



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGSAT Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)
Sri S.V. Kasi Visweshwar Rao, Additional Commissioner (State Tax)

A.R.Com/21/2020

Date:30.09.2021

TSAAR Order No.21/2021

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TELANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Satya Dev Bommireddy, H.NO.6-3-597/D/9, 869 , V R Colony, Khairatabad, Hyderabad, Telangana, 500 004 (GSTIN No. 36ASEPB8739M1ZB) has filed an application in **FORM GST ARA-01** under Section 97(1) of TGSAT Act, 2017 read with Rule 104 of CGST/TGSAT Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGSAT 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 TGSAT Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGSAT 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:**
The applicant is in the business of leasing out immovable properties. In the furtherance of his business he has purchased a flat in 11th floor Sohini Tech Park. The applicant submitted that they have also paid GST @12% on the sale consideration. That such tax remitted by the applicant to his vendor was reflected in his GSTR-2A for the month of July, 2019. Now the applicant would like to use this amount in GSTR-2A as input tax credit (ITC) to set off his liability arising from his supply of leasing of immovable property. Hence this application.
5. **Questions raised:**

It is respectfully submitted that from the Statement of facts and the Applicant's interpretation of law, rules and/or facts, the following substantial questions arises for the consideration and disposition of this Authority for Advanced Ruling:

1. Given that the supply of under construction of immovable property is specifically defined as a separate and distinct service under clause 5(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?
2. Given that the supply of lease of immovable property is specifically defined as a separate and distinct service under clause 2(b) of Schedule II of CGST Act, can

the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?

3. Given that the Applicant is in the business of lease of immovable property, does the term "*works contract services when supplied for*" in s.17(5)(c) of CGST Act refer to output supply of lease of immovable property or to the input receipt (purchase of under construction commercial immovable property) of the Applicant?
4. Is supply of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a contract of "*works contract*" within the meaning of s.17(5)(c) of CGST Act?
5. Does the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?
6. Does the term "*for construction of an immovable property on his own account*" in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?
7. If the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to input received, then can the meaning of the term "*for construction of an immovable property on his own account*" in s.17(5)(d) of CGST Act include the business of the Applicant herein, i.e. for the lease of immovable property?
8. Can purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, be termed as a contract for supply "*for construction of an immovable property on his own account*" within the meaning of s.17(5)(d) of CGST Act, given that the business of the Applicant is lease of immovable property and not construction of immovable property?
9. Regardless of its applicability to the case of the Applicant herein, given the numerous clarifications and notifications by the Dept of Revenue that clearly states that input credit is available for the sale of under construction commercial complexes sold before the issuance of the completion certificate, is not the Authority now precluded from taking a different stand?, since:
 - (a) it is against the principle of *contemporanea expositio* and
 - (b) they are bound by such executive constructions as well as rules of executive estoppel.
10. Is not purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a valid and legitimate input required for the business of the Applicant i.e. lease of immovable property?
11. Given that the Applicant's Vendor (Sohini Developers LLP) has taken the input tax credit of the GST paid by the Applicant, what specific law/rule prevents the flow of that tax and excludes the Applicant from doing the same against the GST received for leasing of his immovable property?
12. Is the Applicant eligible and entitled to claim input tax credit of GST paid to his Vendor for the purchase of under construction commercial immovable property, given he used the same to provide the supply of lease of commercial property, and adjust the same against the rental GST to be paid by him for the supply of lease of immovable property?

This being the case Consequent upon receipt of the application filed by M/s. Satya Dev Bommireddy, the jurisdictional officer i.e. Assistant Commissioner (State Tax) Basheerbag-Nampally, was requested vide this office letter CCT's Ref no.A.R.Com/21/2020 dated: 15.12.2020 inform, whether the questions raised in the application is already pending or decided in any proceedings in the case of the applicant and inform any issue pending before with them within a week lest it would be construed that these issues are not pending before them and the

application would be processed under any of the provisions of the GST Act, 2017 and also requested to offer his/he comments on the points raised in the application, However case was admitted even though Officer have not replied by the grounds of the draft letter, Therefore, Personnel hearing given to the applicant.

6. Personal Hearing:

The Authorized representatives of the unit namely Sri P.S.S Kailashnath, Advocate & AR attended the personal hearing held on 09-07-2021. The authorized representatives reiterated their averments in the application submitted and contended as follows:

That they are recipients of services under clause b of entry 5 of Schedule II of the GST Act i.e., they have purchased a building under this entry and therefore their purchase does not fall under entry 6 of the same schedule. Therefore that the AAR may clarify whether this exclusion exempts them from the conditions prescribed under clause c sub section 5 of Section 17.

7. Discussion & Findings:

The applicant has given detailed averments and also appeared for personal hearing to submit their oral arguments. The contentions of the applicant are principally understood by the authority as follows:

1. That they are purchasing flats/buildings while they are under construction and therefore are of the opinion that such immovable property should fall under the definition in clause 5(b) of Schedule II of SGST Act, 2017.
2. That being a deemed service under the above entry in Schedule II of CGST Act, 2017 such inward supply does not fall under the exclusion provided in Sec 17 of the CGST Act, 2017 from availing input tax credit (ITC).
3. That Sec 17(5)(c) though excluding inward supply of works contract services from availing input tax credit (ITC), such works contract service should be interpreted only as the services provided under Entry 6 to Schedule II and the definition given in clause 119 of Sec 2 should not be applied to Entry 5 of Schedule II.
4. Therefore in sum and substance the tax paid by them on purchase of immovable property i.e., a constructed building/flat should be available for them as ITC to be used to offset their liability arising out of leasing of the same building.

By the constitution 101st Amendment Act, 2016 Clause 26A was introduced in the Article 366 to define Services. This clause defines Services as anything other than goods. Concomitantly following this definition of the constitution the CGST Act, 2017 defines services as anything other than goods. Therefore, supply of all immovable property including supply of land or constructed flats or other civil structures have to be treated as supply of services for the purpose of CGST/SGST Acts.

However, sub-section 2 of section 7 read with Paragraph 5 of Schedule III creates a deeming fiction to exclude the sale of land from levy of GST subject to clause (b) of paragraph 5 of schedule II.

Now Paragraph 5 of Schedule II is a specific entry treating the supply of immovable property involving the construction of a complex or a building or any civil structure intended for sale as service. GST is leviable on this service. There is another specific entry for composite supply in the same schedule at Para 6 which includes works contract as defined under clause (119) of Sec 2 of the CGST Act, 2017.

Clause (119) of Sec 2 of the CGST Act, 2017 defines works contract as follows:

“Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property

wherein transfer of property in goods (whether as goods or in some other form) is involved in execution of such contract.”

The constitution bench of Hon'ble Supreme Court of India in Punjab land development corporation limited Vs presiding officer labour court (1990) 3 SCC 682 has declared that definition should be taken to ascertain the meaning assigned to a word in the Act unless there was something repugnant to the subject or context.

Thus though the construction of a building is covered by the definition of works contract still there are (2) separate entries in Schedule II which describe the eligibility of immovable property to tax. Both these entries read with Sec 7(1A) make the supply of immovable property taxable under the Act. However, the Schedule II carves out certain types of works contract under clause 5 to be treated differently from the types of works contract enumerated in Entry 6. This does not alter the basic definition of works contract given in Sec 2(119).

Now under Sec 17(5)(c) works contract services when supplied for construction of an immovable property (other than plant & machinery) except where it is an input service for further supply of works contract service is excluded from claiming input tax credit.

The contention of the applicant is that as there are (2) separate entries in Schedule II and as the construction and sale of buildings are enumerated at Paragraph 5 as a separate entry it should not be treated as works contract enumerated at Paragraph 5 of the same Schedule. Therefore the condition in Sec 17(5)(c) cannot be applied to restrict claim of input tax credit (ITC) when such building is used for further supply in lease of such property.

In this context it is observed that though the definition of works contract in Sec 2(119) of the CGST Act, 2017 covers all the construction activities including construction of buildings, however for the purpose of charging Sec 7 of the CGST Act, 2017 a specific entry in Paragraph 5 of Schedule II is included as a taxation entry for buildings and complexes for sale. This construction of statute cannot be extended to any other provision or section in the act. The Hon'ble Supreme Court of India in the case of Joint CIT Vs Saheli Leasing & Industries (2010) 6 SCC 384 (SC 3 Member bench) has held that a particular word occurring in one section of the Act, having a particular object, cannot carry the same meaning when used in different section of the same Act which is enacted for a different object. In other words, one word occurring in different sections of the act can have different meaning, if the objects of the two sections are different and when both operated in different fields.

Schedule II to Section 7 operates on a different field from Section 17 of the CGST Act, 2017. In this connection it is observed that the Sec 17 is a complete code in itself in as much as it taken within its fold the eligibility and ineligibility of input tax credit (ITC) for all the supplies received by tax payer. This section stipulates conditions under which ITC can be claimed and also carves out certain exceptions relating to certain goods & services. The enacting part of this special provision operates in the assigned field without any ambiguity or clash. There is nothing in this section to indicate or suggest that the prohibition from taking ITC is not applicable to a particular species of works contract.

It is a settled principle of interpretation that while interpreting the provision of taxing statute, a construction which would preserve the purpose of provision should be adopted. Therefore in the very nature of taxation statute the interpretation cannot be absolutely cast upon the logic. The purpose of introducing exceptions in Sec 17 of the CGST Act, 2017 is to distinguish it from other transactions. Wherever the legislature has considered it appropriated to ensure consistency in the working of various provisions and to avoid repugnancy and ambiguity in such places they have clearly enacted such exclusions. Where such clarity of excluding a particular transaction is not clearly mentioned it cannot be inferred by logic.

Therefore the interpretation of Sec 17(5)(c) wherein works contract services are excluded from claiming ITC will include all activities enumerated under Sec 2(119). And this definition does not exclude any species of works contract relatable to any immovable property where transfer of property in goods is involved. Thus the applicant who is purchasing building under an agreement of sale is not eligible to claim ITC under Sec 17 of the CGST Act, 2017.

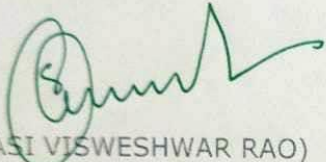

8. In view of the above discussion, the questions raised by the applicant are clarified as below:

Advance Ruling

Question Raised	Advance Ruling Issued
1. Given that the supply of under construction of immovable property is specifically defined as a separate and distinct service under clause 5(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?	Clause 5(b) of Schedule II and Sec 17(5)(c) are two different and distinct provisions of CGST Act, 2017.
2. Given that the supply of lease of immovable property is specifically defined as a separate and distinct service under clause 2(b) of Schedule II of CGST Act, can the same be treated to be referring to either the supplies or transactions described in 17(5)(c) or 17(5)(d) of CGST?	Clause 2(b) of Schedule II and Sec 17(5)(c) are two different and distinct provisions of CGST Act, 2017.
3. Given that the Applicant is in the business of lease of immovable property, does the term " <i>works contract services when supplied for</i> " in s.17(5)(c) of CGST Act refer to output supply of lease of immovable property or to the input receipt (purchase of under construction commercial immovable property) of the Applicant?	Sec 17(5)(c) is enacted with reference to restriction of ITC to works contract services. Works contract is defined under Sec 2(119).
4. Is supply of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a contract of " <i>works contract</i> " within the meaning of s.17(5)(c) of CGST Act?	Sec 17(5)(c) of CGST Act, 2017 pertains to all transactions defined under Sec 2(119).
5. Does the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?	Sec 17(5)(d) of CGST Act, 2017 refers to inputs on which ITC is not available for any taxable person.

6. Does the term " <i>for construction of an immovable property on his own account</i> " in s.17(5)(d) of CGST Act refer to output supply (lease of immovable property) or to the input receipt (purchase of under construction commercial immovable property) of the taxable person (Applicant)?	Sec 17(5)(d) of CGST Act, 2017 refers to inputs on which ITC is not available for any taxable person.
7. If the term "Goods or Services or both received" in s.17(5)(d) of CGST Act refer to input received, then can the meaning of the term " <i>for construction of an immovable property on his own account</i> " in s.17(5)(d) of CGST Act include the business of the Applicant herein, i.e. for the lease of immovable property?	If the applicant utilizes goods or services or both for construction of immovable property on his own account then the Sec 17(5)(d) is applicable with respect to purchase of goods or services or both
8. Can purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, be termed as a contract for supply " <i>for construction of an immovable property on his own account</i> " within the meaning of s.17(5)(d) of CGST Act, given that the business of the Applicant is lease of immovable property and not construction of immovable property?	No. This transaction falls within the scope of Sec 17(5)(c).
9. Regardless of its applicability to the case of the Applicant herein, given the numerous clarifications and notifications by the Dept of Revenue that clearly states that input credit is available for the sale of under construction commercial complexes sold before the issuance of the completion certificate, is not the Authority now precluded from taking a different stand?, since: <div style="margin-left: 40px;">(a) it is against the principle of contemporanea expositio and</div> <div style="margin-left: 40px;">(b) they are bound by such executive constructions as well as rules of executive estoppel.</div>	<p>The applicant has not brought to the notice of the authority any such specific clarifications on Notifications.</p> <p>9a. No.</p> <p>9b. No.</p>
10. Is not purchase of "under construction commercial immovable property" under an indivisible contract without explicit purchase of goods and/or services therein, a valid and legitimate input required for the business of the Applicant i.e. lease of immovable property?	As discussed in detail above, the answer to this question is No.

11. Given that the Applicant's Vendor (Sohini Developers LLP) has taken the input tax credit of the GST paid by the Applicant, what specific law/rule prevents the flow of that tax and excludes the Applicant from doing the same against the GST received for leasing of his immovable property?	Sec 17(5)(c) clearly answers this question.
12. Is the Applicant eligible and entitled to claim input tax credit of GST paid to his Vendor for the purchase of under construction commercial immovable property, given he used the same to provide the supply of lease of commercial property, and adjust the same against the rental GST to be paid by him for the supply of lease of immovable property?	As discussed in detail above, the answer to this question is No.

 (S.V. KASI VISWESHWAR RAO) ADDL. COMMISSIONER (State Tax)	 (B. RAGHU KIRAN) ADDL. COMMISSIONER (Central Tax)
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[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. Satya Dev Bommireddy H.NO.6-3-597/D/9,
869, V R COLONY, KHAIRATABAD, Hyderabad,
Telangana, 500004

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

Copy to:

- 3. Assistant Commissioner (ST), Basheerbaagh – Nampally, Circle.
//t.c.f.b.o//

Superintendent (Grade-I)