

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

Goa Rajya Kar Bhavan, 2nd Floor, Altinho, Panaji-Goa. Pin Code - 403001

Tel: 0832-2229225

Fax : 0832-2225032

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

ORDER NO.: GOA/AAAR/Rectification /01 of 2019-20/2020-21/Date: 16/11/21

2081

BEFORE THE BENCH OF

**Shri Hemant Kumar, Member
and
Smt Krishna A Mishra, Member**



GSTIN Number	30AAACG7220K1Z0
Legal Name of Applicant	M/s Goa Tourism Development Corporation Limited
Registered Address	3 rd floor, Paryatan Bhawan, Patto, Panaji, Goa- 403001
Details of Application	Application No. GOA/GST/AAAR/01/2019-20 Dated: 27.12.2019
Application for Rectification of	Appellate Authority for Advance Ruling Order No. GOA/AAAR /01/26-3/2018-19/4591 dated 22.03.2019
Jurisdictional Officer	State – STO Panaji Center – Range II



(Under Section 102 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 application has been filed under Section 102 of the Central Goods and Services Tax Act, 2017 and Goa Goods and Services Tax Act, 2017, hereinafter, referred to as GST Act by M/s Goa Tourism Development Corporation Limited, registered vide GSTIN30AAACG7220K1Z0, (hereinafter referred to as the Applicant) for rectification in the Appellate Authority for Advance Ruling's Order No. GOA/AAAR /01/26-3/2018-19/4591 dated 22.03.2019.

Brief facts of the case:

1. The Applicant is registered under the GST Act, 2017, and holds GSTIN:30AAAACG7220K1Z0. The Applicant sought an Advance Ruling in respect of the question whether GST is applicable on one time concession fee charged by the applicant in respect of their property at Anjuna, Goa, which is given to M/s Myrash 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 Applicant claimed exemption as per Sr. No. 41 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended by the 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 dated 02.10.2018 held that the service provided by the Applicant does not satisfy the criteria mentioned at Sr. No. 41 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended by the Notification No. 32/2017-Central tax (Rate) dated 13.10.2017. Therefore, they are not entitled for the benefit 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 Applicant filed Appeal before 'The Goa Appellate Authority for Advance Ruling for Goods and Service Tax', on 06.11.2018. The Appellate Authority for Advance Ruling, vide order No. GOA/AAAR/01/26-3/2018-19/4591 dated 22.03.2019 upheld the Ruling given by AAR- Goa and rejected the appeal.
5. As the Applicant couldn't file the rectification application before the Appellate Authority for Advance Ruling, Goa, within the stipulated time period, as prescribed under Section 102 of GST Act, 2017, they approached the Hon'ble Bombay High Court, Goa Bench for condonation of delay and filed Writ Petition No. 1094 of 2019. Hon'ble Bombay High Court, vide order dated 18.12.2019, granted leave and ordered as under:-
"In case such an application under Section 102 is made by the Petitioner within 10 days from today, then the concerned authority may consider that the Petitioner was bonafide pursuing this matter before the Court".

6. Accordingly, Applicant filed the present rectification application before this

Appellate Authority, on 27.12.2019, under Section 102 of the CGST Act, 2017 and Goa

GST Act, 2017.



[Signature]
[Signature]

Grounds of Rectification

7. In the application, the Applicant inter-alia avers that:-

(i) The issue of applicability of GST in respect of the subject agreement dated 9.12.2016, which was executed prior to coming into force of the GST Act, is within the purview of the issue raised at Serial No. 14 of the application filed before the Advance Ruling Authority and the said issue was specifically argued. This is clear from paras 3 and 4 of the second last page and para 1 of the last page of the order dated 02.10.2018. The said contention of the applicant was negated by the said Authority. It was in this context that, general ground was raised in the appeal memo namely Ground 1 that, Order is not warranted on facts and circumstances of the case and is opposed to equity, law and justice. As also at Ground No. 7, leave was sought to amend the grounds at the time of hearing. Though not elaborately, it was urged by the representative of the Applicant, Mr. Parimal Kulkarni that, since the agreement was executed in pre GST time, GST Act would not apply. The said contention has not been considered in the said Order dated 22.03.2019 passed by this Hon'ble Authority. To that limited extent there is error apparent on the face of the record.

(ii) The event of taxation or the point of taxation for the purpose of instant case was the execution of agreement dated 9.12.2016 which was executed before the advent of GST wherein the license was created. In view of the same, the GST Act has no application and the Advance Ruling Authority misconceived provisions of Section 142(10) of the GST Act in as much as the same refers to a continuing service which is not the nature and import of the agreement dated 09.12.2016.

8. Personal Hearing was held on 05.10.2021 through video conference. Shri Parimal Kulkarni of M/s PGK & Co. Chartered Accountants, attended the hearing on behalf of the Applicant and orally submitted following for consideration by the Appellate Authority –

(i) That the Advance Ruling Authority as well as the Appellate Advance Ruling Authority had wrongly considered the amount of Rs.25,20,00,000/- as a onetime upfront concession fee for a term of 60 years @42,00,000/- per annum. Whereas, the actual 'One Time Upfront Concession Fee' was Rs.28,00,00,000/-. This amount was taken in two installments (i) Rs. 2,80,00,000/-(i.e. 10% of Rs.28,00,00,000/-) and (ii) Rs. 25,20,00,000/- (balance 90% of Rs. 28,00,00,000/-).

(ii) That the Applicant shall be paying GST on the annual revenue share, to be computed @5% quarterly i.e. @20% annually on the gross revenue earned by M/s Myrayash Hotel Pvt. Ltd.. This revenue is part of yearly charges that will be received by the Applicant. However, this is not part of the AAR application.

(iii) That the Advance Ruling Authority invoked Section 142(10) of the GST Act, 2017 instead of Section 142(11b) of the Act.



9. The Applicant was requested to submit the following documents to the Appellate Authority:-

- (i) Copy of the agreement dated 09.12.2016, executed between M/s Goa Tourism Development Corporation Limited and M/s Myrayash Hotels Pvt. Ltd.,
 - (ii) Copy of invoice issued by the Applicant to M/s Myrayash Hotels Pvt. Ltd for payment of first instalment of upfront fee of Rs.2,80,00,000/-,
 - (iii) Copy of invoice issued by the Applicant to M/s Myrayash Hotels Pvt. Ltd for payment of second instalment of upfront fee of Rs.25,20,00,000/-,
 - (iv) Copy of ledger of the Applicant showing receipt of the aforesaid amounts.
- 9.1. The above cited documents were submitted by the Applicant vide e-mails dated 14.10.2021 and 20.10.2021.

Discussion and Findings:

10. The application and appeal filed by the Applicant before the Advance Ruling Authority and the Appellate Authority for Advance Rulings and orders passed by both the Authorities have been perused. The point to be decided is:-

Whether there was any error apparent on the face of the record in the order dated 22.03.2019, passed by the Appellate Authority? If yes, what rectification is required in view of submissions of the Applicant?

11. On perusal of the 'Form GST ARA-01' i.e. 'Application Form for Advance Ruling', of the Applicant before the 'Goa Authority for Advance Ruling', it is observed that, the relevant portions of S.No. 14, 15 and 16 of the application form read as under:-

14	Question(s) on which advance ruling is required	Whether GST is applicable on One time Concession Fees charged by us in respect of our property namely Anjuna property given to M/s Myrayash Hotels Pvt. Ltd., on a long term lease of 60 years for development of infrastructure for financial business on Private Investment mode on DBFOT basis (Design, Build, Finance, Operate and Transfer) providing exclusive right, license and authority to construct, operate and maintain the project.
15	Statement of relevant facts having a bearing on the question(s) raised.	We have executed Concession Agreement for Renovation / Development of Anjuna property through Private Investment Mode, Goa with Myrayash Hotels Pvt. Ltd., Mumbai on 09 th December 2016, ----- We have collected amount of Rs. 25,20,00,000/- as a onetime upfront Concession Fees for a term of 60 years @ Rs. 4200000/- per annum for use of our Anjuna Property



[Handwritten signature]

[Handwritten signature]

		through Private Investment mode on DBFOT basis(Design, Build, Finance, Operate and Transfer).
16	Statement containing the applicant's interpretation of Law and / or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point on issues on which the advance ruling is sought).	<p>The notification as mentioned below clearly says that GST is not applicable for One Time Concession Fees charged by us in respect of our property namely Anjunaproperty given to M/s Myrayash Hotels Pvt. Ltd., on a long term lease of 60 years for development of infrastructure for financial business onPrivate Investment mode on DBFOT basis(Design,Build,Finance,Operate and Transfer) providing exclusive right, license and authority to construct, operate and maintain the project.</p> <p>As per Sr. no. 41 of GST notification no. 12/2017-Central Tax (Rate) dated 28th June 2017 which says that</p> <p>"One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units."</p> <p>Similarly, the above mentioned GST notification was further amended vide notification no. 32 / 2017- Central Tax (Rate) dated 13th October 2017 wherein the entry at serial number 41 was substituted as under:-</p> <p>"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 Corporations 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.";</p>

12. The personal hearing before the AAR was held on 24.9.2018. Thereafter, the order dated 2.10.2018 was passed by the Authority for Advance Ruling (AAR).The relevant paras of the order dated 2.10.2018 of AAR are reproduced below for ease of

reference:-



The applicant has collected amount of Rs. 25,20,00,000/- from M/s. Myrayash Hotels Pvt. Ltd., Mumbai in the name of onetime upfront Concession Fees for a term of

litt

Kushal Kumar

60 years @ Rs. 42,00,000/- per annum for use of their Anjuna Property through Private Investment mode on DBFOT Basis (Design Build, Finance, Operate and Transfer).

4. During the hearing, it was submitted by the authorised representative of the applicant that the one-time upfront concession fee charged by the applicant, an undertaking of Government of Goa, for lease of 60 years granted to M/s. Myrayash Hotels Pvt. Ltd., Mumbai is exempted from payment of GST under Sr. No. 41 of Notification No. 12/2017-C.T. (Rate), 28-6-2017 as amended by Notification No. 32/2017-C.T. (Rate), dated 13-10-2017. The Entry No. 41 reads as follows :
"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 for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 percent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area."

5. Further the applicant submitted that all the conditions for claiming exemption under this entry is satisfied and complied and hence eligible for exemption under entry 41.

10. Recently, the Hon'ble High Court Bombay has dealt with the identical issue in the matter of Writ Petition No. 12194 of 2017 [2018 (12) G.S.T.L. 232 (Bom.) in the case of Builders Association of Navi Mumbai and Neelsidhi Realities v. Union of India and Others. The issue before their lordship was to decide whether GST can be levied and collected on the long term lease granted by City Industrial and Development Corporation of Maharashtra Ltd. (CIDCO) for 60 years. While dealing with the issue the Hon'ble High Court has observed that lease premium amount is a consideration against supply of service and is subject to Goods and Services Tax.

11. Reliance may also be place on the decision of Hon'ble High Court Allahabad in the case of Greater Noida Industrial Development Authority v. Commissioner of Customs, Central Excise[2015 (40) S.T.R. 95 (All.)], wherein the Hon'ble High Court while considering the demand, though not arising out of GST, but under the Finance Act, 1994 in relation to the services of renting of immovable property of Greater Noida, has arrived at the conclusion that the same was a taxable service and on the consideration received, the service tax could have been levied and demanded.

12. In their submission dated 24-9-2018 the applicant has submitted that as per Section 142(10) of the GST Act, the provisions of GST shall apply only in cases where the supply of service has been after the appointed date i.e. introduction of levy of GST. Thus, in case services are provided prior to appointed date, the provisions of GST shall not apply. On this count we would like to draw the attention to the provisions of Section



[Signature]
Kumudeshwari

142(10) of GST Act, 2017 which reads as - "Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act".

13. From the statute of the provisions of Section 142(10) *ibid* it can be easily secreted that if the contract is made in Service Tax regime and the service is provided in the GST regime or the service is in the nature of continuous supply of service, the same shall be liable to tax under the GST Act. In the instant matter, though the consideration against service is received prior to the appointed day and the contract was made in service tax regime, it cannot be said that the supply of service is completed. It can easily be understand that the consideration is received against the services to be provided for next 60 years i.e. the supply of service is in the nature of continuous supply of service. Therefore, the same is liable to be taxed under GST Act.

Advance Ruling under Section 98 of the CGST/GGST Act, 2017.

14. The service provided by the applicant in the instant matter, is not falling under the criterion mentioned at Sr. No. 41 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by the Notification No. 32/2017-Central Tax (Rate), dated 13-10-2017. Therefore, the applicant is not entitled for the benefits of the said notification and the activity of long term lease is liable for levy of GST".

13. On perusal of the order dated 2.10.2018 of the Authority for Advance Ruling (AAR), it is observed that, while passing the said Order, the AAR had taken into account (i) the written submissions of the applicant, (ii) submissions made during personal hearing, (iii) relevant provisions of law, (iv) relevant orders of Hon'ble Tribunals & Hon'ble Courts, and (v) other relevant material.

13.1 On perusal of para 12, of the order dated 2.10.2018, it is observed that, in their submission dated 24-9-2018, the Applicant had submitted that, as per Section 142(10) of the GST Act, the provisions of GST shall apply only in cases where the supply of service has been after the appointed date i.e. introduction of levy of GST. Thus, in case services are provided prior to appointed date, the provisions of GST shall not apply.

13.2 This submission of the Applicant was specifically dealt by the AAR in the paras 12 and 13 of the order dated 2.10.2018.

14. On perusal of the 'Form GST ARA-02' (and its Annexures) i.e. 'Appeal to the Appellate Authority for Advance Ruling', of the Applicant before the 'Goa Appellate Authority for Advance Ruling for Goods and Service Tax', it is observed as under:-

(i) On page 7 of the appeal the Applicant had stated as under:-



'We have collected amount of Rs. 28,00,00,000/- as a onetime upfront Concession Fees. In our application before the AAR it was inadvertently mentioned as – for a term of 60 years @Rs. 42,00,000/- per annum-such is not the case. This amount was received in two parts. First 10% of the amount of Rs. 2,80,00,000/- and the second installment was of Rs. 25,20,00,000/-. This is an upfront fees for granting concession of our Anjuna property through Private Investment mode on DBFOT basis (Design, Build, Finance, Operate and Transfer) towards this we attach the financial bid copy / Resolution which proves that the amount is an upfront fee towards granting concession. The Financial Bid was called for during the hearing which has been duly submitted.

In addition to our upfront fees, annual revenue share shall be computed at 20% (5% per quarter) of the Gross revenues. This revenue share is part of our yearly charges that we will receive and on which GST will be charged and that is not part of this AAR application".

(ii) At para 6.7 on page 11 of the appeal the Applicant had stated as under:-

"The revenue share shall be computed at 5% of the Gross revenues for the quarter. This is part of our yearly charges that we will receive and on which GST will be charged and that is not part of this AAR application".

(iii) From para 9.1 on page no. 13 to para 9.11 on page no. 18 of the appeal, the Applicant made submissions that they were entitled for the benefit of S.No. 41 of exemption notification no. 12/2017-Central Tax (Rate) dated 28.07.2017 as amended by notification no. 32/2017- Central Tax (Rate) dated 13.10.2017.

(iv) On page 12 of the appeal, the Applicant had given the grounds of appeal as under:-

"1. The order is not warranted on the facts and circumstances of the case and is opposed to equity, law and justice.

2. The respected AAR-Goa has failed to appreciate the fact that the exemption notification is wide enough to cover the transaction as **exempt**.

3. The respected AAR-Goa failed to consider that our transaction is that of upfront one time premium and not merely a periodic lease rental collected in advance.

4. The respected 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**.

5. The respected AAR-Goa has wrongly applied the facts of the cases that are different from the facts of our case.

6. The respected AAR-Goa has wrongly applied the facts of the case which in fact when applied correctly shows that our case is very much eligible for the **exemption**.

7. **The appellants crave leave to add, alter, amend and/ or rescind any of the above grounds of appeal at the time of or before personal hearing. The appellants also crave leave to submit additional grounds of appeal at a later stage".**



15. The personal hearing before the Appellate Authority for Advance Ruling (AAAR) was held on 30.1.2019. On perusal of para 7 of the order dated 22.3.2019 of the AAAR, it is observed that, during hearing, the arguments of the Applicant were based on the notification no. 32/2017- Central Tax- (Rate) dated 13.10.2017.

16. From the above, it is evident that the main contention of the Applicant before the AAAR was that they were entitled for the benefit of exemption notification i.e. S.No. 41 of the exemption Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by notification no. 32/2017- Central Tax- (Rate) dated 13.10.2017.

17. On perusal of the order dated 22.03.2019 of the Appellate Authority for Advance Ruling (AAAR), it is observed that the AAAR had dealt with the issue of coverage under the notification no. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by notification no. 32/2017- Central Tax- (Rate) dated 13.10.2017, in detail. On perusal of Para 9 to 25 of the said order dated 22.03.2019, it is observed that, the AAAR had carefully examined the content of the notification no. 12/2017-Central Tax (Rate), dated 28-6-2017 as amended by notification no. 32/2017- Central Tax- (Rate) dated 13.10.2017, vis-à-vis the legislative intent of the same. The AAAR has examined each and every condition of the notifications in detail and whether the same had been fulfilled by the Applicant or not.

17.1 While passing the said order dated 22.3.2019, the AAAR had taken into account (i) the submissions of the Applicant before the AAR, (ii) order dated 02.10.2018 of AAR, (iii) the written submissions of the Applicant before the AAAR, (iv) submissions made by the Applicant during personal hearing on 30.01.2019 before AAAR, (v) relevant provisions of law, (vi) relevant orders of Hon'ble Tribunals and Courts, and (vii) other relevant material.

Accordingly, vide order dated 22.3.2019, the AAAR upheld the order dated 02.10.2018 of AAR. The said order dated 22.03.2019 of AAAR is legal and proper.

18. In the application for rectification, the basic submissions of the Applicant are as under:-

(i) the event of taxation or the point of taxation for the purpose of the instant case was the execution of agreement dated 9.12.2016 which was executed pre- GST wherein the license was created,

(ii) the GST Act has no application and the Advance Ruling Authority misconceived provisions of 142(10) of the GST Act in as much as the same refers to a continuing service which is not the nature and import of the agreement dated 09.12.2016.

(iii) the Advance Ruling Authority should have invoked Section 142(11) (b) of the GST Act, 2017.



19. All documents and submissions on record have been perused. On perusal of the documents on record, inter-alia, the following facts are revealed:-

(i) Letter of Award dated 24.11.2016 of Applicant addressed to Shri Dhaval Atul Barot, Director, of M/s Bharat Infrastructure & Engineering Pvt. Ltd., shows that they were supposed to fulfill six conditions and the first condition was to pay Upfront Concession Fee of Rs. 28,00,00,000/- along with applicable taxes.

(ii) Letter dated 7.12.2016 of M/s Bharat Infrastructure & Engineering Pvt. Ltd. addressed to Applicant shows that, M/s Bharat Infrastructure & Engineering Pvt. Ltd. accepted all the six conditions of the Letter of Award dated 24.11.2016 of the Applicant.

(iii) The Board of Directors of M/s Bharat Infrastructure & Engineering Pvt. Ltd. passed resolution dated 7.12.2016, to carry out the said project in the name of Special Purpose Vehicle viz. M/s Myrayash Hotels Private Limited. Accordingly, a concession agreement dated 9.12.2016 was executed between the Applicant and M/s Myrayash Hotels Private Limited.

(iv) The 'Recital 4' of the Concession Agreement covers 'Conditions Precedent' from page no. 39 to 41. On perusal of sub-clause 4.1.3(a) on page 39 of the Concession Agreement it is observed that, one of the conditions precedent to be satisfied by the Concessionaire is to pay the "Upfront Concession Fee", as quoted by the concessionaire in the Financial Proposal.

(v) The clause 4.4.1 on page 41 of the concession agreement reads as under:-

"Notwithstanding anything to the contrary contained in this Agreement in the event that the Conditions Precedent are not met, for any reason whatsoever, within the period set forth in Clause 4.1.324.1.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the parties."

On perusal of the above clause, it is evident that it is a non obstante clause that declares that it supersedes anything forthcoming that might contradict it. In other words, if any of the conditions precedent is not fulfilled then, the concession agreement shall be deemed to have been terminated.

(vi) Appointed date has been defined on page 17 of the concession agreement as under:-

"Appointed date means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may



Plt. K. A. K. K.

be, the **Appointed Date** shall be deemed to occur **only when each and every Condition Precedent is either satisfied or waived**, as the case maybe”.

(vii) Applicable laws have been defined on page 16&17 of the concession agreement as under:

“Applicable laws means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the **subsistence of this Agreement**”.

(viii) Concession period has been defined on page 18 of the concession agreement as under:-

“Concession period means a period of 30 years(thirty) years extendable by a further period of 30(thirty) Yearssubject to no suspension on Concessionaire Event of default having taken place, **commencing from the Appointed Date till Date of Transfer**”.

(ix) As per sub-clause 23.1(a) on page 86 of the concession agreement the ownership of all immovable assets including site and civil structures created on the site shall remain with the Authority i.e. M/s GTDCL.

(x) The terms of revenue sharing arrangement have been provided in the ‘Recital 18’ from page 77 to 78 of the concession agreement.

(xi) Copy of invoice issued by the Applicant to M/s Myrayash Hotels Pvt. Ltd. for payment of first instalment of upfront fee of Rs.2,80,00,000/-, is dated **07.03.2017**. The invoice was raised for a total amount of Rs. 3,22,00,000/- [Up-front concession fee –Rs. 2,80,00,000/- plus 14% Service Tax Rs. 39,20,000/- plus 0.5% Swachh Bharat Cess Rs. 1,40,000/- plus 0.5% Krishikalyan Cess Rs. 1,40,000/-].

(xii) Copy of the relevant page of the ledger of the Applicant shows that, the date of entry in ledger of the second instalment of upfront fee is **16.01.2018**.

(xiii) Copy of invoice issued by the Applicant to M/s Myrayash Hotels Pvt. Ltd for payment of second instalment of upfront fee of Rs.25,20,00,000/-, is dated **13.02.2018**. The invoice was raised for a total amount of Rs. 29,73,60,000/- [Up-front concession fee –Rs. 25,20,00,000/- plus 9% CGST Rs. 2,26,80,000/- plus 9% SGST Rs. 2,26,80,000/-].

20. From the above facts it is evident that, the concession period was to commence from the Appointed Date and Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived. The second installment of Upfront Concession Fee along with applicable taxes, was credited in ledger of the Applicant on 16.01.2018. Hence, the condition precedent to pay Upfront Concession Fee with applicable taxes was fulfilled only on 16.01.2018. The Applicant has not submitted



[Handwritten signature]
[Handwritten signature]

any document to show that other conditions precedent have not been fulfilled, hence, it is presumed that they are fulfilled. Thus, Appointed Date shall be deemed to occur on 16.01.2018. Accordingly, the concession period commenced from 16.01.2018 although the agreement was executed on 9.12.2016.

21. The GST Act, 2017 came into effect on 01.07.2017. Hence, the provisions of GST Act, 2017, would apply as the GST Act, 2017, came into force prior to the commencement of the concession period. In the instant case, the Upfront Concession Fee is a consideration received by the Applicant for provision of service and it fits into the definition of 'consideration' as envisaged under sub-section 31 of Section 2 of the GST Act, 2017. The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of Section 13 of GST Act 2017.

22. The sub-section 10 of Section 142 of the GST Act, 2017 reads as under:-

"(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act".

On perusal of above it is evident that, if contract is entered into prior to the appointed day then goods or services supplied on or after the appointed day in pursuance of the said contract shall be taxable under GST Act.

22.1. The sub-section 10 of Section 142 of the GST Act, 2017 does not specify that the service should be continuous. It may be continuous or not. The provisions of this sub-section will be attracted as soon as the terms of this sub-section are met viz. if the goods or services or both are supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day.

22.2. The instant case of the Applicant perfectly fits in the ambit of sub-section 10 of Section 142 of the GST Act, 2017.

23. The clause (b) of sub-section 11 of Section 142 of the GST Act, 2017, reads as under:-

"(11) (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 (32 of 1994)".

On perusal of above it is evident that, if tax was leviable on services under Chapter V of the Finance Act, 1994 (32 of 1994), then no tax shall be payable under the GST Act.

23.1 However, in the instant case the provisions of Section 142(1)(b) would not apply as the concession period commenced from 16.01.2018 although the agreement was executed on 9.12.2016.



Atte
Kamsha A. Kamsha

24. The Applicant, in the written as well as oral submissions before the AAR and AAAR, had all along submitted that they are entitled for the benefit of S.No. 41 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, which is a notification enacted under the GST Act and exempts intra-state supply of services from GST. However, now, in the rectification application they have submitted that, the provisions of Section 142(1b) of GST Act, 2017, will apply in their case. In other words, the tax was payable by them under Chapter V of the Finance Act, 1994 (32 of 1994). **The two submissions of the Applicant are inherently self-contradictory.**

25. Even if for the sake of academic interest, it is assumed without admitting that, the provisions of Section 142(11) (b) of GST Act, 2017, will apply in the instant case, then also there is no doubt that, lump sum payment was liable to service tax. In this regard this authority places reliance on the judgement dated 11.11.2019 of Hon'ble CESTAT, Mumbai in the case of Starcity Entertainment Pvt. Ltd. Versus Commissioner of S.T., Mumbai-2020 (39) G.S.T.L. 266 (Tri. - Mumbai). The relevant para 11 i.e. para 11 of the said judgement reads as under:-

"11. Accordingly, the lump sum payment becomes liable to tax under Finance Act, 1994 in addition to the periodic payments. For this reason, we find no merit in the appeal which is dismissed".

25.1 The lump sum payment in service tax regime was not taxable if the transaction was eligible for the benefit of Notification No. 41/2016-S.T. dated 22.9.2016. The exemption Notification No. 41/2016-S.T. dated 22.9.2016 exempted the taxable service provided by **State Government Industrial Development Corporations/Undertakings to industrial units** by way of granting long term (thirty years, or more) lease of **industrial plots** from so much of service tax leviable thereon under section 66B of the said Act, as is leviable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

25.2 However, in the instant case, the subject transaction of the Applicant does not fulfill the requirements of exemption Notification No. 41/2016-S.T. dated 22.9.2016 and hence was not eligible for the benefit of Notification No. 41/2016-S.T. dated 22.9.2016.

26. The order dated 22.3.2019 of the AAAR Goa is consistent with the extant statute and the reasons thereof have been duly recorded in the said order.

27. In view of above, this Authority is of the view that there was no error apparent on the face of record in the Order dated 22.03.2019, passed by the Appellate Authority.

Commissioner in view of the above discussions and observations, this Appellate Authority passes the following order:-



ORDER

(Under Section 102 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 dated 22.03.2019 given by AAAR, Goa being consistent with the extant statute, requires no rectification. Hence, the rectification application is rejected.



Hemant Kumar
Member





Krishna A. Mishra
Member

To,
The General Manager,
Goa Tourism Development Corporation Ltd.,
3rd Floor, Paryatan Bhavan, Patto,
Panaji Goa.

Copy to:

1. The Addl. Commissioner of State Tax, North and South Goa;
2. Office file;
3. Guard file.

GOA TOURISM DEVELOPMENT CORPORATION LTD
PARYATAN BHAVAN
2ND FLOOR,
PATTO, PANAJI-GOA


