



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Dr. K. Ravi Sankar, Commissioner of State Tax (Member)
2. B. Lakshmi Narayana, IRS, Joint Commissioner of Central Tax (Member)

ORDER

(Under sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017 and Section 98 of Central Goods and Services Tax Act, 2017)

AAR No.13/AP/GST/2024, dated:27.11.2024

1	Name and address of the applicant	M/s JAY
2	GSTIN	37BMWPM6828D1ZG
3	Date of filing of Form GST ARA-01	30.08.2024
4	Personal Hearing	21-10-2024
5	Represented by	M. Venkata Vara Prasad, Proprietor
6	Jurisdictional Authority - Central	The Superintendent, Central GST, Kurnool -I Range, Kurnool Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	97 (2) e) Determination of the liability to pay tax on any goods or services or both; 97 (2) g) Whether any particular thing done by the applicant respect to any goods or services or both amounts or results in a supply of goods or services or both, within the meaning of that term.

1. 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 subsection (2) of Section 97 for Advance ruling.

- b) On the concerned officer or the jurisdictional officer in respect of the applicant.
2. 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 rulings have changed.
3. 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.
4. The provisions of both the CGST Act 2017 and APGST Act 2017 are the same except for certain provisions. Therefore unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the APGST Act 2017.

1. Preamble:

The present application has been filed under Section 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s JAY, GSTIN 37BMWPM6828D1ZG (herein after referred to as applicant).

2. Brief Facts of the case:

M/s JAY, a building owner who is registered under GST Act, 2017 with GSTIN No. 37BMW6828D1ZG (Central Jurisdiction), on the rolls of the Superintendent, Central GST, Kurnool –I Range, Kurnool Division and filed GST ARA-01 under rule 98 of GST Act 2017.

The applicant has owned a Commercial Building at Prasad's Complex, D.No.96-3-72-124-1, Santosh Nagar, Kurnool admeasuring 18,888 sft. and the said building was leased out for setting up of the Institution of Lokayukta of Andhra Pradesh a parliamentary ombudsman formed by the Government of Andhra Pradesh under the Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983. Initially the Executive Engineer (R&B) invited Expression of interest dated 24-07-2021 for sparing of buildings on rental basis for setting up office of Lokayukta in Kurnool city. The interested building owners submitted their

Technical bid in Annexure 1 and Price bid in Annexure 2 which includes rental charges per square ft along with application of Expression of Interest (EOI). Further as per the permission accorded by Government of AP in G.O.Rt.no.1589, General administration (SCII) department dated 25-09-2021 the Collector & District Magistrate, Kurnool addressed the applicant to hand over the building. On 1st day of February 2022, the Collector and District Magistrate, Kurnool who in the capacity of Lessee executed lease deed with the building owner Sri M.V.V.Prasad.

The Lease deed executed on 01-02-2022 specifies some important terms and conditions as mentioned below:

- That the term of the subject lease shall be for a period of 02 (Two) years, commencing from the date of agreement and renewed for every two years with an escalation of 5% rent as per the G.O.Rt.No.1589 Dt:25.09.2021.
- That the lessee shall pay the monthly rent of Rs.5,38,308/- (Rupees Five Lakhs Thirty Eight Thousand Three Hundred and Eight Rupees only) to the premises admeasuring 18,888 Sq. ft built-up area at the rate of Rs.28.50 Per Sq. ft in the complex known as PRASAD'S COMPLEX with an escalation of 5% for every 2 years on the rent as per the G.O.Rt.No.1589 Dt:25.09.2021 on or before 5th of every succeeding calendar month.
- The lessee has to pay the monthly GST (18%) on rent Rs.96,895/- (Rupees Ninety Six Thousand Eight Hundred and Ninety Five only)
- The lessee has to pay the maintenance charges Rs.1.50/- per Sq. ft amounting to Rs.28,332/- (Rupees Twenty Eight Thousand Three Hundred and Thirty Two only) for the maintenance of Lifts AMC, Stair case and parking area maintenance.

The Owner of the building MVV Prasad in the application has submitted that as the lessee is not paying the GST on rent and that he has sent legal notice to the registrar, Institution of Lokayukta of Andhra Pradesh requesting to take necessary action for release of rent as per agreed Registered lease deed. Further he filed complaint in form-I in the institution of Lokayukta Andhra Pradesh for implementation of terms and conditions of the lease deed.

Further as per the orders of the Government of AP, the District Revenue Office, Kurnool "lessee" has executed lease deed with Sri M.V.V.Prasad the lessor, on 11th day of July, 2024 for renewal of lease deed with existing rent upto 31-03-2025 or till suitable government premises are identified without any escalation, GST and Maintenance charges for the Institution of Lokayukta, Andhra Pradesh at Kurnool.

Meanwhile, the Lokayukta of Andhra Pradesh has made an order against the applicant's complaint on the 6th day of September, 2024 and delivered the judgement, as the Complainant is present and expressed his willingness to withdraw the complaint and want to approach Hon'ble High Court of AP in the matter. The same is recorded and the complainant is permitted to withdraw the complaint and the complaint is closed as withdrawn, without prejudice to the contentions raised by the complainant giving liberty to the complainant to approach appropriate court of law for redressal of his grievance.

The building owner filed an application under Rule 98 of GST Rules, 2017 in Form GST ARA-01 seeking clarification/ruling on the issue of GST payable on the amount received by him.

3. Questions raised before the authority:

The applicant sought advance ruling on the following:

1. As per GST Act, GST on rent who has to pay owner or tenant?
2. Is there any special provision in GST Act for Government Occupied Private Building?
3. Who is liable for GST on rent owner or tenant?
4. Is there any such Act in GST that GST on rent has to borne by owner for Government occupied private buildings?

4. Proceedings if any pending:

On Verification of basic information of the applicant, it is observed that the applicant is under Central Administrative jurisdiction i.e, Kurnool -I Range, Kurnool Division. Accordingly, the application has been forwarded to

the Central and State Tax authorities on 12.09.2024 to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the Central jurisdictional officer on October 1st 2024 and state tax authorities concerned from Sep 26th 2024 stating that no proceedings lying pending with the issue, for which the advance ruling sought by the applicant.

5. Admissibility of the application:

The question raised as above appeared to fall under section 97(2)(e) and (g) of CGST/SGST Act, 2017, as no proceedings on the same is pending, the application, as advance ruling is admitted and the applicant has paid RS. 4,950/- under SGST CPIN: No: 24093700005752 Dt:04-09-2024 and 4,950/- under CGST CPIN No: 24073700203403 dt:31-07-2024.

As per **Section 97**

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.*
- (2) The question on which the advance ruling is sought under this Act, shall be in respect of,-*
 - (e) determination of the liability to pay tax on any goods or services or both;*
 - (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

6. Applicant's Interpretation of Law:

M/s. JAY refers to Notification No. 04/2022- Central Tax (Rate) dated 13th July 2022 and No. 05/2022-Central Tax (Rate), dated 13th July 2022 which indicate that GST on rent is payable by the tenant (government) under the reverse charge mechanism.

7. Personal Hearing:

A personal hearing was conducted on 21.10.2024, which was attended by the authorized person, M. VenkataVara Prasad, Proprietor and reiterated the

submissions made in the application and prayed for clarification on the issues mentioned supra.

8. GROUND AND PRAYER OF THE PETITIONER AS PER THE APPLICATION:

"My building G + 4 Floor has 18,888 SFT, leased out to AP Lokayukta when Government called for tenders, I quoted price per SFT and also stated that GST on Rent has borne by Lessee in executed Lease Deed. (The District Collector, Kurnool) has agreed to pay GST on Rent as applicable. After occupying the building by said Government Dept., issued Memo stating that GST on Rent which is payable by Government has to borne by owner/lessor for private buildings occupied by Government. I filed a complaint in A.P. Lokayukta for release of Rent as per agreed deed including ST issue is still pending in Lokayukta. I expressed by will for renewal of Deed to pay as per agreed lease Deed submitted G.O. after 6 months from expiry of lease Deed that only rent without GST."

9. Discussion and Findings:

We have carefully gone through the submissions made by the applicant in the advance ruling application filed by M/s JAY, a building owner who is registered under GST Act, 2017 with GSTIN No.37BMW6828D1ZG(Central Jurisdiction), on the rolls of the Superintendent, Central GST, Kurnool –I Range, Kurnool Division.

The applicant owns a Commercial Building at Prasad's Complex, D.No.96-3-72-124-1, Santosh Nagar, Kurnool admeasuring 18,888 sft. and the said building was leased out for setting up the Institution of Lokayukta of Andhra Pradesh. On 1st day of February 2022, the Collector and District Magistrate, Kurnool who in the capacity of Lessee has entered into agreement with the building owner Sri M.V.V.Prasad with the following main terms and conditions included in the lease deed.

- The lease shall be for a period of 02 (Two) years, commencing from the date of agreement and renewed for every two years with an escalation of 5% rent as per the G.O.Rt.No.1589 Dt:25.09.2021.

- The lessee shall pay the monthly rent of Rs.5,38,308/- (Rupees Five Lakhs Thirty Eight Thousand Three Hundred and Eight Rupees only) to the premises admeasuring 18,888 Sq. ft built-up area at the rate of Rs.28.50 Per Sq. ft. in the complex known as PRASAD'S COMPLEX with an escalation of 5% for every 2 years on the rent as per the G.O.Rt.No.1589 Dt:25.09.2021 on or before 5th of every succeeding calendar month.
- The lessee has to pay the monthly GST (18%) on rent Rs.96,895/- (Rupees Ninety Six Thousand Eight Hundred and Ninety Five only)
- The lessee has to pay the maintenance charges Rs.1.50/- per Sq. ft amounting to Rs.28,332/- (Rupees Twenty Eight Thousand Three Hundred and Thirty Two only) for the maintenance of Lifts AMC, Stair case and parking area maintenance.

The Owner of the building M.V.V. Prasad has submitted that as the lessee is not paying the GST on rent and has sent legal notice to the registrar, institution of Lokayukta of Andhra Pradesh requesting to take necessary action for release of rent as per agreed regd., lease deed. Further he filed complaint in form-I in the institution of Lokayukta Andhra Pradesh for implementation of terms and conditions of the lease deed.

Legal Framework and Observations:

The query raised by the taxpayer on the issue of liability to pay GST on lease of commercial building. For ease of reference the following legal provisions are reproduced herein as noted below.

Section 7(1)(a) of the CGST/SGST Act, 2017 specifically describes the expression supply which includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Section 7(1A) of CGST/SGST ACT 2017 further describes certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated either supply of goods or supply of services as referred to in Schedule II.

- **Schedule II of the GST Act (Goods and Services Tax) describes the activities as "supply of goods" or "supply of services."**
- **Para2(b) reads as any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.**

Section 9(1) the charging section under which CGST/SGST is levied on all types of intra state supplies of goods or services or both on the value determined under section 15 which is collected in such manner as prescribed and shall be paid by the taxable person.

APPLICABILITY OF GST ON LEASE:

GST shall apply on lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, which is a supply of service. Lease is where possession is transferred along with the right to use immovable property with a duty to care, protect and return along with consideration in the form of non recurring premium only or along with recurring rent. Essence of lease being delivery of possession along with user rights. Supplier of lease does not have possession, does not have the right to use but retains right to possession after term of lease.

As noted supra the applicant letting out his building which is a commercial property as per the occupancy certificate issued by the Town planning department, Kurnool Municipal Corporation dated 07-01-2022. The activity of the taxpayer fits under the scope of supply defined under section 7(1A). Leasing of Commercial property is subjected to GST (Goods and Services Tax) at the rate of 18% (with SAC code 997212 : Rental or leasing services involving own or leased non-residential property) and the service provider need to collect GST on such lease and he shall be liable to pay if he crosses the Threshold limit of taxable turnover under the provisions of GST.

The applicant interprets the Notification No. 04/2022 - Central Tax (Rate) dated 13th July 2022 and No. 05/2022-Central Tax (Rate), dated 13th

July 2022 which indicate that GST on rent is payable by the tenant (government) under the reverse charge mechanism. But, Notification 4/2022 is about exemption to residential dwellings and 5/2022 relates to reverse charge in respect of residential dwellings. Both are not applicable to renting of commercial property and also to the present case.

On observation of submissions put forth by the applicant and further submissions received during personal hearing, it is clearly established that the applicant has leased out his commercial building premises for setting up the Institution of Lokayukta of Andhra Pradesh Government.

Therefore, the applicant, being a lessor and registered supplier of services of Leasing of Commercial property, is liable for remitting GST on lease consideration under Section 9 read with section 15 of the GST Act as detailed supra.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question 1: As per GST Act, GST on rent — who has to pay, owner or tenant?

Ruling: GST on lease as discussed above is to be paid by the registered service provider (building owner) under forward charge mechanism unless a specific provision shifts the liability to the recipient of the service (tenant) under the Reverse Charge Mechanism (RCM). In the instant case, the service provided by the applicant qualifies as the leasing out of immovable property, a taxable supply under Section 7 (1A) of the CGST/SGST Act, 2017, and liable for remitting GST on lease/Rent consideration under Section 9 read with section 15 of the GST Act.

Question 2: Is there any special provision in the GST Act for Government-occupied private buildings?

Ruling: There is no specific provision in the GST Act regarding government-occupied private buildings.

Question 3: Who is liable for GST on rent, owner or tenant?

Ruling: answered at sl no.1

Question 4: Is there any such Act in GST that GST on rent has to be borne by the owner for government - occupied private buildings?

Ruling: answered at sl no.1 .

Conclusion:

The applicant is liable to remit GST on rental services provided by them.

Sd/-K.Ravi Sankar
Member

Sd/-B .Lakshmi Narayana
Member

//t.c.f.b.o//


Deputy Commissioner (ST)
Registrar

Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To

M/s JAY (GSTIN 37BMWPM6828D1ZG), D.No.96-3-72-124-1, Prasad's Complex, Santosh Nagar, REVENUE WARD 96 Kurnool. (By Registered Post and Mail).

Copy to

1. The Assistant Commissioner (ST), Kurnool-I Circle, Kurnool Division(through mail) with a direction to communicate the copy to the Central Tax authorities.
2. Superintendent, Central GST, Kurnool -I Range, Kurnool Division
3. The Joint Commissioner (ST), Kurnool Division (through mail) with a direction to inform the Central Tax authorities.
4. The Superintendent (CT), Central GST, Kurnool-I Range, Kurnool Division (through mail).

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District (A.P.)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. (through mail)
3. The Commissioner of Central Tax, 9/86A, Amaravathi Nagar, M.R.Palli, Tirupati - 517 502

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.