

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, VibhutiKhand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 29 /2023/ DATED 07.07-2023

PRESENT:

1. Shri Amit Kumar

Joint Commissioner, Central Goods and Service Tax
Audit Commissionerate, Lucknow

...Member (Central Tax)

2. Shri Harilal Prajapati

Joint Commissioner, State Goods and Service Tax, Lucknow

...Member (State Tax)

1.	Name and address of the Applicant	M/s Lavish Buildmart Pvt Ltd, Windsor Grand, 1C, 23 rd Floor, Sector-126, Noida, Gautam Buddha Nagar, Uttar Pradesh-201303
2.	GSTIN or User ID	09AABCL3285G1ZF
3.	Date of filing of Form GST ARA-01	28.03.2023
4.	Represented by	Mr. Rishabh Mishra, C.A.
5.	Jurisdictional Authority-Centre	Range -Range 5, Division- Division 1 Gautam Buddha Nagar, Commissionerate- Gautam Buddha Nagar
6.	Jurisdictional Authority-State	Sector- Noida Sector -14, Range- Gautam Buddha Nagar (B), Zone- Gautam Buddha Nagar, Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes HDFC23030900538683

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98 (4) OF THE UPGST ACT, 2017**

M/s Lavish Buildmart Pvt Ltd., having registered office at Windsor Grand, 1C, 23rd Floor, Sector-126, Noida, Gautam Buddha Nagar, Uttar Pradesh-201303 (hereinafter referred as "the applicant") having GSTIN-09AABCL3285G1ZF have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/- each under the CGST Act and the UPGST Act.

2. The applicant is, registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Uttar Pradesh Goods and Services Tax Act, 2017 (herein after referred to as the CGST Act and UPGST Act respectively). The applicant had submitted an E-bid for development of commercial complex/Project on Plot No. 1, Sector 94, NOIDA. Their E-bid was accepted, on leasehold basis for a period of 90 years from the date of lease deed and they were asked to deposit

30% of the Premium money within 60 days of issuance of allotment letter. In pursuance of the allotment, NOIDA Authority executed a Lease Deed in favour of the Applicant was allotted a plot of land for development of infrastructure for financial business including Commercial Complex for commercial activities such as shopping malls, showrooms, retail outlets, hotels, restaurants, offices and such other commercial uses.

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

- i) Whether the Applicant is liable to pay tax under Reverse Charge Mechanism (RCM) on the upfront amount charged by the NOIDA Authority (as lease premium) in respect of allotment of plots to the Applicant by way of granting of long term lease of ninety years, for development of commercial infrastructure in an industrial township?
- ii) Whether the long-term lease is in the nature of sale of land, hence outside the scope of supply under the provisions of CGST Act?

4. The question is about applicability of notification issued under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(e) of the CGST Act 2017. Further, as per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. Statement of relevant facts having a bearing on the question(s) raised

The applicant is, registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Uttar Pradesh Goods and Services Tax Act, 2017 (herein after referred to as the CGST Act and UPGST Act respectively). The applicant had submitted an E-bid for development of commercial complex/Project on Plot No. 1, Sector 94, NOIDA. Their E-bid was accepted, on leasehold basis for a period of 90 years from the date of lease deed and they were asked to deposit 30% of the Premium money within 60 days of issuance of allotment letter. In pursuance of the allotment, NOIDA Authority executed a Lease Deed in favour of the Applicant and was allotted a plot of land for development of infrastructure for financial business including Commercial Complex for commercial activities such as shopping malls, showrooms, retail outlets, hotels, restaurants, offices and such other commercial uses.

6. The applicant has submitted their interpretation of law as under-

- They have referred to provisions contained in Section 9 and Section 7 of CGST Act and further stated that as per Para 2 of Schedule II to the CGST Act, 'any lease, tenancy, easement, licence to occupy land' shall be treated as supply of service.

- That as per Sl No 5 of the RCM Notification, GST shall be paid under reverse charge by the recipient i.e business entity for services supplied by the Central Government, State Government, Union territory or local authority to such business entity excluding certain services.

- That Sl No 5A of the RCM Notification provides for payment of GST under reverse charge by the recipient in case of services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to such registered persons.

- Noida Authority does not qualify to be Central/State Government, Union Territory or local authority. Being a statutory authority constituted under Section 3 of the UPIAD Act, it is an

authority established by the State Government under a statute, it does not qualify as 'Government'. It is also not covered under the definition of 'Local Authority' as per clause (69) of section 2 of the CGST Act.

- That the Hon'ble Supreme Court has laid down certain attributes and characteristics of a local authority which are as follows:-

- (i) It must have a separate legal existence as a corporate body;
- (ii) It must not be a mere governmental agency but a legally independent entity;
- (iii) It must function in a defined area and must ordinarily be elected wholly or partly, directly or indirectly by the inhabitants of the area;
- (iv) It must enjoy a certain degree of autonomy, which, though not complete, must be appreciable;
- (v) the statute must entrust the authority with such governmental functions and duties as are usually entrusted to a municipal body for providing such amenities, as health and education services, water and sewerage, town planning and development, roads, markets, transportation etc. to the inhabitants;
- (vi) The control and management of the fund must be vested in the authority.

- That Noida Authority has a separate legal existence and the primary function assigned to them is to secure the planned development of the industrial development area. The NOIDA Authority also has certain degree of autonomy with freedom to decide the questions of policy affecting the area, the power in respect of issues such as transfer of land or issue policies in respect of creation of buildings or impose penalties and has the right to manage and control its own fund. Hence the NOIDA Authority satisfies five out of six necessary conditions as laid down by the Supreme Court to qualify as a local authority.

- They referred to the judgement of Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs Birla Cotton, spinning & Weaving Mills Delhi & Anr and the decision by Tamil Nadu AAR, to the effect that they did not qualify as a local authority. Similar views were also expressed in the FAQs on Government Services dated 18.08.2017.

- That the services provided by NOIDA Authority will not fall within the ambit of Sl No 5 and 5A of the RCM Notification and therefore the applicant is not liable to pay GST on reverse charge basis on the supply of long term lease by the NOIDA Authority.

- That the transaction of long term lease per se does not qualify as supply of service but as a transaction for sale of land and therefore the same is not taxable under GST at all. As per para 5 of the Schedule III of the CGST Act, sale of land shall be treated neither as supply of goods nor a supply of services hence not taxable under GST.

- They referred to the definition of immovable property under Section 3(26) of the General Clauses Act and also referred to transfer of property as per Transfer of Property Act, 1882. They also referred to the Hon'ble Allahabad High Court order stating that even the tenancy rights are immovable property of the tenant.

- They also took recourse to various citations and allied acts to the effect that leasehold right is a benefit arising out of land and hence qualifies as land. They have stated that long term lease is nothing but conveyance of rights arising out of land, the same is a transaction for sale of land and therefore no GST should be levied on allotment of plot on Long Term Lease basis.

- The applicant further added that upfront amount payable in respect of service by way of granting of long term lease is exempt from GST vide Sl. No. 41 of Notification No 12/2017 CT

(Rate) dated 28.06.2017. They fulfill all the four conditions stipulated in the notification and are therefore eligible to avail benefit of the same.

- They referred to the decision of the Advance Ruling Authority in the case of Yamuna Expressway Industrial Development Authority, wherein it was held that the plot of land allotted by Yamuna Expressway Authority for hospital, nursing home, diagnostic centre purposes etc would be eligible for the aforesaid exemption under the exemption notification. The said advance ruling squarely applies to the facts of their present case and therefore the upfront premium payable on the allotment of commercial plots which would be used for development of infrastructure for financial business including Commercial Complex for commercial activities such as shopping malls, showrooms, retail outlets, hotels, restaurants, offices and such other commercial uses duly qualifies as 'industrial plot' and is eligible for the exemption.

- They have quoted CBIC Circular No 101/20/2019-GST dated 30.04.2019 wherein it is clarified that the above mentioned GST exemption is admissible irrespective of whether such upfront amount is payable or paid in one or more installments, provided the amount is determined upfront.

- They submitted the date wise schedule of installments to be paid by them and stated that the entire amount was payable by them to the NOIDA Authority as an upfront amount and the same was exempted from GST under the exemption notification.

7. The application for advance ruling was forwarded to the Central Jurisdictional GST Officer vide letter dated 20.04.2023 to offer their comments/views/verification report on the matter. However, No comments in the matter has been received in the matter.

8. Mr. Rishabh Mishra, C.A., Authorized Representative of the applicant appeared for the personal hearing held on 06.07.2023 and reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

9. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

10. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

- (1) Applicability of a notification issued under the provisions of this Act;*
- (2) Determination of the liability to pay tax on any goods or services or both;*

11. We would like to examine whether the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017 or not. For this we would like to examine this matter in light of definitions of Advance Ruling under section 95 of the CGST Act 2017 and the same is reproduced as under:

Section 95. Definitions of Advance Ruling.— In this Chapter, unless the context otherwise requires,—

- (a) —*advance ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*
- (b) —*Appellate Authority means the Appellate Authority for Advance Ruling referred to in section 99;*
- (c) —*applicant means any person registered or desirous of obtaining registration under this Act;*

The above clause (a) of section 95 clearly provides that the applicant of Advance Ruling should be related to a taxpayer who supplies the goods or services or both or who proposes to make supplies in future. As the wording says the "supply of goods or series or both" and not the "receipt of goods or services, or both", it is implied that the applicants seeking Advance Rulings should be the suppliers and not the recipients.

The meaning of the applicant defined at Point No. (c) should be derived only in consonance with Point No. (a) of Section 95 of the CGST Act 2017.

12. Further, we find that the scope of supply as provided in section 7 of the CGST Act, the expression "supply" includes the following

- (a) *all forms of supply of goods or services or both such a sale, transfer barter, exchange, licence, rental, lease or disposal made or agreed to be made for consideration by a person in the course of furtherance of business.*
- (aa) *the activities or transaction, by a person, other than individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration*
- (b) *import of services for a consideration whether or not in the course or furtherance of business; and*
- (c) *the activities specified in Schedule I, made or agreed to be made without a consideration,*

The conjoint reading of both the above paras 11 and 12, it clarifies that activities of the taxpayer being a recipient, are not related to the supply being undertaken or proposed to be undertaken by him.

13. Further, reference needs to be made to section 103 of CGST Act, 2017 which provides for applicability of the advance ruling. Clause (a) of sub-section (1) of the said section clearly provides that the advance ruling is binding only upon the applicant.

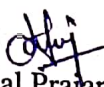
14. We find that Applicant M/s Lavish Buildmart Pvt. Ltd. is receiver of the Goods/Services provided by the M/s New Okhla Industrial Development Authority and has admitted in the application dated 28.03.2023 that it falls under category of Service recipient. In light of point provided under Section 95 of CGST Act 2017, only supplier of the services can file Application for Advance Ruling. Accordingly, we do not admit the application for consideration/ruling on merits as applicant does not fall under the definition of supplier under Advance Ruling and cannot get the Advance Ruling under the Act.


15. Accordingly, we pass the ruling as under:

RULING

No ruling can be given in the matter as discussed above.

16. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Harilal Prajapati)
Member of Authority for Advance
Ruling


(Amit Kumar)
Member of Authority for Advance
Ruling

To,

M/s Lavish Buildmart Pvt Ltd.,
Windsor Grand, 1C, 23rd Floor, Sector-126,
Noida, Gautam Buddha Nagar, Uttar Pradesh-201303

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, Gautam Buddha Nagar, 3RD Floor, Wegmans Business Park, K.P.-III, Greater Noida-201306, Uttar Pradesh.
4. The Deputy/Assistant Commissioner, CGST & Central Excise Division-I, Gautam Buddha Nagar, 3RD Floor, Wegmans Business Park, K.P.-III, Greater Noida-201306, Uttar Pradesh.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, ~~Gautam Buddha Nagar~~ Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnadh, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.