

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
NO.206, 2ND FLOOR, PAPJM BUILDING , NO.1 , GREAMS ROAD,
CHENNAI -600 006.**

**RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai-600 034.	Smt. T. Indira, Joint Commissioner / Member (SGST), Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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Advance Ruling No. 119/AAR/2023 Dated:29.11.2023

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/ 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.*
- 5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act (herein referred to as an Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.*

GSTIN Number, if any / User id		33AABCI3600A1ZK
Legal Name of Applicant		Ionbond Coating Private Limited
Registered Address / Address provided while obtaining user id		Plot No.B-700, Indospace Industrial Park, Block-B, Oragadam Walajahbad Road, Panruti, Kancheepuram - 631 604
Details of Application		GST ARA – 01 Application Sl.No.64/2022 dated 29.12.2022
Jurisdictional Officer		State : Oragadam Assessment Circle
Concerned Officer		Centre : Chennai Outer Commissionerate; Maraimalainagar Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service providers
B	Description (in brief)	Whether GST is payable on the consideration receivable on such transfer of lease hold rights or eligible for exemption. If so, what should be the SAC and the rate applicable.
Issue/s on which advance ruling required		<ul style="list-style-type: none"> • Classification of any goods or services or both • Applicability of a notification issued under the provisions of this Act. • Determination of the liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required		<ol style="list-style-type: none"> 1. Whether the subsequent transfer of State Industries Promotion Corporation of Tamilnadu Limited's (SIPCOT) allotted lease hold rights in the land from the Applicant to M/s.Kanta Flex (India) Private Limited would fall with the ambit of 'Supply' as defined under Section 7 of the Goods and Services Act, 2017? 2. If yes, what will be the HSN/SAC code and GST Rate?

1. The applicant submitted a copy of Electronic Cash Ledger 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.

2.1 The applicant, a GST Registrant, is a Private Limited company under the Administrative control of 'CENTER' and they are providers of service relating to coating activities on the goods belonging to customers.

2.2 The applicant has submitted that –

- M/s.Ionbond Coatings (P) Ltd., are engaged in coating activities on the goods belonging to customers.
- The applicant had a factory at B-26(B), SIPCOT Industrial Estate, Gummidipoondi, Tamilnadu-601201, which has been allotted by SIPCOT on 99 years lease. However, the applicant had to relocate their business operations to Plot No.B-700, Indospace Industrial Park, Block B, Oragadam Walajabad Road, Panruti, Kanchcepuram, Tamilnadu-631604.
- The applicant has transferred building, electric equipment and lease hold rights of lands to Kanta Flex (India) Private Limited with a consent to State Industries Corporation of Tamil Nadu Limited (SIPCOT), who had allotted land admeasuring 1.29 acres in the SIPCOT Industrial Complex at Gummidipoondi.
- The Original lease deed was entered into for a period of 99 years vide lease deed dated December 19, 2005. On M/s.Kanta Flex requesting for the said property, the applicant entered into a Memorandum of Understanding dated September 14, 2021 with them.
- The MOU is executed to formalize the terms agreed between them for transfer of the balance period of leasehold rights in the property, subject to approvals being granted by SIPCOT. The applicant agrees to transfer the remainder of leasehold rights for a consideration of Rs.1.24 crores, by way of submitting an application to SIPCOT for transfer of rights in favour of M/s.Kanta Flex. On receipt of approval letter, and on payment of consideration, a Modified Lease Deed to be executed, upon which the applicant would hand over the vacant possession of the Schedule property to M/s.Kanta Flex.

2.3 The authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

3. The concerned 'CENTER' authority under whose administrative jurisdiction the taxpayer falls, have vide their letter dated 13.02.2023, stated that,

- It is inferred that SIPCOT is the owner of the land which has been leased to the taxpayer for 99 years. The one who hold the leasehold rights may transfer the rights to third party but only with the approval of SIPCOT, who may or may not grant such approval.
 - The applicant themselves have admitted that the transaction in question, gets covered under 'Supply', but have referred to Sl.No.41 of the exemption Notification No.12/2017-CT dated 28.06.2017.
 - On perusal of the provisions relating to the said notification, it is seen that the same would be applicable to State or Central Government Industrial Corporations or Undertakings, or any Undertaking having 50% or more ownership of Central or State Government and engaged in granting of long terms lease of 30 years or more of Industrial plots, and hence the same is not applicable to the applicant.
 - Further, the transaction is not the transfer of lease hold rights of land as claimed by the applicant, but transfer of interest, i.e., Agreeing to part with the interest on the lease hold land held by the applicant to the buyer on receipt of consideration.
 - Accordingly, the activity undertaken by the applicant for which a consideration of Rs.1.24 crores is said to have been received, is an activity of "agreeing to do an act", which is taxable under "Other Miscellaneous Services" with SAC 9997.
 - It was also informed that no case is pending or decided in any proceedings on the subject issue in respect of the applicant.
4. The jurisdictional 'STATE' authority has not furnished any reply in this regard, and it is construed that there are no proceedings pending on the issue raised by the applicant.
5. On interpretation of law, the applicant states that –
- The term "Supply" as laid down in Section of 7 of the CGST Act, 2017, is an inclusive definition and should satisfy the following :
 - all forms of supply such as sale, transfer, etc.
 - such supply should be for a consideration
 - and made by a person in the course of furtherance of business.

- Section 2(17) of the CGST Act, 2017, defines "Business" which is also an inclusive definition and as per clause (d) to Section 2(17), services in connection with commencement of business has also been covered.
- Further, entry 2 of Schedule II of the CGST Act, provides that with respect to transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, letting out of a building including a commercial, industrial or residential complex for business or commerce is 'supply of services'. In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but as supply of service for the purpose of GST.
- In the case of Builders Association of Navi Mumbai Vs. UOI, reported in 2018 (12) G.S.T.L. 232 (Bom.), the Hon'ble High Court has held that an activity in any form effected for a consideration and made in the furtherance of business is a 'Supply'. Further only those transactions or activities of Governments or Statutory authorities can be considered as neither supply of goods or services, which are specifically notified to be so. Accordingly, transaction would be taxable under GST law in the absence of specific Notification, and therefore exemption is not available to CIDCO merely by its status.
- Further, in the case of Greater Noida Industrial Developmental Authority Vs. Commissioner of Customs, C.Ex., reported in 2015 (40) S.T.R. 95 (All.), the Hon'ble High Court has held that service tax would be applicable on transfer of leasehold rights.
- Therefore, the activity of assignment is in the nature of agreeing to transfer leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the deed stands extinguished. Neither does it create fresh benefit from land other than the leasehold right. It is like a compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee.
- However, as per entry No.41 of Notification No.12/2017-CT (Rate) dated 28.07.2017, GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of 30 years, or more of industrial plots or plots for development of infrastructure for financial business is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront. Accordingly, the

description of services in the subject matter, is to be read as long term leasing services, on which exemption is available.

6.1 The applicant, after consent, was given an opportunity to be heard in person on 03.11.2023. Mr. Mahesh Bandre, Chartered Accountant appeared for Personal Hearing on being authorized by the Applicant.

6.2 He furnished additional submissions during the personal hearing, and stated that the transfer of rights of the land to the third party was done during 2022 and a payment of Rs.1.24 crores was also received. When the Authorities requested the representative to submit relevant documents such as Agreement between SIPCOT and the applicant, MOU with the third party, tripartite agreement, payment details, etc., the representative replied that he would submit the same at the earliest.

6.3 In the additional submissions made during personal hearing, the applicant submitted that the transfer of balance lease period to the new buyer would not be taxable. As the transaction would be regarded as sale of land falling under Entry No.5 of the Schedule III of the CGST Act, 2017, which deals with 'Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services'. The applicant believes that the subsequent transfer of plot for the remaining lease period under MOU executed between the parties is absolute, i.e., all rights, title and interest and the same qualify as sale of land, and they relied upon the case of **Commissioner of Income Tax Vs. M/s.Rane Brake Lining Ltd.**, wherein the Hon'ble Madras High Court has held that the lumpsum amount paid does not make a permanent lease any less an alienation than a sale. Further, in the case of **Suyog Dye Chemie Pvt Ltd Vs. UOI**, the Hon'ble Gujarat High Court has held that what is being taxed in the hands of the petitioner is a sale of land which otherwise is an activity not falling within the supply of services in accordance with Schedule III of the Act. Accordingly, the applicant believes that the instant transaction is to be treated as 'Sale of land', which would not attract any GST at all.

6.4 As undertaken during the personal hearing, the authorized representative furnished the following documents before the authorities, viz.,

- (i) Letter dated 30.03.2022 of SIPCOT according approval for transfer of leasehold rights.

- (ii) MOU dated 14.09.2021 executed by M/s.Ionbond Coatings Private Limited, with M/s.Kanta Flex (India) Private Limited.
- (iii) Facts of the case relating to transfer of leasehold rights.
- (iv) Ledger of M/s.Kanta Flex (India) Private Limited in the books of M/s.Ionbond Coatings Private Limited, depicting the details of payments received by the applicant.

DISCUSSION AND ANALYSIS

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing and the comments furnished by the 'CENTER' Tax Authorities. The applicant filed advance ruling application under Section 97(2) of GST Act, 2017.

7.2 From the submissions made at the time of filing the application, it is seen that the applicant had a factory at B-26(B), SIPCOT Industrial Estate, Gummidipoondi, Tamilnadu-601201, which was allotted by SIPCOT on long term lease. However, as the applicant had to relocate their business operations to Plot No.B-700, Indospace Industrial Park, Block B, Oragadam Walajabad Road, Panruti, Kancheepuram, Tamilnadu-631604, they transferred building, electric equipment and lease hold rights of lands to Kanta Flex (India) Private Limited, after receiving necessary approval from State Industries Corporation of Tamil Nadu Limited (SIPCOT). As per the Memorandum of Understanding dated 19.09.2021 entered into by the applicant with M/s.Kanta Flex, a total consideration of Rs.1.63 crores, is to be received by the applicant, out of which an amount of R.1.24 crores relates to the transfer of leasehold right in land. Under these circumstances, the applicant had sought an advance ruling, as to

1. Whether the subsequent transfer of State Industries Promotion Corporation of Tamilnadu Limited's (SIPCOT) allotted lease hold rights in the land from the Applicant to M/s.Kanta Flex (India) Private Limited would fall with the ambit of 'Supply' as defined under Section 7 of the Goods and Services Act, 2017?
2. If yes, what will be the HSN/SAC code and GST Rate?

The question raised as above appeared to fall within the scope of Section 97(2)(g) and 97(2)(a) respectively, of the CGST Act, 2017. Hence, the application admitted.

8.1 On a careful analysis of the Memorandum of Understanding dated 19.09.2021, it is seen that the applicant (the transferor) had proposed to transfer the leasehold rights of the property which has been allotted by SIPCOT on long term lease, and located at B-26(B), SIPCOT Industrial Estate, Gummidipoondi, Tamilnadu-601201, to M/s.Kanta Flex (transferee company).

8.2 The terms agreed upon between the parties involved, are as follows:-

- The consideration agreed for the transfer is Rs.1,50,00,000/-, out of which Rs.10,00,000/- to be paid within 7 days after execution of this MOU as 'First Instalment of Advance'.
- On receipt of advance, the transferor shall commence the process of obtaining necessary approval from SIPCOT and shall make the payment of differential plot cost as determined by SIPCOT.
- The transferor shall put the transferee into possession of the property by handing over the entire asset, immediately after full payment and execution of the Modified Lease Deed.
- The Modified Lease Deed shall be executed within 45 days from the payment of differential plot cost by the transferor to SIPCOT.
- In lieu of the TANGEDCO deposit, the transferee to make an additional payment of Rs.13,00,000/- to the transferor, upon which the transferor shall extend their assistance in effecting such name transfer with TANGEDCO authorities.
- It is agreed between the parties that only rights in the immovable property are expected to be transferred, and the transferor shall take back all movable property except electrical equipment, related wiring and cabling fixtures and fittings.
- As per the Annexure-C to MOU, the overall amount to be transferred is arrived as follows:-

Particulars	Amount (INR)
Leasehold rights in land	1,24,00,000
Building	8,00,000
Electric Equipment	18,00,000
Total	1,50,00,000
TANGEDCO – Security Deposit	13,00,000
Grand Total	1,63,00,000

8.3 As per the Letter dated 30.03.2022 of SIPCOT, the SIPCOT had accorded approval for transfer of leasehold rights of the property in question, based on the applicant's request. The important conditions imposed by SIPCOT, amongst various other conditions for approval, were :-

- (Sl.No.2) - The new incumbent (M/s.Kanta Flex) shall execute Modified Lease Deed (MLD) at their cost **within 45 days** from the date of approval of draft MLD by SIPCOT;
- (Sl.No.7) - The new incumbent shall furnish an undertaking with regard to **payment of service tax** in the prescribed format in Rs.20/- non-judicial stamp paper before execution of Modified Lease Deed;
- (Sl.No.8) - All other conditions of Allotment order and Lease Deed executed by M/s.Multiarc India Pvt. Ltd. and Modified Lease Deed executed by M/s.Ionbond Coatings Pvt. Ltd, in respect of the subject plot shall apply mutatis mutandis.

8.4 From the 'Facts' of the case, furnished by the authorized representative as undertaken during the personal hearing, the following points were seen to have been highlighted, viz.,

- The SIPCOT has originally executed the agreement with Multi Arc India Pvt. Ltd. vide allotment Order No.AD5/GMP/456/90 dated 15.03.1990 for 99 years. However, later during 2005, the leasehold property has been transferred to the applicant (Ionbond Coatings) vide Letter No.D-1/GMP/456/2005 dated 13.10.2005.
- The applicant in 2021 has decided to transfer the said leasehold property to subsequent user, i.e., Kanta Flex (India) Pvt. Ltd. and accordingly the applicant has executed a MOU which states that Rs.1.24 crores relates to transfer of leasehold land, out of the total consideration of Rs.1.50 crores, which is payable based on milestone of MOU.
- According to the terms of MOU, the applicant applied to SIPCOT for approval of the transfer, which was approved vide SIPCOT's Letter dated 30.03.2022, subject to the payment of differential land cost of Rs.63,21,000/- along with processing fees of Rs.17,700/-.
- The SIPCOT, upon receipt of the differential amount **executed modified lease deed** with Kanta Flex (India) Pvt. Ltd., for the balance period of 68 years.

8.5 On perusal of the Ledger of M/s.Kanta Flex (India) Private Limited in the books of M/s.Ionbond Coatings Private Limited, it was seen that credit entries relating to the receipt of consideration from M/s.Kanta Flex have been recorded as follows :-

Date	Particulars	Amount (INR)
15.09.2021	Payment	10,00,000
07.04.2022	Payment	1,00,00,000
16.04.2022	Payment	13,00,000
07.05.2022	Payment	18,00,000
07.05.2022	Payment	22,00,000
	TOTAL	1,63,00,000

It could be seen from the above that an amount of Rs.10,00,000/- has been received by the applicant on 15.09.2021 as advance from M/s.Kanta Flex, immediately on executing the Memorandum of Understanding on 14.09.2021. Thereafter payments have been received in regular intervals and by 07.05.2022, the entire consideration of Rs.1,63,00,000/- is seen to have been received including the Security Deposit (TANGEDCO) of Rs.13,00,000/-. Further, it is seen from the ledger that entries relating to the Invoices towards the transfer of leasehold rights in land, Building, Electrical Equipment, etc., have been booked only on 29.08.2022, whereas the entire payment is seen to have been received well in advance by 07.05.2022.

8.6 Accordingly, from the submissions made and documents furnished by the applicant, especially during the personal hearing and thereafter, it is quite clear that the activities relating to the transaction in question, have been carried out already, i.e., before the filing of **application dated 29.12.2022** by the applicant, viz.,

- The Memorandum of Understanding between the applicant (transferor) and M/s.Kanta Flex (transferee), **is dated 19.09.2021**.
- The Letter of SIPCOT, which extends approval for transfer of leasehold rights on land from the transferor to the transferee, **is dated 30.03.2022**.
- The booking entry relating to the invoice reported to have been raised by the applicant on the transferee, **is dated 29.08.2022**.
- The payment of entire consideration towards leasehold transfer of land along with other amenities, is seen to have been **completed by 07.05.2022**.

This apart, it is also presumed that the execution of Modified Lease Deed by SIPCOT in favour of M/s.Kanta Flex, and the handing over of property, had also been carried

out in the immediate aftermath of the approval of SIPCOT (dated 30.03.2022), and the payments made (dated 07.05.2022).

8.7 It may be noted that as the financial transactions relating to the instant issue, have been carried out in its entirety by 07.05.2022, i.e., the date of last payment, any liability arising out of the taxability or otherwise, on the instant transaction, ought to have been discharged at the relevant point of time by the applicant. 'Advance Ruling' as the name suggests, are rulings pronounced **upfront** aimed at facilitating the trade on issues of ambiguous nature. The same has been laid out clearly under Section 95(a) of the CGST Act, 2017, which reads as :-

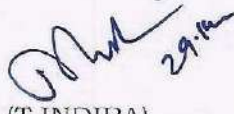
*"advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of section 101C, in relation to supply of goods or services or both **being undertaken or proposed to be undertaken** by the applicant;"*

8.8 Therefore, we are of the opinion that the queries raised by the applicant relating to taxability and classification, if any, involved on the issue in question, need not be answered, inasmuch as the transaction stands completed already, before the filing of application by the applicant.


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

RULING

The applicant cannot seek an advance ruling on a completed transaction as laid down in Section 95(a) of the CGST Act, 2017, and accordingly, this authority refrains from giving any ruling in this regard.


(T.INDIRA)
Member (SGST)




(D.JAYAPRIYA)
Member (CGST)

To

M/s.Ionbond Coatings (P) Ltd.,
Plot No.B-700, Indospace Industrial Park,
Block-B, Oragadam Walajahbad Road,
Panruti, Kancheepuram - 631 604

//By RPAD//

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

3. The Principal Commissioner of GST & C.Ex.,
Chennai Outer Commissionerate.
(Maraimalai Nagar Division.)
4. The Assistant Commissioner(ST)
Oragadam Assessment Circle
5. Master File / spare – 1.

