multiplicity of indirect taxes.
- It is based on the VAT concept of allowing input tax credit of tax paid on inputs, input services and capital goods which can be utilized for payment of output tax to obviate the cascading effect
- When the ITC is blocked, the levy of taxing chain itself will be broken at the construction stage itself.
- As the building itself is used for shopping mall any amenities provided for the purpose of renting is in the process of taxation up to the stage of providing renting services.
- The applicant referred Hon'ble High Court of Orissa in WP No. 20463 of 2018 to the case of M/s. Safari Retreats Pvt. Ltd., Vs. Chief Commissioner of GST also ruled that the very purpose of the credit is to give benefit to the assessee out of the investments on which he has paid GST on the rental income arising out of the investment on which GST was paid and it is required to have the ITC to pay GST.

5. Only, Assistant Commissioner, Chrompet Assessment Circle has furnished comments and informed that no show cause notice issued or pending adjudication with them on the subject matter.

6. Personal Hearing:

Personal hearing has been fixed on 16-04-2025. Shri. M Sarathbabu, Cost Accountant and Authorised Representative of the Applicant, appeared for the personal hearing as scheduled and reiterated the submissions made in their application seeking clarification. He explained that the applicant is doing business of renting out commercial properties for running retail and show room business with the property fully furnished and equipped. The rent is inclusive of all the facilities and fixtures mandatory for the business of their customers. The applicant informed that DGGI, Coimbatore unit had visited them and issued a Show Cause Notice. The members sought copies of the communication with DGGI from the beginning with copy of Show Cause Notice issued to them.

7. DISCUSSION AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application and also the submissions made during the personal hearing.

7.2 The applicant during the personal hearing have informed that DGGI, Coimbatore Zonal Unit had visited them and after investigation had issued a show cause notice on the same issue for which clarification is sought in the Advance ruling application.

7.3 Before proceeding to decide the query on merits, the question of admissibility of the application needs to be decided in view of the investigation initiated by DGGI, on the questions raised in the advance ruling application.

Second 98(2) of the Act, is as follows.

"(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order."

7.4 The above provision specifically states that if the question raised is already pending or decided in any proceedings, such application shall not be admitted. Therefore we have to first ascertain whether the questions raised in the application is similar or same on which proceedings have been initiated. Second, whether the proceeding precedes or succeeds the application filed by the applicant.

7.5 As per the AAR application, the applicant had sought,

Clarification as to whether the input credit available on construction of building, purchase of interiors, purchase of furniture, Lift, Air-conditioner, generator and other miscellaneous goods and services which are given to provide output services of rental business. List of goods and services are –

- Construction of Building
- Lifts
- Centralised Air Conditioner
- Interior Work
- Air Conditioner
- Furniture & Fittings
- Glass materials
- Computer, Printer, scanner and Network items
- Racks
- Electrical Bulbs and Other fittings
- Generator and other fittings
- Cameras and CCTV
- Chandeliers
- Electrical Transformers
- Aquastic

7.6 As per the Show Cause Notice, the intelligence gathered is with regard to irregular availment input tax credit to the tune of Rs. 32 Crores availed during the period 2021-22 to 2022-23 in respect of inputs used in the construction of building and utilized the same for discharging the GST liability towards their rental income. As per Section 17(5)(c) and (d) of the Act, also referred to as blocked credits, ITC shall not be available in respect of Works Contract Service or other goods or services or both used in the construction of immovable property. Hence the allegation in the notice is the availment of blocked credit contravening the provisions of Section 17(5)(c) & (d) of the Act and started initiating the investigation against the applicant.

7.7 From the above, the reason for initiation of investigation against the applicant is akin to the clarification sought by them and therefore, the time line of initiation of investigation and application before the Authority of Advance Ruling need to be seen.

8. The chronology of events resulting in issuance of show cause notice by DGGI, Coimbatore Zonal Unit is enumerated below.

Sl. No.	Nature of Activity	Date of occurrence
1.	Date of Inspection conducted by DGGI, Coimbatore Zonal Unit	25-05-2023
2.	First reply given by the applicant.	25-05-2023
3.	First summon issued to the applicant	25-05-2023
4.	Statement voluntarily deposed by Shri. B. Gopalan, General Manage & Authorised representative	01-06-2023
5.	Letter dated 31-05-2023 submitted by the applicant	01-06-2023
6.	Details of ITC availed, month-wise as per GSTR-3B with corresponding invoice details with description of goods/services purchased.	22-08-2023
7.	Summon issued to Shri. B. Gopalan, General Manage & Authorised representative	06-08-2024
8.	Statement voluntarily deposed by Shri. B. Gopalan, General Manage & Authorised representative	19-09-2024
9.	Advance Ruling application filed online	13-09-2024
10.	Advance ruling application received physically	04-10-2024
11.	Show Cause –cum-Demand Notice No. 174/2024-GST	03-12-2024

8.2 From the chronology of the events above, the recovery proceedings in the form of Show cause Notice has been issued to the applicant on 03-12-2024 after completion of thorough investigation proceedings.

8.3 The first proviso to Section 98(2) restricts admission of application seeking advance ruling where the questions are already pending in any proceedings in the case of an applicant under any of the provisions of the Act. Therefore, the term 'proceedings' assumes immense significance in the context of the instant case.

8.4 Though the term 'proceedings' has not been defined under the CGST/TNGST Act, 2017, it is seen to have been widely used in the Act, *ibid*, either as it is, in the context of the situation, or with a prefix bringing out the meaning and purpose in an unambiguous manner like 'Recovery proceedings', 'Assessment proceedings', etc.

8.5 To mention a few, the table below lists when and where the term 'proceedings' has been referred to in the CGST Act, 2017, and in what context the same has been used.

Section	Referred as	Context/Phrase
6(2)(b)	Any proceedings	Cross jurisdiction – "has initiated any proceedings on a subject matter"
Proviso to 29(1) and 29(2)	The proceedings	Cancellation or Suspension – "during pendency of the proceedings relating to cancellation of registration"
66(1)	Any other proceedings	Special Audit – "If at any stage of scrutiny, inquiry, investigation or any other proceedings before him"
67(2)	Any proceedings	Power of inspection, search and seizure – "which in his opinion shall be useful for or relevant to any proceedings under this act"
70(2)	Judicial proceedings	Power to summon – "deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code"
73(8)	All proceedings	Determination of tax – other than fraud – "all proceedings in respect of the said notice shall be deemed to be concluded"
74(8)	All proceedings	Determination of tax – by reason of fraud – "all proceedings in respect of the said notice shall be deemed to be concluded"
75(10)	Adjudication proceedings	General provisions – Determination of tax – "The adjudication proceedings shall be deemed to be concluded"
78	Recovery proceedings	Initiation of Recovery proceedings
122(1)(xvii)	Any proceedings	Penalty for certain offences – "furnishes false information or documents during any proceedings under this Act"
127	Any proceedings	Power to impose penalty in certain cases – "the same is not covered under any proceedings under sections 62/63/64/73/74/129/130".
130(7)	Any other proceedings	Confiscation of goods or conveyances – "after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act"
160(1)	Other proceedings	Assessment proceedings not to be invalid on certain grounds – "No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings"

160(2)	Earlier proceedings	Assessment proceedings not to be invalid on certain grounds – "in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication."
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9. Therefore, it becomes clear that while Sections 73, 74 and 130 talk about proceedings post the issue of show cause notice, Sections 62, 63 and 64 on the other hand clearly discusses about the proceedings involving assessment, which precedes the issue of any show cause notice. In the same way, Section 70 of the Act, that talks about 'Power to summon persons to give evidence and produce documents', specifies in sub-section 2 of Section 70 as "Every such inquiry referred to in sub-section (1) shall be deemed to be "judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).". Therefore, from the above, it becomes clear that an inquiry is to be seen as initiation of judicial proceedings, and the crucial aspect is that such proceedings precedes the issue of show cause notice. Accordingly, we are of the opinion that the moment an inquiry or investigation gets started, it amounts to initiation of proceedings under the provisions of the Act, irrespective of the fact whether it culminates in the issue of show cause notice or not, depending upon the facts and circumstances of the case.

10. In view of the above, the term 'proceedings' used in the CGST Act, 2017 is not restricted to proceedings which commence after the issue of show cause notice alone, and that the same also denotes proceedings prior to the issue of show cause notice, or proceedings which may not culminate in the issue of any show cause notice at all. Investigation is activated when there is enough predication to show that there is an alleged tax evasion and the essence of investigation is to carry out an in-depth review of the taxpayer's records and activities to ensure that the tax due to the Government is not lost in evasion. Therefore, the commencement of investigation or inquiry is to be seen as the start of a proceeding to safeguard Government revenue.

11. Apart from the above, it may be seen that while the term '**any** proceedings' contained in the phrase in question, viz., "in **any** proceedings in the case of the applicant **under any** of the provisions of this Act", by itself conveys an exhaustive picture, the additional usage of the words '**under any of the provisions of the Act**', makes it all the more broader and all encompassing. We are therefore of the opinion that the usage of the words 'any proceeding' in the proviso to Section 98(2) of the CGST Act, 2017, will encompass within its fold not just investigation, but any other proceedings as well.

12. Therefore, we are of the opinion that an advance ruling is not required to be pronounced once an investigation is initiated against the applicant under the provisions of the CGST/TNGST Act involving the same issue on which the query for advance ruling has been raised. Arriving at a decision on the same issue in respect of which a show cause notice has been issued, may vitiate the adjudication proceedings involving the said notice. At this juncture, it becomes imperative to analyse as to whether the query raised in the application for advance ruling is the same on which the investigation was initiated, and whether the investigation proceedings precedes the application for advance ruling. Accordingly, in the instant case, it is seen that inspection of the premises was made on 25-05-2023 and a summon dated 25.05.2023 was issued to give evidence and to produce the following details/documents, viz.,

1. Details of ITC availed for the financial years 2021-22 & 2022-23 (Supplier-wise with description of goods & services and HSN/SAC) with copies of purchase bills/invoices.

2. Details of outward supply along with copies of invoices issued for the period from July, 2017 onwards.

3. Details of ITC reversal made, if any.

13. In response to the above summon and the inspection conducted by the officers of DGGI, the General Manager and Authorised Representative of the applicant had given a statement presenting the fact of availment of ITC, reversal of ITC and furnished a reply the same day that they have claimed ITC of Rs. 32 Crore availed during the period 2021-22 to 2022-23 and out of which an amount of Rs. 17,55,64,064/- pertains to Civil works service for newly constructed building at Madurai. Further they have informed that they have claimed the ITC on civil works contracts based on Gujarat High Court judgment which is pending in Supreme Court. They also furnished the month-wise details of ITC availed as per GSTR-2B and GSTR-3B as required by the officers of DGGI.

14. Subsequently, another summon dated 06.08.2024 was also issued and statement from the General Manager is obtained on 19-09-2024 resulting in issuance to Show Cause Notice No.174/2024-GST dated 03.12.2024 requiring them to show cause as to why, total ineligible ITC of Rs. 23,22,21,333/- (IGST-Rs.91,65,369/-, CGST - Rs.11,15,27,982/- and SGST - Rs.11,15,27,982/-) should not be demanded and recovered along with interest and penalty besides appropriating Rs.17,55,64,064/- (CGST-Rs.8,77,82,032/- and SGST-Rs. 8,77,82,032/-) reversed by the applicant.

15. Accordingly, it is clear that the issue involved in the investigation carried out by DGGI, Coimbatore Zonal Unit, and the one covered under the query for advance ruling raised by the applicant is one and the same.

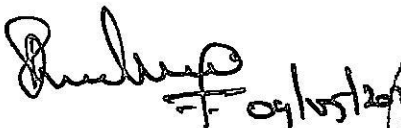
16. Further, it is seen that while the application for advance ruling in the instant case was filed by the applicant online on 13.09.2024, the first summon issued by the Senior Intelligence Officer, DGGI, Chennai Zonal Unit is dated 25.05.2023 for appearance on 25.05.2023. It is seen that the date of issue of the second summon is 06.08.2024 for appearance and statement was recorded on 19.09.2024. It is quite clear from the above, that the initiation of proceedings by way of issue of both the summons that seeks the details/documents in relation to the issue involved in the instant case, precedes the date of filing of advance ruling application by the applicant. More specifically, the letter dated 25.05.2023 of the applicant furnishing the details of ITC availed during the period 2021-22 to 2022-23, proves the case in point.

17. We are therefore of the considered opinion that the application for advance ruling filed online dated 13.09.2024 by the applicant is liable for rejection under the first proviso to Section 98(2) of the CGST / TNGST Acts, 2017, in view of the fact that 'proceedings' on the same issue was already pending against the applicant.

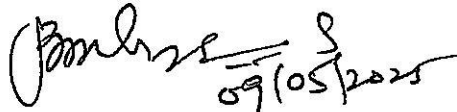
18. In view of the above, we rule as under;

RULING

The advance ruling application is rejected for the reasons discussed in para 8 supra.


(B. SUSEEL KUMAR)
Member (SGST)




(BALAKRISHNA. S)
Member (CGST)

To

M/s. RARE SS PROPERTIES INDIA PRIVATE LIMITED

GSTIN: 33AAACR4003K2ZR

No. 159, Saravana Stores, GST Road,
Chrompet, Chennai – 600 044.

//by RPAD//

Copy submitted to:

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2. The Commissioner of Commercial Taxes,
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3. The Commissioner of GST & Central Excise,
Chennai Outer Commissionerate.

Copy to:

1. The Assistant Commissioner (ST),
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2. Master File/ Spare – 2.

