

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG ROM 03/2020

Date : 11-09-2020

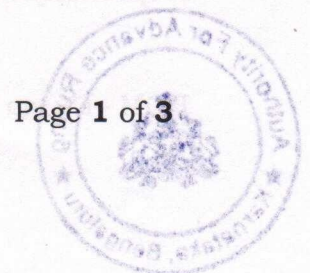
Present:

1. Dr. Ravi Prasad M.P.
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. Durga Projects & Infrastructure Pvt. Ltd., 1 st Floor, # 125/1-18, G.K. Arcade, T Mariyappa Road, I Block, Jayanagar, Bengaluru-560011.
2.	GSTIN or User ID	29AACCD5554H1ZI
3.	Date of filing of Form GST ARA-01	27-09-2019
4.	AAR Order against which ROM is filed	KAR ADRG 17/2019 dated 25.07.2019
4.	Represented by	Sri. Sanjay M Dhariwal. C A & Authorised Representative.
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.
6.	Jurisdictional Authority - State	LGSTO-100, Bengaluru

**PROCEEDINGS UNDER SECTION 102 OF THE CGST ACT, 2017
& UNDER SECTION 102 OF THE KGST ACT, 2017**

1. M/s. Durga Projects & Infrastructure Pvt. Ltd., (called as the 'Applicant' hereinafter), 1st Floor, # 125/1-18, G.K. Arcade, T Mariyappa Road, I Block, Jayanagar, Bengaluru-560011, having GSTIN 29AACCD5554H1ZI, have filed an application for rectification of mistake (ROM), under Section 161 of CGST/KGST Act, 2017, alleging that the ruling passed in Order No. KAR ADRG 17/2019 dated 25/07/2019 differed significantly with a ruling in another case having a similar set of case facts.



2. The applicant filed the instant application on the following grounds namely
- The ruling issued in their case differed significantly with the ruling issued in the case of M/s Nforce Infrastructure India Pvt. Ltd., (AAR Order KAR ADRG 30/2018 dated 28.11.2018), even though both the applications shared similar subject matter & facts
 - The different rulings issued constitute an error apparent on the face of record as provided under section 161 of the CGST/KGST Act 2017.
3. The applicant alleges the significant difference in the rulings of the aforesaid orders, in respect of the construction service, started in pre-GST regime & completed in GST regime, provided to the land owner by the developer, under Joint Development Agreement that in the order No.17/2019 it is ruled that "Applicant is liable to pay GST" whereas in the order No.38/2019 it is ruled that "Applicant is liable to pay Service Tax / GST proportionate to the services provided before / after 30.06.2017 respectively". Further they also furnished additional submissions vide their letter dated 12.06.2020, requesting to consider at the time of issuing the ROM order.
4. Sri Sanjay M Dhariwal, C A & authorised representative of the applicant appeared for personal hearing proceedings held on 28.07.2020 before this authority and reiterated their submissions made in the ROM application.

5. **DISCUSSION & FINDINGS**

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by them during the personal hearing.

5.2 The authority in the Order No.17/2019 dated 25.07.2019 ruled that the applicant is liable to pay GST towards work executed under Joint Development Agreement on Land Owner's portion, on the value to be arrived at in terms of para 2 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, at the time of transfer of possession of the land owner's portion of the flats and that the tax liability arises entirely under the GST Law since possession of land owner's share of flats has not been given to the land owner till the inception of GST Law.

5.3 The authority in the case of M/s Nforce Infrastructure India Pvt. Ltd., vide Order No.30/2018 dated 30.11.2018 ruled that the applicant is liable to pay Service Tax/GST proportionate to the services provided before / after 30.06.2017 respectively.



ROM - Durga Projects

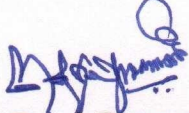


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5.4 We find that the applicant filed the instant application for ROM in the order No.17/2019 dated 25.07.2019, without bringing anything on record to negate the findings in the said order that the possession of land owner's share of flats was not handed over to the land owner till 30.06.2017. Further, the time of supply and point of taxation, for the purpose of valuation, are same in CGST Act 2017 (Notification No.04/2018-Central Tax (Rate) dated 25.01.2018) and Service Tax i.e. Finance Act 1994 (para 2.1 (B) (i) of Circular No.151/2/2012-ST dated 10.02.2012) i.e. liability shall arise at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (eg. Allotment letter). We find that the findings given in the said rulings are as per the discussions made therein.

5.5 In view of the above, it is clearly evident from the aforesaid orders that the authority has considered all the submissions and issued proper orders. Hence there is no error / apparent mistake on the face of the record in the order No.17/2019 dated 25.07.2019.

5.6 The applicant filed the instant application for ROM, under Section 161 of the CGST Act, 2017 whereas Section 102 of the CGST Act 2017 is the relevant one for filing the application for rectification of advance ruling. Thus the instant application is not maintainable and is liable for rejection in terms of Section 98(2) of the CGST/KGST Act 2017 and hence the same is dismissed as inadmissible.


(Dr. Ravi Prasad M.P.)
Member MEMBER
Karnataka Advance Ruling Authority

Place : Bengaluru, Bengaluru - 560 009

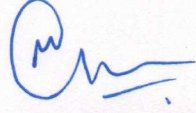
Date : 11-09-2020

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-100, Bengaluru.
Office Folder.


(Mashhood Ur Rehman Farooqui)
Member MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009



ROM - Darga Projects