

THE AUTHORITY ON ADVANCE RULINGS IN KARNATAKA
GOODS AND SERVICES TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009

Advance Ruling No. KAR ADRG 45 /2020

Dated: 11/09/2020

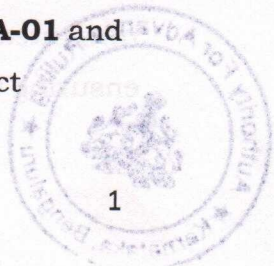
Present:

1. **Dr. M.P.Ravi Prasad**
Additional Commissioner of Commercial Taxes ... Member (State Tax)
2. **Sri. Mashhood ur Rehman Farooqui**
Joint Commissioner of Central Tax, ... Member (Central Tax)

1.	Name and address of the applicant	M/s Gnanaganga Gruha Nirmana Sahakara Sangha Niyamitha No. 365, 10 th cross, C Block, J P Nagar, Mysore-570008
2.	GSTIN or User ID	29AAAAG2275L2ZF
3.	Date of filing of Form GST ARA-01	18/02/2020
4.	Represented by	Sri Rajeev, President of the Society
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Mysore Commissionerate (Vishweshwaranagar Range), Mysore
6.	Jurisdictional Authority – State	LGSTO-195, Mysore
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs 5,000-00 under SGST Act vide CIN No. IOBA20022900163382 dated:15/02/2020

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Gnanaganga Gruha Nirmana Sahakara Sangha Niyamitha No. 365, 10th Cross, C Block, J P Nagar, Mysore-570008, GSTIN: 29AAAAG2275L2ZF, (hereinafter referred to as “the applicant”) is a Housing Society registered under the Karnataka Co-Operative Societies Act filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules and Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in **FORM GST ARA-01** and discharged the fee of Rs.5,000/- each under the CGST Act and the KGST Act

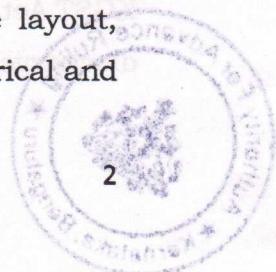


FACTS OF THE CASE

2. The applicant is a Housing Society registered under the Karnataka Co-Operative Societies Act., engaged in the development and sale of Sites for its members. Applicant submitted that the process of formation of Sites involves identification of land, which may be an Agricultural land and this agricultural land has to be converted into non-agricultural land from the prescribed authority. Further society has to secure plan approval from the appropriate Planning authority and execute the works like marking of the sites, formation of the roads, preparing and leveling of the roads, asphaltting the roads, formation of drainage, securing water and electric connection to the layout as a whole and connecting the same to the individual residential sites. Further, society has to develop Parks and other Civic Amenities in terms of the approved plan to make the sites developed, habitable one, and to ensure completion of the execution of all the other works in terms of the approved Plan.

3. The applicant submitted that after complete allotment of sites to its members in a layout, society has to handover the layout to the Local Municipal Administration (LMA) for maintenance and LMA taken over the layout for maintenance in a period between 5 years to 25 years depending upon the time taken for allotment of sites to its member by the society. Besides this some of the Authorities impose a condition that the layout will be taken over by them for maintenance only after the majority of the residents occupy the layout. Further, at the time of takeover, the entire layout should be in proper condition in terms of Power, Water, Roads and other Civic Amenities which are strictly in terms of the approved Plan. Such being the case, most of the time the developmental work under taken in the layout damaged beyond repair and this has to be re-done besides repairing wherever possible. Though Society not responsible for maintenance of the sites till the local Municipal Administration takes over layout but it is expected that Society has to maintain the layout.

4. The applicant further submitted that some of allottees have occupied the sites by constructing the building on their own, however, maximum number of sites are not occupied by the allottees and do not have superstructure built on them. Even then, the layout needs to be maintained until the local body takes over the same. The maintenance of the layout involves cleaning of the vacant sites by removing the unwanted vegetation, upkeep and maintain the roads and parks in the layout, ensuring un-interrupted supply of power and water by up-keeping the electrical and



water installations with regular and proper maintenance, and providing proper civil amenities to the residents of the layout. All these maintenance activities involves considerable amount of costs which the Society cannot afford as the Society being a Co-operative Society works on no profit and no loss basis. In view of this, Society is collecting the amount from its members for maintenance of the sites in the layout till the local Municipal Administration takes-over the sites formally.

5. In view of the above, applicant seeks advance Ruling on the following;

1. Is the activity of maintaining the facilities at the layout from the funds collected from the members of the Society a service attracting GST? Maintenance involves upkeep and maintenance of amenities and due to the length of the period roads, drainages and other UGD facilities need to be re-done/re-constructed.
2. If answer to question no.(1) above is yes then, does the Society's collection of sum towards maintenance charges calculated on yearly basis in one lump-sum for certain length of time say 10 years, should the GST be paid even for the amount pertaining to the un-expired period?
3. The Society is collecting Water charges from the residents for recovery of charges for water. The entire cost of the water is recovered from the members on monthly basis, does it attract GST?
4. Does the society have to pay GST for collecting lump-sum amount as endowment fund, the proceeds of which would be utilized for maintenance charges in terms of the maintenance as indicated in Appendix A above, of the layout with an express condition that the amount would be returned to the Site owners upon the taking over of the layout by the local body as the Society would be utilizing only accretions to the endowment fund from year to year.
5. In the event that any or all of the items from (1) to (4) is rendered taxable whether the same is exempt under Notification No 12/2017 entry no 77 respect of the value of the maintenance amount collected from the members of the society to the extent of Rs 7,500/- (Rupees Seven thousand five hundred) per month?



PERSONAL HEARING

6. Sri Rajeev H.V. President of the M/s Gnanaganga Gruha Nirmana Sahakara Sanga Niyamitha has appeared for personal hearing proceedings before this authority and made the submissions as narrated above.

7. Subsequent to the personal hearing applicant has made the additional submission on 22/06/2020 and stated that we are seeking the ruling as detailed in appendix B about the taxability of the maintenance amount collected from the members under the different situation which is as under;

- a. Under para (1), maintenance charges collection annual basis on regular.
- b. Under para (2), collection of maintenance charges in advance for 10 years to avoid frequent collection of small values.
- c. Under para (3), charges are collected for the water supplies to various residents towards cost of pumping water from bore wells to overhead tank at the layout and management and maintenance of distribution systems to individual houses.
- d. Under para (4), certain amount is collected from members who are selling their sites. Amount so collected are maintained as fund to finance major maintenance reworks, re-carpeting of roads, re-do major sewage treatment reworks, re-landscaping work at parks etc. The fund and accretion thereto are used for funding such major reworks. The balance in the fund is repayable to the member's proportionately when the society no longer has any maintenance obligation viz., when the layout is handed over to Mysore urban Development Authority or Corporation.

FINDINGS AND DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, 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



9. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Rajeev H.V. President of the M/s Gnanaganga Gruha Nirmana Sahakara Sangha Niyamitha during the personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

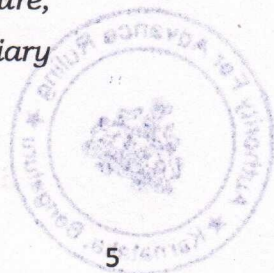
10. On verification of the nature of the activity carried out by the applicant it was observed that applicant is a House Building Co-operative Society registered under the Karnataka Co-operative Societies Act. First, we have to decide whether the applicant is a housing society or not. Housing Society is not defined under the GST Act. As per section 2(16) of the Maharashtra Co-operative Society Act, 1960 "housing society" means a society, the object of which is to provide its member with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services. The applicant, being the House Building Co-operative Society, is engaged in the development and sale of sites to its members for housing, is covered under the term "housing society" for the purposes of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017.

11. Further the applicant is carrying out the maintenance of layout like cleaning of vegetation in the sites, upkeep and maintain the roads and parks, ensuring uninterrupted supply of power and water to its residents by up-keeping the electrical and water installations with regular and proper maintenance, and also is providing proper civil amenities to its residents, till they handover the entire layout to the Local Municipal Administration (LMA). For this maintenance work, the applicant is collecting the certain amount from its members.

12. Before discussing the questions on hand, let us look in to whether the service provided by the applicant to its members be treated as business as per section 2(17) of the CGST Act 2017, which is narrated as under:

"2(17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;



(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

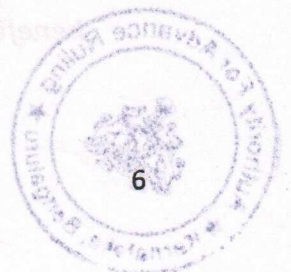
(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Thus, as per section 2(17)(e) of the CGST Act 2017, **provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members is a business.**

13. Further, we shall examine whether the activity undertaken by the society regarding the maintenance of layout be treated as supply in terms of Section 7(1)(a) of the CGST Act 2017 or not.

Section 7(1)(a) of the CGST Act, 2017 stipulates that any transaction to get qualified as 'supply', must contain the following three components.

- i. The transaction must involve a supply of goods or services or both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made.
- ii. The transaction must be for a consideration



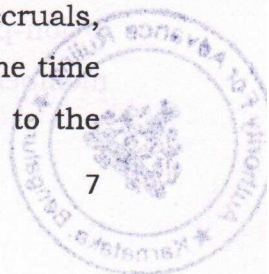
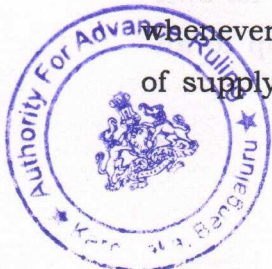
iii. The transaction must be in the course or furtherance of business

In the instant case, the applicant is involved in the providing layout maintenance service to its members by supplying goods or services and hence the first condition is satisfied. The applicant has rightly admitted that they are receiving the amount from its members as consideration towards the maintenance of the layout and hence the second condition is also satisfied. Further, as explained above, the facilities or benefits provided by the applicant to its member for consideration is a business as per section 2(17) of the CGST Act 2017 and hence the third condition is also satisfied. Hence the activity of maintenance of layout by the applicant amounts to supply in terms of Section 7(1)(a) of the CGST Act 2017.

14. Further, as applicant has rightly admitted that they are collecting maintenance charges from its member, either annually or once in 10 years and said amount is utilized for the maintenance of the layout. The liability to pay tax on services shall arise at the time of supply as per the provisions of sub section (1) of section 13 of the CGST Act, 2017. Further, as per sub section (2) of section 13 of the CGST Act, 2017 the time of supply of services shall be the earliest of the following dates, namely:—

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Therefore, the time of supply of services shall be the earliest of the date of issue of invoice or date of receipt of payment. From the above paras it is observed that applicant collects the amount either annually or once in ten years from its members and kept it as deposit. The applicant utilises a part of this amount with its accruals, whenever they undertake maintenance work from the third person. Thus, the time of supply of service in this case is earliest of the date of issue of invoice to the

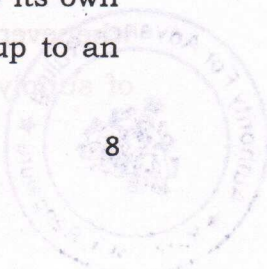


applicant or date of receipt of payment by the service provider. It is also seen that the applicant is bound to refund to its members the amount unutilised at the time of transfer of the entire property to the civic authorities. Therefore, going by the nature of the money collected, it is only in the form of deposit and does not take the character of advance for the services provided. Hence, mere collection and deposit of money does not qualify either as supply of goods as per section 2(52) or as supply of service as per section 2(102) of the CGST Act, 2017 and taxability of the goods or services or both arises only at the time of supply of goods or supply of service or both. Thus the extent of amount utilized by the applicant towards the payment at the time of supply of service by the third person, such amount is liable for GST as per subsection (1) of section 9 of the CGST Act, 2017.

15. Further, the applicant being the housing society falling under the entry No.77 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018. The said entry reads as under:

Sl No.	Chapter, Section, Heading. Group or Service Code (Tariff)	Description of services	Rate (per Cent)	Condition
77	Heading 9995	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution- (a)..... (b) For the provision of carrying out any activity which exempt from the levy of Goods and services Tax or (c) Up to an amount of seven thousand five hundred per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex	Nil	Nil

From the above it is clear that the services provided by the unincorporated body or non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution up to an



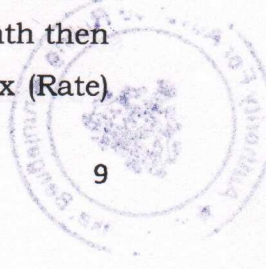
amount of seven thousand five hundred per month per member for sourcing of goods or services from a third person for the common use of its members in a **housing society or a residential complex** is exempted from the levy of GST. Since the applicant being the housing society, this exemption is also applicable to the applicant.

However, from the above paras it was observed that applicant is not collecting the reimbursement of charges or share of contribution from its members every month, instead they are collecting the charges either annually or once in ten years and is keeping it as a deposit, such being the situation, when the applicant utilised the amount from the deposit for sourcing goods or service from the third person for the common use of its member in the housing society, amount utilised in that particular tax period must be divided into number of members in the society and said amount per member, if it does not exceed Rupees Seven thousand five hundred in that tax period, such amount is exempted from tax as per entry No.77 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018. Suppose if that amount per member in that tax period exceeds Rupees Seven thousand five hundred, then entire amount is taxable.

16. Further, the applicant is collecting water charges from the residents of the layout towards the cost of pumping water from bore wells to overhead tank and also for management and maintenance of water distribution systems to each individual houses. The applicant is collecting water charges on monthly basis. The supply of water is exempted from the GST as per entry no. 99 of the Notification No. 2/2017 -Central Tax (Rate) dated 28th June, 2017 and the relevant extract of the notification is as under:

“Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container] is exempt from GST”.

Therefore the supply of water is exempt from GST and the applicant is not liable to pay GST on water charges. However, it is not clear from the submission of the applicant that whether the applicant is collecting water charges separately from its members or it is included in total contribution. If water charges are collected separately, then it falls in entry 99 of the Notification No. 2/2017 -Central Tax (Rate) dated 28th June, 2017 which is exempt from the levy of GST. In case water charges are included in the total contribution of each individual member in each month then it is covered under the entry No.77 of Notification No.12/2017- Central Tax (Rate)

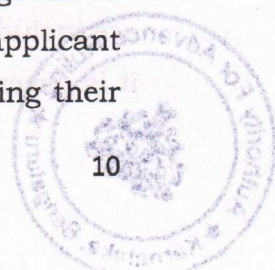
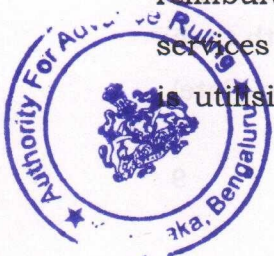


dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018 and the exemption or taxability is determined as supra.

17. Further with respect to fourth question it was submitted by the applicant that they are collecting lump-sum amount from its member who are selling their sites as fund and the proceeds of which are utilized for maintenance of the layout with an express condition that the amount would be returned to the site owners upon the taking over of the layout by the local body as the Society would be utilizing only accretions to the endowment fund from year to year. In order to claim exemption under entry 77(c) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018, applicant should fulfil the six conditions namely.

1. Service should be by the RWA/Housing society
2. Applicant/ Housing society should provide the services to its own members
3. Service provided by the applicant /housing society to its members should be against reimbursement of charges or share of contribution.
4. The reimbursement of charges or share of contribution should be up to Rs. 7500 per month per member.
5. Reimbursement of charges or share of contribution should be for sourcing of goods or services from a "third person" and
6. Such sourcing of goods or services should be for the "common use of its members" in a housing society or residential complex

In the instant case the applicant is collecting amount from the member who is selling the site and that amount is kept as endowment fund. The applicant utilising the proceeds/ accretions of the endowment fund for sourcing goods or service from the third person for the common use of its members. This amount does not amount to the contribution or reimbursement of amount from its members. The exemption under entry 77(c) of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018 is available only when the applicant receives the amount from its members as contribution or reimbursement against the amount paid by the applicant for sourcing of goods or services from the third person for common use of its members. Since the applicant is utilising the amount which is collected from the member who are selling their

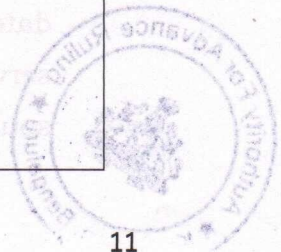


sites, such contribution is not for providing any maintenance services, instead he is providing no-objection certificates and other clearances for the site sellers. Hence this amount when collected amounts to a service and the applicant is liable to pay GST at the rate of 18% as such services are unclassified services covered under entry no. 35 of the Notification No.11/2017- Central Tax (Rate) dated 28.06.2017. Hence the contributions of the members who are selling the sites and obtaining clearances from the applicant for such sale, are liable to tax under the GST Acts.

Further, the endowment fund belongs to the applicant society and interest gets accrued to this fund. The amount spent out of this fund which belongs to all members, is for providing services to all the members and there is an express provision that any amount left as balance in the fund at the time of handover of the layout to the civic authorities, would be distributed to all the members, the amount debited to this account should also be taken proportionately as contribution of each the member and this should be reckoned while calculating the threshold of Rs.7,500-00 per member per month.

18. Further, the applicant contended about applicability of exemption under entry No.77 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018. The said entry reads as under:

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (per Cent)	Condition
77	Heading 9995	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution- (d)..... (e) For the provision of carrying out any activity which exempt from the levy of Goods and services Tax or (f) Up to an amount of seven thousand five hundred per month per member for sourcing of goods or services from a third person for	Nil	Nil



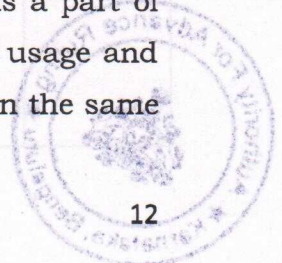
		the common use of its members in a housing society or a residential complex		
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Hence applicability of exemption under entry No.77 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018 is discussed in detail in above paras and this entry applicable to the applicant only when the they have provided services to its own members by way of reimbursement of charges or share of contribution up to an amount of seven thousand five hundred per month per member for sourcing of goods or services from a third person for the common use of its members.

19. Hence the following ruling.

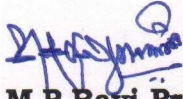
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1. The activity of maintaining the facilities at the layout from the funds collected from the members of the Society is a service attracting GST. The answer is Yes.
2. The contributions collected by the applicant from the member of the housing society either annually or once in ten years, if such amount when utilized for sourcing of goods or service from the third person for the common use of its member, the amount utilised in that particular tax period, from both individual contributions and from the endowment fund, must be divided by recipients of such service in the society and if the said amount per member does not exceed Rupees Seven thousand five hundred in that tax period, such amount is exempted from tax as per entry No.77 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018. Suppose if that amount per member in that tax period exceeds Rupees Seven thousand five hundred, then entire amount is taxable.
3. The water charges collected separately on monthly basis is exempt from the levy of GST as per entry 99 of the Notification No. 2/2017 -Central Tax (Rate) dated 28th June, 2017. If the applicant collects water charges as a part of service provided without being shown separately on the basis of usage and sourcing it from both the contributions and endowment fund, then the same




should be added to the total consideration of services and apportioned which determining the threshold for the purpose of taxing or exemption as per the entry No.77 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018.

4. The amount collected from the member who is selling the site and ceases to be a member, as endowment fund is liable to tax under GST.
5. The entry No.77 of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2/2018-dated 25-01-2018 is applicable to the applicant only to the extent of amount of Rupees Seven thousand five hundred per month per member collected by way of reimbursement of charges or share of contribution for sourcing of goods or services from a third person for the common use of its members.



(Dr.M.P.Ravi Prasad)

Member MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009



(Mashhood ur Rehman Farooqui)

Member MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place : Bengaluru,
Date: 11/09/2020

To,
The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Mysore Commissionerate Vishweshwaranagar Range, Mysore
4. The Assistant Commissioner, LGSTO-195, Mysore.
5. Office Folder.

