

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560009**

Advance Ruling No. KAR ADRG 37/2019

Date : 16-09-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1	Name and address of the applicant	M/S. Carnation Hotels Pvt. Ltd., No.600, Anand Building, 4 th Floor, JP Nagar VI phase, Above Indus Ind Bank, Bangalore - 560078.
2	GSTIN or Used ID	Un- Registered in the State of Karnataka
3	Date of filing of Form GST ARA-01	23-04-2018
4	Represented by	Sri. S.Hanish, Chartered Accountant
5	Jurisdictional Authority-Centre	N A
6	Jurisdictional Authority-State	N A
7	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.5,000/- each under CGST Act vide CIN UTIB18042900076110 dated 11-04-2018 and under KGST Act vide CIN UTIB 18042900383903 dated 23-04-2018.

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES
TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS &
SERVICES TAX ACT, 2017**

M/s CARNATION HOTELS PRIVATE LIMITED, (hereinafter called the "applicant"), No.600, Anand Building, 4th Floor, JP Nagar VI phase, Above Indus Ind Bank, Bangalore 560078, an unregistered dealer in the state of Karnataka, have filed an application on 23/04/2018 for advance ruling under Section 97 of CGST Act 2017 & KGST Act 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01, discharging fee of Rs.5,000/- each under CGST Act 2017 & KGST Act 2017.



2. The applicant, having his registered office at B6/17, Safdarjung Enclave, New Delhi-110029 is proposing to operate hotels and rent out rooms to the employees of the SEZ units. The services rendered by the hotels are entirely consumed at the premises itself.

2.1 The applicant contended that Section 12(3) of the IGST Act 2017 provides that place of supply of service by the way of lodging accommodation of the hotel shall be the location at which immovable property located. Since supplier being hotel, the location of the supply is also the location of immovable property i.e. hotel. Services rendered by hotels are intra-state as location of the supplier and the place of supply is in the same State. Accordingly accommodation services attract CGST+SGST (of the relevant state) irrespective of the fact whether receiver of service is located in same state or in the state other than the State where hotel is located.

2.2 Further, dealer submits that Section 7(5)(b) of the IGST Act 2017 provides that supplies of goods and services to SEZ will be treated as IGST supplies and proviso to section 8(2) states that intra state supply of services shall not include services to SEZ developer or unit. Accordingly services rendered to SEZ will be treated as interstate supplies and liable to IGST under section 5(1) of the IGST Act 2017 and not under section 9(1) of the CGST/SGST Act 2017 though the location of supplier and the place of such service are in the same State.

2.3 Given the above, an accommodation service provided by hotel where it is located is considered as place of supply. As per section 12(3) of IGST Act can hotel be considered as supplier of services to SEZ units when services do not travel to SEZ or are not rendered/provided in SEZ area. In other words can the services rendered by hotel in the state where hotel is located to a customer located in SEZ area (i.e SEZ unit/developer) be considered as interstate supply subject to levy of IGST.

3. In view of the above, the applicant sought advance ruling on the following questions:

- a. Whether accommodation service proposed to be rendered by the applicant to SEZ units are liable to CGST and SGST or IGST?
- b. If the accommodation service to SEZ are covered under IGST Act, can these be treated as zero rated supplies and the invoice be raised without charging Tax after executing LUT under section 16?

PERSONAL HEARING / PROCEEDINGS HELD ON 21/05/2018

4. Sri. S. Hanish, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 21.05.2018, reiterated the facts narrated in their application.

5. FINDINGS AND DISCUSSION

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. S. Hanish, Chartered Accountant and authorised representative of the applicant during the personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

5.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act 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 KGST Act.

5.2 Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit are treated as Zero Rated Supply in terms of Section 16(1)(b) of IGST Act, 2017. Further Rule 46 of CGST Rules 2017 stipulates that the invoice shall carry an endorsement "Supply meant for export / Supply to SEZ unit or SEZ Developer for authorised operations on payment of Integrated Tax or Supply meant for Export / Supply to SEZ unit or SEZ Developer for authorised operations under Bond or letter of Undertaking without payment of Integrated Tax as the case may be.

5.3 Therefore on reading Section 16(1)(b) of IGST Act, 2017 & Rule 46 of CGST Rules 2017 together it is clearly evident that the supplies of goods or services or both towards the authorised operations only shall be treated as Supplies to SEZ Developer / SEZ unit.

5.4 The Central Government has issued a Circular bearing No.48/22/2018-GST dated 14th June 2018 in which it is clarified as under

Issue 1. Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply under section 12(3) of the IGST Act, 2017?



Clarification:

1.1 As per section 7(5)(b) of the Integrated Goods and Services Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ Unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State / Union territory, it would be treated as an inter-State supply.

1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ Unit, which states that such supplies shall be treated as inter-State supplies.

1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting, etc. provided to a SEZ developer or a SEZ Unit shall be treated as an inter-State supply."

5.5 It is therefore clear from the above that the present transaction proposed to be made by the applicant where he provides the accommodation services in his hotel to SEZ Unit would be treated as inter-State supply.

5.6 Regarding the issue of whether this supply of services to a SEZ Unit would be treated as a Zero rate supply, the same Circular in Issue 2 clarifies as under:

"Issue 2: Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?"

Clarification:

2.1 As per section 16(1) of the IGST Act, "zero rated supplies" means supplies of goods or services or both to a SEZ developer or

a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:

(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

2.3 Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier."

5.7 Hence, the supply of accommodation services provided to a SEZ Unit would be treated as a Zero-rated supply and this is subject to the provisions of section 17(5) of the CGST Act.


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

RULING

1. The accommodation service proposed to be rendered by the applicant to SEZ units are covered under the IGST as it is an inter-State supply as per section 7(5)(b) of the Integrated Goods and Services Act, 2017.



2. Since the accommodation service supplied to an SEZ are covered under IGST Act, the same can be treated as zero rated supplies and the invoice can be raised without charging Tax after executing LUT under section 16.



(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : 16-09-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO - 120, Bengaluru.

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