



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/15/2019

Date:13.07.2022

TSAAR Order No.47/2022

[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. Maddi Seetha Devi, A-28, 2nd Floor, Journalist Colony, Plot No.70 Jublee hills, Hyderabad Telangana- 500 033 (36ADQPM2479L1ZS) 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. Maddi Seetha Devi, the applicant, is a registered tax payer and a land owner and has entered into a development agreement with M/s. PHL and entrusted the land to M/s. PHL by way of a joint development agreement in the year 2016. M/s. PHL will hand over 27% of the developed property to the applicant. The applicant is desirous of clarification regarding liability of transfer of development rights and time of supply under GST. Hence this application.

5. Questions raised:

1. Whether transfer of land or transfer of 'development rights' to the developer by the landowner is to be considered as receipt of consideration by the developer as per Notification No.04/2018-CT (Rate) dt.25.01.2018 and as per the clarifications issued after

introduction of GST and prior thereto towards the construction of flats in the residential complex to be taken up by the developer for the landowner?

2. Whether the liability to pay GST or service tax as applicable arises on the developer immediately on receipt of development rights or immediately on conveyance of the flats to be constructed by way of an allotment letter?

6. Personal Hearing:

The Authorized representatives of the unit namely Y Sreenivasa Reddy, Advocate and C.V. Narsimham, Advocate attended the personal hearing held on 16-02-2022. The authorized representatives reiterated their averments in the application submitted and averred as follows:

1. That, they are the land owner developer and have alienated development rights to the builder developer in the year 2016, i.e., prior to introduction of GST in 2017.
2. That, in their opinion they have supplied development rights to the builder and in exchange received construction services from the builder. That, they are desirous of clarification whether the development rights received by the builder can be construed as consideration received by such builder.
3. Whether the construction service rendered by the builder against the consideration received from the owner in the form of transfer of development rights on the land, the liability for payment of GST/ service tax arose either:
 - a) Immediately on receipt of development right and conveyance of the allotment of the share of constructed area; or
 - b) Upon handover of the constructed place.

7. Discussion & Findings:

The submissions made by the applicant indicate that they as "land owner-promoter" have entered into a joint development agreement (JDA) with the "developer-promoter" on area sharing basis for Residential Real Estate Project (RREP) in Jan' 2016. The GST structure on real estate services has been greatly altered with effect from 01.04.2019 through Notification No. 03/2019 and Notification No. 04/2019 dated: 29.03.2019.

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.

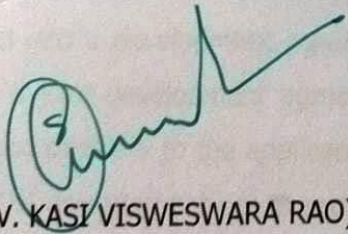
Therefore the tax on the portion of constructed area shared with the land owner-promoter has to be paid by 'developer-promoter'. The applicant i.e., the land owner-promoter will claim such tax as ITC as described above whenever he makes further sale of such property before issuance of completion certificate.


Further according to the conditions laid down in Notification No. 04/2018 the liability to pay tax on consideration received by the developer-promoter in form of development rights shall arise at a time when such developer-builder transfers possession or right in the constructed complex. That is after the completion of the construction of a civil structure the time of supply arises when the right or possession in such constructed complex is transferred to the land owner-promoter.

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 transfer of land or transfer of 'development rights' to the developer by the landowner is to be considered as receipt of consideration by the developer as per Notification No.04/2018-CT (Rate) dt.25.01.2018 and as per the clarifications issued after introduction of GST and prior thereto towards the construction of flats in the residential complex to be taken up by the developer for the landowner?	Yes. Transfer of development rights by the landowner to the developer is consideration received by such developer for supply of construction service.
2. Whether the liability to pay GST or service tax as applicable arises on the developer immediately on receipt of development rights or immediately on conveyance of the flats to be constructed by way of an allotment letter?	The liable to pay GST by the developer-promoter shall arise at the time of transfers possession or right in the constructed complex or constructed flats and not at the time of receipt of development rights.


(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. Maddi Seetha Devi, A-28, 2nd Floor,
Journalist Colony, Plot No.70 Jubilee hills,
Hyderabad Telangana- 500 033.

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. The Superintendent (Central Tax) Punjagutta Range. H.No.8-3-1040, Plot No. 140, 3rd to 5th Floor, Opp. Ratnadeep Super Market, Srinagar Colony, Hyderabad - 500 073