

**THE AUTHORITY FOR ADVANCE RULING  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 14 / 2022**

**Date: 30.04.2022**

Present:

1. Dr. M. P. Ravi Prasad  
Additional Commissioner of Commercial Taxes . . . Member (State)
2. Sri. T. Kiran Reddy  
Additional Commissioner of Customs & Indirect Taxes . . . Member (Central)

1.	Name and address of the applicant	M/s. OM CONSTRUCTION COMPANY, Arya Nivas, 4 <sup>th</sup> Floor, No.7, 3 <sup>rd</sup> Cross, Davidappa Layout, Veeranapalya, Bangalore-560045
2.	GSTIN or User ID	29DRLPR4247F1ZA
3.	Date of filing of Form GST ARA-01	23-08-2021
4.	Represented by	Sri A.S. Harihara Kumar, Company Secretary
5.	<b>Jurisdictional Authority - Centre</b>	The Commissioner of Central Tax, Bengaluru North Commissionerate, North Division 7, (RANGE-CND 7), Bengaluru
6.	Jurisdictional Authority - State	ACCT, LGSTO-056, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN BARB21082900189492 dated 17-08-2021

**ORDER UNDER SECTION 98(4) OF CGST ACT, 2017  
AND UNDER SECTION 98(4) OF KGST ACT, 2017**

M/s Om Construction Company, Arya Nivas, 4th Floor, No.7, 3rd Cross, Davidappa Layout, Veeranapalya, Bengaluru-560045, having GSTIN 29DRLPR4247F1ZA, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of 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 Proprietorship concern registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST Act respectively). The applicant is engaged in the business of civil construction of residential



Om Constructions



premises and supplying 'Works Contract' service as a sub-contractor to the main contractor (builder), who provides works contract service to construct affordable housing under PMAY scheme for the Economically Weaker Sections.

3. The applicant has sought advance ruling in respect of the following questions:

- i. *The applicability of Serial No.3(i) of Notification No.03/2019-Central Tax (Rate) New Delhi, the 29<sup>th</sup> March, 2019 (parent Notification No.11/2017-Central Tax(Rate), dated the 28<sup>th</sup> June, 2017 as amended by Notification No.30/2018-Central Tax (Rate), dated the 31<sup>st</sup> December, 2018 to the applicant who is one of the sub-contractors to the builder / Developer / Contractor of Affordable housing under PMAY Scheme.*
- ii. *Eligibility of concessional rate of CGST at 0.75% as per the Notification No.03/2019-Central Tax (Rate) New Delhi, the 29<sup>th</sup> March, 2019 amended from time to time.*

4. **Admissibility of the application:** The applicant, filed the instant application, in relation to applicability of notification, covered under Section 97(2)(b) of the CGST Act 2017 and hence the application is admitted.

**BRIEF FACTS OF THE CASE:**

5. The applicant furnishes the following facts relevant to the issue, on which the advance ruling has been sought.

5.1 The applicant submits that they are engaged in the business of construction of residential apartments as a sub-contractor and has filed the instant application on the basis of memorandum of understanding entered into with M/s KG Foundations Private Limited (builder), Chennai, for proposed construction of residential project at PERUMBAKKAM. The said project is a residential project of affordable Housing scheme (low-cost housing) for economically weaker section comprising of 292 Units, under the Pradhan Mantri Awas Yojana (PMAY) scheme, with the carpet area of each flat is less than 60 Square meters & the gross amount charged is not more than forty-five lakh rupees. Further, more than 50% of Floor Space Index (FSI) area shall be utilized towards construction of Low Cost housing of the project so as to qualify as 'Affordable Housing Project' (AHP) and also to get infrastructure status in terms of the Notification F.No.13/6/2009-INF dated 30.03.2017 issued by the Department of Economic Affairs (DEA Notification). In the instant case, entire 100% Land area is used towards construction of the residential flats / units, having carpet area of 60 Sq. Mtrs. or less and hence the said project would qualify as an 'Affordable Housing Project' (AHP).

5.2 The applicant contends that they are eligible for concessional rate of CGST/KGST @ 0.75% for construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) as per Sl.No.3(i) of the Notification No.11/2017-Central Tax (Rate), dated 28<sup>th</sup> June, 2017 as amended by notification No.30/2018-Central Tax (Rate) dated 31<sup>st</sup> December, 2018 and further amended by Notification No.03/2019-Central Tax





(Rate) dated 29<sup>th</sup> March, 2019, which commences on or after 1<sup>st</sup> April, 2019 and the promoter, therefore, would be charging CGST 0.75% (after deduction of 1/3 land cost on money consideration received).

5.3 The applicant contended that the proposed construction of affordable residential apartments at PERUMBAKKAM, pertains to the Main contractor, which qualifies AHP status and attains the infrastructure status in terms of the Notification F.No.13/6/2009-INF dated 30.03.2017 issued by the Department of Economic Affairs (DEA Notification), is a composite supply of works contract as per section 2(119) of the CGST/KGST Act 2017, for construction of Affordable Housing Project under low cost housing scheme, up to the carpet area of 60 sq. mts in metropolitan cities and includes civil work for construction of substructure for buildings (Flats/Units); Shuttering and Mivan Work; RCC Concrete work (incl. supply of concrete); supply of Reinforcement steel; Masonry work and Scaffolding and plastering and there will be no commercial construction.

5.4 The applicant relied upon the ruling of the Maharashtra AAR in case of M/s Prajapati Developers (GST-ARA-02/2018-Mumbai dated 05-04-2018) and CBEC clarification F.No.354/52/2018-TRU to support their contention that once the condition of more than 50% FSI being used for the construction of units less than 60 Sq. Mts. is fulfilled, the project would be considered as an Affordable Housing Project having infrastructure status as per the DEA Notification and no other Certificate from any authority is required for the same.

5.5 The applicant has also quoted the ruling of GST AAR Maharashtra in respect of M/s Puranik Construction Pvt. Ltd., (Appeal No.AAR No.GST-ARA-99/2018-19/B-31) where in the authority ruled that the applicant will be eligible for concessional rate @ 12% in the project. The concessional rate will be applicable only for residential units of upto 60 sq. mts. in their project and not for commercial units.

5.6 The applicant submitted that the benefit of concessional rate of tax is available to any person who is supplying the 'works contract' services pertaining to low cost houses in an AHP. The applicant further claimed that the Notification entry is on the supply of service and not concerning the person and therefore once a project qualifies as an AHP, the benefit of concessional rate of tax would be available in respect of works contract services pertaining to low-cost Houses, irrespective of it being supplied by the Developer or the Contractor.

5.7 The applicant has also cited the decision of the Maharashtra AAR in the case of Shree Construction (TS-444 AAR-NT-2018) wherein it was held that the benefit of 12% rate was also available to the sub-contractor supplying services to the main contractor who in turn is providing works contract services for original works pertaining to Railways and have contended that the ratio laid down in the above ruling squarely applicable to the instant case.

5.8 The applicant is of the view that the Affordable Housing Scheme is low-cost housing scheme for people having low income. Affordable / low-cost housing depends on 3 factors such as income, size of house and affordability. Forms of affordable housing include indigenous housing, subsidized housing, emergency shelters and formal & informal rental. The affordable housing scheme aims at





'Housing for All by 2022' which mission was launched by the Government of India in 2015 to accomplish a decades-old development objective of providing housing to all citizens. The government notified the concessional rate of CGST 0.75% under the relevant Notification to provide housing to all by 2022. A Developer/Builder undertake the Affordable housing project by engaging sub-contracts to keep the price of the Flats/Units within the prescribed limit for the 'Affordable Housing project'. If the sub-contractors are denied the concessional rate of notification No.03/2019 -Central Tax(Rate), the very purpose of the PMAY scheme and the intention of the Notification will be defeated.

### **PERSONAL HEARING / PROCEEDINGS HELD ON 07-10-2021**

6. Sri A.S. Harihara Kumar, Company Secretary & Duly Authorised Representative of the applicant appeared for personal hearing proceedings held on 07-10-2021 and reiterated the facts narrated in their application.

### **FINDINGS & DISCUSSION**

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant's authorized representative during the hearing. We have also considered the issue/s involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

9. It is observed that the applicant has entered into an agreement of memorandum of understanding with M/s K.G Foundations Private Limited, Chennai for the construction of residential apartments as a sub-contractor.

10. The Applicant states that, the project is a residential project at PERUMBAKKAM, which is of affordable housing scheme (Low-cost housing) for economically weaker section comprising of 292 Units under the scheme of Pradhan Mantri Awas Yojana. The carpet area of the flats is less than 60 Square meters and the gross amount to be charged is not more than forty-five lakh rupees. In view of this the applicant sought advance ruling in respect of the questions mentioned at para 3 supra.

11. The applicant contends that they are eligible to avail the concession rate of tax @ 0.75% after deduction of 1/3 of the land cost on money consideration received from the prospective buyer as per Sl.No.3(i) of the Notification No.03/2019-Central Tax (Rate) dated 29<sup>th</sup> March, 2019, which is an amendment to the entry number 3 of the principal notification No.11/2017-Central Tax (Rate) dated 28.06.2017, whose reference is invited herein, which is as under:





Sl .N o	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent. )	Condition
1	2	3	4	5
3	Heading 9954(Con struction services	“(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project(herein after referred to as RREP)which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if)below, as the case may be,in the manner prescribed therein,intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	0.75	<p>Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;</p> <p>Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1 st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -</p> <p>(i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner promoter, and</p> <p>(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided</p>





the landowner promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer promoter.

Explanation. -

(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,

(ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;

Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;

Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen





percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;

Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;

(Please refer to the illustrations in annexure III)

Explanation. –

1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.

3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)]





12. It could be seen from the column 3 (description of the service) of entry number 3(i) of the principal notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended by the Notification No.3/2019-Central Tax (Rate) dated 29.03.2019, effective from 01.04.2019 that, the concessional rate of 0.75% CGST is **applicable only to the promoter** in respect of the Construction of affordable residential apartments in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019. The concessional rate is also applicable in case of an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein. Further the said apartment/s must be intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

13. In the instant case it is an admitted fact that the applicant is not a promoter but a sub-contractor and hence the benefit of the said entry i.e. concessional rate of GST of 0.75%, for the proposed construction, is not applicable to the applicant. Thus we do not intend to examine the other details as the entry itself is not applicable to the applicant.

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

#### **RULING**

- i. Serial No.3(i) of Notification No.03/2019-Central Tax (Rate) New Delhi, the 29<sup>th</sup> March, 2019 (parent Notification No.11/2017-Central Tax(Rate), dated the 28<sup>th</sup> June, 2017 as amended by Notification No.30/2018-Central Tax (Rate), dated the 31<sup>st</sup> December, 2018 is not applicable to the applicant who is one of the sub-contractors to the builder / Developer / Contractor of Affordable housing under PMAY Scheme.
- ii. The concessional rate of CGST @ 0.75% as per entry No.3(i) of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended by the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 is not applicable to the applicant as the said entry is applicable only to the promoters, but not to the sub-contractors.

(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority  
Place: Bengaluru,  
Date: 30.04.2022

(T. Kiran Reddy)

Member

Karnataka Advance Ruling Authority  
Bengaluru - 560 009





Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Bengaluru North Commissionerate, North Division 7, (RANGE-CND 7), Bengaluru
4. The Asst. Commissioner of Commercial taxes, LGSTO-056, Bengaluru.
5. Office Folder.

