

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8 th Floor, New building, Mazgaon , Mumbai-400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax,(Member)

GSTIN Number, if any/ User-id		27AGOPK7162P1ZJ
Legal Name of Applicant		THE KREATIONS BUILDERS & DEVELOPERS
Registered Address/Address provided while obtaining user id		602,Shivalaya,Plot No.10,Sector 11,Khargar, Navi Mumbai-410210
Details of application		GST-ARA, Application No. 85 dt. 11.10.2018
Concerned officer		Sales Tax Officer (C-016), Raigad Division, Navi Mumbai
A	Category	Service Provision
B	Description (in brief)	The applicant business of construction of flats for sale to prospective buyers.
Issue/s on which advance ruling required		(ii) Applicability of a notification issued under the provisions of this act.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as the CGST "Act and "MGST Act" respectively] by M/s THE KREATIONS BUILDERS & DEVELOPERS, seeking an advance ruling raising the following question:

1) Whether, as per notification no. 01/2018 - Central Tax (Rate) dated 25th January, 2018 can works?

2) Facts in brief -

Mr. Madan Khadgi, proprietor of M/s The Kreations Builders and Developers is in the business of construction of flats for sale to prospective buyers. At present he is undertaking only a single project named "Safalvaa" which is having only 1 Bed Room Kitchen (BHK) residential units in his project. The project is having infrastructure status and affordable housing in terms of Notification of Government of India, Ministry of Finance, Department of Economics Affairs vide F No 13/06/2009-INF. dated the 30 March 2017 Madan Khadgi has appointed M/s Loomcraft Shade Systems Private Limited as main contractor for execution of the project .

3) Question(s) on which Advance Ruling is required -

1. Whether, as per notification no 01/2018 -Central Tax (Rate) dated 25 January, 2018 can works

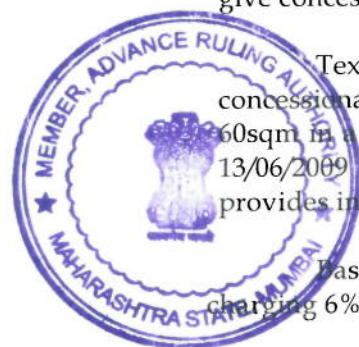


4) Statement of Fact for Question no.(1):-

Mr. Madan Tanbani Khadgi, the proprietor of THE KREATIONS BUILDERS AND DEVELOPMENTS having registered office at 602, Shivalya, Plot No 10, Sector 11, Kharghar Navi Mumbai 410210 is registered Taxable Person holding GSTN 27AGOPK7162P120, which has entered into agreement with M/s Loomcraft Shade Systems Private Limited for providing works contract services. The entire project is a residential project with each residential unit having an area of with less than 60 sq. meters. The said project gets infrastructure status vide Notification of Government of India, Ministry of Finance. department of Economics Affairs vide F. No. 13/06/2009.INF, dated the 304 March, 2017 .The Loomcraft Shade Systems Private Limited wish to raise the invoice on THE KREATIONS, at GST 18% considering that since residential project is not registered with any central or state authority, concessional rate of 12% cannot be charged .

Statement of Fact for Question no. (2):-

As per press Release by Ministry of Finance dated Feb 7, 2018, 7 Para which is reproduced below give understanding that concessional rate of 12% (effective GST rate of 8% after deducting value of land) to service by way of construction of low cost houses up to carpet area of 60sqm in to a housing project which is given infrastructure status So, the intention of the Government is to give concessional rate of 8% net of land) to low cost houses



Text of the Para "The Fourth Recommendation of the Council as to extend the concessional rate of 12% to service by way of construction of low house up to a carpet area of 60sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30 March 2009 .The said notification of Department of Economics Affairs provides infrastructure status of Affordable Housing."

Based on combined reading of this press release and notification THE KREATIONS is charging 6% GST on their services.

5). Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid questions i.e. (applicant's view point and submissions on issues on which the advance ruling is sought)

Interpretation for question (1) -- The main work contractor falls in the definition of composite supply of works contract as per sub section 119 of Section 2 of CGST Act. So as per notification no. 01/2018 Central Tax (Rate) SL No. 3{v}(da) a concessional rate of GST of 6% can be charged to a project even if the project is not registered with any central or state authorities and fall within the ambit of notification F No. 13/6/2009 INF, dated the 30 March, 2017 .

Interpretation for question (2)-- As per Consolidated Notification No. 11/2017 Central Tax (Rate) which is amended vide notification No 1/2018-Central Tax (Rate) Construction service having service Accounting Code (SAC) 9954 is divided into 2 broad categories i.e. Construction Services and Composite supply of works contract as per section 2(119) of CGST Act. Strictly speaking the service provided by M/s THE KREATIONS to prospective home buyers fall in the category of Construction series of complex, building etc. for which the rate as per notification is

9%. However, the intention of the government can be read from press release mentioned above that affordable housing be given concessional rate of 8% net of land) .

6. HEARING --

The preliminary hearing in the matter was held on 28.11.2018 and Sh. Madan Khadgi Proprietor and Sh. Jadhav, C.A., appeared and requested for admission of application as per ARA . During the course of Preliminary hearing, we have gone through the application and submissions made by the applicant. They were informed that there was a short payment of fees of Rs. 5000/-, which was required to be paid by them for their application to be entertained and they were also requested to reframe the questions as per the section 97 of CGST/MGST ACT within 8 days as the questions raised by them were not pertaining to applicant as required under the provisions of section 95 of GST Act and hence not maintainable .

However, nobody attended on behalf of the applicant nor submitted any details in relation to PH held on 28.11.2018. To give the applicant a reasonable opportunity of being heard, this office has contacted the applicant on 14.01.2019 in the issue of reframing of their questions, but no response has been received by them till 16.1.2019. Hence we are constrained to decide present application on the basis of available records.

7. OBSERVATIONS -

It is mandatory as per section 97(1) read with Rule 104 of the CGST/MGST Act to pay applicable fee of Rs. 5000/- each under SGST and CGST Act to be deposited as per the provision of Section 49 of the Act. If not the application would be treated as an incomplete application liable for rejection. Details regarding the payment of fee for the filing an application for advance ruling is also clarified vide Circular No .25/25/2017-GST by GOI, Ministry of finance, Department of Revenue, Central Board of Excise and Customs, GST Policy Wing, New Delhi dated 21st December, 2017 wherein, in point no. 4 mentioned that the applicant can make the payment of the fee of Rs. 5000/-each under CGST and the respective SGST ACT. In the instant case, applicant has deposited only a fee of Rs. 5000/- and not the full amount.

As such application is incomplete and is liable for rejection.

08. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 85/2018-19/B-

16

Mumbai, dt.

23.01.2019

The Application for advance ruling in Form GST ARA-01 registered as ARA NO. 85 dated 11/10/2018 is rejected as being not maintainable.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax, Mahavikas for Website.

—sd—
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.