

**IN THE KARNATAKA AUTHORITY FOR ADVANCE RULINGS
GOODS AND SERVICES TAX**

Advance Ruling No. KAR ADRG 15/2019

| | |
|--------------------------------------|--|
| Name of the applicant | M/s DURGA PROJECTS AND INFRASTRUCTURE PVT LTD |
| Date of filing of Form GST ARA-01 | 25-04-2018 |
| Represented by | Sri Sanjay M Dhariwal, CA Authorised representative |
| Jurisdictional Authority - Centre | The Commissioner of Central Tax, Bengaluru South Commissionrate, C R Building, Queens Road, Bengaluru-560001 |
| Jurisdictional Authority - State | LGSTO-90, Bengaluru |

Harish Dharnia, Member (CT) & Ravi Prasad M P, Member (ST)

Dated: July 25, 2019

GST - In respect of partially completed flats having identified customers before GST regime, appellant is liable to pay service tax under the FA, 1994 proportionate to the services provided up to 30.06.2017 and from 01.07.2017 onwards they are liable to pay GST proportionate to the services provided effective 01.07.2017: AAR

GST - In respect of partially completed flats where customers are identified after implementation of GST, applicant is liable to pay GST on transaction value of supply: AAR

GST - Where no customers are identified in respect of partially completed flats, applicant is not liable to pay GST as no supply is involved - however, if supply is made prior to issuance of completion certificate, GST is liable to be paid on transaction value of supply: AAR

Application disposed of

PROCEEDINGS

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES
TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES
TAX ACT, 2017**

M/s Durga Projects & Infrastructure Private Limited, (called as the 'Applicant' hereinafter), having GSTIN number 29AACCD5554H1ZI have filed an application for Advance Ruling under Section 97 of **CGST Act, 2017** read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the **KGST Act, 2017** read with Rule 104 of the KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a company incorporated under the Companies Act 1956 and is registered under the Goods and Services **Act, 2017**. The company has sought advance ruling in respect of the following questions:

Applicability of GST on partially completed flats i.e.

- a) Partially completed flats having identified customers before GST regime
- b) Partially completed flats, where customers are identified after implementation of GST regime, and
- c) Partially completed flats, where no customers are identified.

3. The applicant company furnishes some facts relevant to the stated activity:

3.1 The Applicant is engaged in construction and sale of residential apartments and residential complex based under joint development agreement.

3.2 The Applicant have executed projects under JDA with Land Owners for an agreed ratio of built-up area. Construction was commenced during pre-GST regime and also continued under GST regime, out of which substantial portion of the work has been sub-contracted to another registered person.

3.3 The Applicant submits, their understanding of law and consequently their view points, on the issue raised by them, that construction activities relating to immovable property have been treated as "Works Contract" under the GST Law; construction and sale of residential flats falls under the "Works Contract" and hence classified as supply of Service that are leviable to GST, but with an exception that the GST is not leviable where entire consideration is received after issuance of completion certificate, wherever required, by the Competent Authority or after its first occupation, whichever is earlier. In other words in such cases the sale of immovable property is out of the purview of GST.

3.4 The Applicant further submits on the basis of Transitional Provisions of the **CGST Act 2017** (Sections 141, 142, 143) that tax was leviable under earlier law to the extent of work executed under earlier law and not under GST Law and therefore in respect of partially completed flats, tax is applicable on the value of work to be executed under GST and not on the value of work already executed under earlier law, irrespective of whether payments are received or not. The Applicant submits that in terms of Honorable Supreme Court decision in the case of *M/s Larsen and Toubro limited & another V/s State of Karnataka and another (2013) 75 VST 1 - 2013-TIOL-46-SC-CT-LB* work executed, either under earlier law or under GST Law, amounts to "Works Contract" only from the stage of entering agreement with customer.

3.5 The Applicant, in view of the above, concludes their view on the question raised, as under:

(a) In respect of partially completed flats having identified customers before GST Regime - Liable to Tax as per earlier law on the value of work executed under earlier law and liable to tax under GST Law only on the value of work executed under GST,

(b) In respect of partially completed flats, where customers are identified after implementation of GST regime - Not liable to tax under earlier law on the portion of

work executed under earlier law, as held by Hon'ble Supreme Court in L&T case that the activity/transaction amounts to work contract only from the stage of entering agreement with customer, and attract tax under GST Law on the value of work executed under GST Law.

(c) **Partially completed flats, where no customers are identified** - Not liable to tax under earlier law on the portion of work executed under earlier law, as held by Hon'ble Supreme Court in L&T case that the activity/transaction amounts to works contract only from the stage of entering agreement with customer, and attract tax under GST law on the value of work executed under GST Law only from the stage of entering agreement with customer.

PERSONAL HEARING:/PROCEEDINGS HELD ON 21.05.2018.

4. Sri. Sanjay M Dhariwal, Chartered Accountant at M/s Dhariwal & Sreenivas, Bengaluru, on authorization issued by Sri Navneet Jhunjhunwala, Director of the Company, appeared as Authorised representative of the company for personal hearing proceedings on 21.05.2018, before this authority and reiterated the facts narrated in their application. The applicant also submitted copies of following documents during personal hearing.

(a) Commencement certificate issued by local authority (BBMP)

(b) Copy of completion certificate containing status of project i.e. percentage of completion obtained from Chartered Engineer.

(c) Copy of application filed before the local authority (BBMP) seeking issuance of Occupancy Certificate.

(d) Copy of Hon'ble Apex Court decision in *Larsen and Toubro Limited & another Vs State of Karnataka & another* [2013] 65 VST 1 = **2013-TIOL-46-SC-CT-LB**.

5. FINDINGS & DISCUSSION

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Sanjay M Dhariwal, Chartered Accountant and authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant and relevant facts.

5.2 The Applicant seeks advance ruling in respect of the following questions:

Applicability of GST on partially completed flats i.e.

a) Partially completed flats having identified customers before GST regime

b) Partially completed flats, where customers are identified after implementation of GST regime, and

c) Partially completed flats, where no customers are identified.

5.3 The Applicant has admitted that their activity of construction related to immovable property falls under the definition of "Works Contract". Accordingly in terms of Schedule

II of the **CGST Act 2017** their activity is liable to be treated as a supply of service. The questions on which advance rulings have been sought by the Applicant are in relation to "works Contract" service which had commenced in the pre-GST regime and continued/ended in the post- GST regime. Section 142(11) of the **CGST/KGST Act 2017** under Transitional Provisions is relevant to the aforesaid situation in the instant case and hence we draw reference to the said section, which is appended below:

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

5.4. Section 142(11)(b) provides that no tax shall be payable under the CGST/KSGST Act to the extent that tax was leviable under the erstwhile Finance Act, 1994 for the services rendered during the currency of the said Finance Act. In other words service tax is liable to be paid on the services provided up to 30.06.2017. Also the GST is liable to be paid under the **CGST Act' 2017/KGST Act' 2017**, on the services provided after 01.07.2017. Therefore we are of the opinion that the Applicant has to pay service tax/GST proportionate to the services provided before/after 30.06.2017 respectively.

5.5 The Applicant's questions are customer centric i.e. the customer is identified in pre-GST regime, post-GST regime and not identified in either regime. The Applicant means by "identification of customer" that the agreement has been entered into with the customer for construction of particular flat. We now consider each of the questions one at a time.

5.6 It is pertinent to first discuss the taxability of works contract service. In terms of para 5(b) of Schedule II to the **CGST Act 2017**, construction activity is not leviable to GST where the entire consideration has been received after issuance of completion certificate, where required, by the Competent Authority or its first occupation, whichever is earlier. In other words the supply would amount to sale of building/flat if the transaction occurs after the issue of completion certificate. In this situation the activity is covered under Para 5 of Schedule III of the CGST Act. Consequently such an activity is neither a supply of goods nor that of services, Therefore it would not attract GST.

5.7 Now we proceed to answer the questions on the basis of the fact that the completion certificate has not been issued by the competent authority. The first question is with regard to applicability of GST on partially completed flats where customers had been identified prior to 01.07.2017. In this situation, the agreement with the customer was executed in pre-GST regime i.e prior to 01.07.2017. Therefore the Applicant is

liable to pay service tax under the Finance Act 1994 proportionate to the services provided up to 30.06.2017 and from 01.07.2017 onwards liable to pay GST proportionate to the services provided effective from 01.07.2017, in terms of Section 142(11)(b) of the **GST Act 2017**.

5.8 The second question is with regard to applicability of GST on Partially completed flats, where customers are identified after implementation of GST. In these cases agreements for supply have been entered with the probable customers on or after 01.07.2017. It implies that the agreement has been entered prior to completion of the construction and also before issuance of the completion certificate from the BBMP, the competent authority. At this point we make a reference to the provisions of Section 13 of the **CGST Act, 2017**. Sub Section (1) provides that liability to pay tax under the Act arises at the time of supply. The time of supply has been further described adequately under various entries of Sub Section (2) of Section 13. Therefore in the event that the agreements are entered into after 01.07.2017, the provisions of Section 13 of the said Act shall come into force and the applicant shall become liable to pay the applicable tax.

5.9 In the context of the aforesaid second question the applicant has also expressed their views on the value on which the GST would be liable to be paid. In this regard the applicant contends that the tax payable under GST would be on the value of work executed under GST Law. In other words, the applicant contends that if the work commenced prior to 01.07.2017 and was partially completed as on the appointed date, then the value of supply under GST shall be only the value of the work carried out after the appointed date.

5.10 We have considered the contention of the applicant in relation to the value of supply in relation to the second question. We do not agree to the applicants viewpoint. The applicant had not entered into any agreement with the customer prior to 01.07.2017. Therefore there was no event of supply to anyone. The applicant was engaged in the activity of construction on his own account. In this regard we draw reference to Section 15 of the **CGST Act, 2017**. Section 15(1) provides that the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipients are not related and the price is the sole consideration for the supply. It is apparent from the aforesaid provision that the value to be adopted for the computation of tax amount has to be the transaction value, i.e. the value at which the supply has been agreed upon. Therefore the applicants view in this regard is not correct and we do not accept the same.

5.11 The third question is with regard to applicability of GST on Partially completed flats, where no customers are identified. The applicant admits that no customers are identified. Here we again draw attention to the provisions of Para 5 of Schedule II of the **CGST Act, 2017**. If the applicant completes the activity of construction and also obtains the occupancy/completion certificate from the competent authority and then enters into a transaction with a recipient then the applicant is not liable to pay GST as such an activity/transaction then falls under Para 5 of Schedule III. In case the transactions are initiated prior to the issue of completion/occupancy certificate then the

scenario becomes identical to the one raised in question No. 2 and the discussion above in Para 5.7 applies.

6. In view of the foregoing, we pass the following

RULING

The rulings in the three questions are respectively as follows:

- a) In respect of Partially completed flats having identified customers before GST regime, the Applicant is liable to pay service tax under the Finance Act 1994 proportionate to the services provided up to 30.06.2017 and from 01.07.2017 onwards liable to pay GST proportionate to the services provided effective from 01.07.2017, in terms of Section 142(11) of the **CGST Act 2017**.
- b) In respect of partially completed flats, where customers are identified after implementation of GST, the Applicant is liable to pay GST on the transaction value of supply.
- c) In respect of partially completed flats, where no customers are identified the applicant is not liable to GST as no supply is involved. However, if the supply is made prior to the issuance of completion certificate then GST is liable to be paid on the transaction value of supply, as answered in (b) above.