MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		**27AAACW1398L1ZU**
Legal Name of Applicant		WOODKRAFT INDIA LIMITED
Registered Address/Address provided while obtaining user id Corresponding Address		1.CTS No. 844/4, Village- Ambivalli, Shah Industrial Estate, Off New Link road, Andheri West Mumbai 400053. 2. No.56, First floor, New Timber Yard layout, Mysore road, Bangalore, Karnataka- 5600026
Details of application		GST-ARA, Application No. 24 Dated 13.06.2019
Concerned officer		PUN-VAT-C-102, PUNE-I, PUNE.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in brief)	An applicant is engaged in undertaking and execution of interior works and other works. M/s Oil & Natural Gas Corporation Ltd.
Issue/s on which advance ruling required		(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s. WOODKRAFT INDIA LIMITED, the applicant, seeking an advance ruling in respect of the following questions:

1. **Whether in the facts & circumstances of case, applicant is liable to pay GST in respect of Tax Invoice No 01 dated 25/06/2018 / R.A. Bill No 22 for Rs. 2,42,09,594/-, toward civil and interior work done of M/s Oil & Natural Gas Corporation Ltd. under provision CGST ACT.**

2. **If the ruling on above question is affirmative, kindly clarify rate of tax applicable thereon.**

3. **Whether in the facts and circumstances of case, applicant is liable to pay GST on proposed reimbursement of Rs. 1,92,50,247/- from M/s Oil & Natural Gas Corporation Ltd., toward operational site expenses and claim toward rectification of water damages, pertaining to original civil & interior work contract awarded by M/s Oil & Natural Gas Corporation Ltd.**

4. **If the ruling on above question is affirmative, kindly clarify rate of tax applicable thereon.**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to "GST Act" would means CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the applicant is as under:-

2.1 M/s Woodcraft India Ltd (Applicant) is engaged in undertaking and execution of interior works and other works. M/s Oil & Natural Gas Corporation Ltd. (ONGC) has, vide Order No MR/PO/4BP/BK/52 2013 dated 01/10/2013 awarded contract of civil & interior works of Green Building, Plot No C-69, Bandra-Kurla Complex, Mumbai 400-051, to the applicant for value of Rs. 57,45,18,007/- which was further revised to Rs. 60,74,89,569/- and period of completion of work was 6 months & 6 days from notification of award. Since work could not be completed within stipulated period, period was extended up to 31/01/2016, with application of liquidated damages clause.

2.2 Thereafter, Applicant issued R.A. Bill No 22 and issued corresponding Tax Invoice No 001 on 25/06/2018 for Rs. 2,42,09,594/- and charged thereon CGST &MGST @ 9% at Rs. 21,78,863/- & Rs.21,78,863/- respectively, with total amount of Rs. 2,85,67,321/-. ONGC made payment on 03/07/2018 but disputed the collection of CGST & MGST. Applicant accounted the said tax invoice in the books of accounts, paid CGST & MGST and accordingly filed the return for the month of June-2018.

2.3 After issue of impugned final R.A. Bill No 22, question arose as to, for whose default / breach of contract, the execution of work could not be completed as agreed and had to be extended till 31/01/2016. Applicant vide letter dated 24/02/2016 raised claim for an

amount of Rs. 10,11,78,725/- which was not accepted by CNGC. There were also other issues in dispute like; (a) for whose default or breach execution of works was delayed; (b) what amount is payable to ONGC or Applicant for loss or damage suffered by either of them for breach committed by other party, etc.

2.4. Since the dispute between applicant and ONGC could not be settled, the Chief Legal Services of ONGC constituted on O.E.C (Outside Expert Committee) to conciliate and help them to reach an amicable settlement.

2.5 O.E.C, vide report dated 21/05/2019 rejected claim of Rs. 6,07,48,957/- of liquidated damages made by ONGC and following claims of the applicant have been recommended

a) Operational Site Expenses Rs. 65,19,560/-

b) Rectification of rain water damages Rs. 1,27,30,687/-

c) Interest @12% on above amt.

d) GST liability of Rs. 39,00,139/- to be paid as per GST Authority Ruling (on final RA Bill 22 for Rs. 2,85,67,321/-)

2.6 Claim of operation site expenses comprises of expenses incurred by the applicant for extension of insurance policy and bank guarantee due to delay in project on the part of ONGC and hiring of scaffolding. Details of which are as under.

a) Insurance Policy extension Rs. 33,27,925/-

b) Bank Guarantee extension Rs. 18,36,535/-

c) Hiring of Scaffolding Rs: 13,55,100/-

Total Rs. 65,19,560/-

2.7 Applicant made claim of Rs. 1,40,28,820/- toward certain damages which took place on account of rain water seepage for which contractor was not responsible. O.E.C. agreed to the claim and recommended to reimburse an amount of Rs. 1,27,30,687/- to an applicant.

2.8.a) Applicant issued final R.A. Bill. No 22 / Tax Invoice No 001 dated 25/06/2018 for civil & interior work to ONGC, Bandra - Kurla Complex, Mumbai 400 051. Details of which are as under.

Value	Rs. 2,42,09,594/-
CGST 9%	Rs. 21,78,863/-
MGST 9%	Rs. 21,78,863/-
Total	Rs. 2,85,67,321/ -

2.8 (b) Final summary of above bill as certified by M/s Oil & Natural Gas Corporation Ltd.

Supply amount	Rs. 2,43,83,448/-
Installation amount	Rs. 37,26,285/-
Service Tax	Rs. 4,57,588 /-
Total	Rs. 2,85,67,321/ -

2.8 (c) Calculation of GST to be recovered from ONGC is as under:

Total GST as per Tax Invoice	Rs. 43,57,727/-
Less Amt. received by way of Service Tax	Rs. 4,57,588/-
Balance GST payable from M/S ONGC	Rs. 39,00,139/-

2.9 As regard GST claim of Rs. 39,00,139/- of the applicant, O.E.C. in its report observed that; "The contractor has made claim toward GST of Rs. 39,00,139/- being GST on Final Bill No.22 submitted on 22/6/2018. The claim arose on account of payment of GST by the contractor in the month of June-2018 while raising their final bill No 22 for work carried out in the year 2016, before the introduction of GST from 01/07/2017. ONGC rejected the claim of GST and instead paid service tax on installation portion, since the work was performed prior to implementation of GST. In this context O.E.C. directed both parties to get opinion from their respective legal group on the correct stand being both the parties sticking to their original point of view. In view of the stalemate, O.E.C. directed that determination order from GST authority should be obtained based on representation by M/s Woodkraft India Ltd, which should incorporate the view point of ONGC, on the subject matter. M/s. Woodkraft India Ltd, accordingly submitted their draft to ONGC who have also incorporated their view, O.E.C. recommends that final determination from GST authority be implemented by both parties. O.E.C. to be kept appraised of final outcome."

2.10. Hence applicant has filed subject application.

2.11 According to ONGC, as per Section 142(11) (b) of CGST Act, the levy of tax under GST would inter alia, not apply on services to the extent it was leviable under service tax law and services were completed in pre GST period and therefore, the applicant should have issued invoice and paid tax as per Rule 3 of point of taxation rule. Further even if invoice was not issued timely, as per rule 3, the service tax would become payable on the date of completion of services and GST would not apply. ONGC service tax amount to the applicant relying on the transitional provision U/s 142(11) (b) which read as under.

"Section 142(11) (b): Notwithstanding anything contained in Section 13 no tax shall be payable on the services under this Act to the extent tax was leviable on the said services under Chapter V of Financial Act 1994".

2.11 The applicant contended before O.E.C. that, invoice is pertaining to upward revision in price and therefore in view of Section 142(2) (a) of CGST Act, it is outward supply under GST law and liable to tax under CGST & MGST Act. Section 142(2) (a) of CGST Act provide that in respect of on-going contract, if there is upward revision in supply of goods

or services, then such registered person should issue supplementary invoice or debit note and it should be deemed as outward supply under GST law.

2.12 Applicant has treated impugned contract as works contract under MVAT Act and paid taxes accordingly at composition rate under Section 42(3) of MVAT Act. Under GST law works contract supply is deemed as supply of services in view of Schedule II (6(a)) of CGST Act and therefore provision Section 13 of CGST Act, regarding time of supply would be applicable.

"Section 13 of CGST Act: Time of supply of services:

(1) The liability to pay tax on services shall arise at the time of supply; as determined in accordance with the provision of this section.

(2) 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 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 section 31 or the date of receipt of payment, whichever is earlier, or

(c) 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;

Provided that where the supplier of taxable services received an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier; be the date of issue of invoice relating to such excess amount.

Explanation: - for the purposes of clauses (a) and (b) --

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

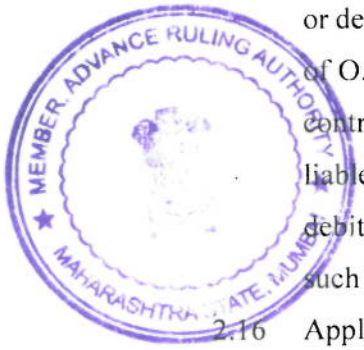
ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier":

2.13 As per Section 13 of CGST Act, liability to pay tax on supply of services would arise on the date of issue of invoice or date of receipt of payment whichever is earlier. Time of supply where invoice is not issued within prescribed time U/s 31 of Act, shall be date of provision service or date of receipt of payment whichever is earlier. In the present case Tax Invoice is issued on 25/06/2018 and payment is received on 03/07/2018 and therefore time of supply would be 25/06/2018 and supplier is liable to pay tax on 25/06/2018. Accordingly, the tax is leviable on supply of impugned works contract services under provision of Section 142(2) (a) of GST Act and the applicant has paid tax into the

Government Treasury in the return for month of June - 2018. Hence impugned supply is outward supply under CGST Act and liable to tax under GST Act.

2.14 Since applicant has completed work awarded by ONGC, of interior and civil work, as per explanation note to scheme of classification of services under GST Act, it would be covered under Tarrif.-995478 - other building completion and finishing services and CGST & MGST would be applicable @ 9% each.

2.15 O.E.C. vide report dated *21/05/2019* recommended and directed ONGC to reimburse Rs. 1,92,50,247/ -, but till date applicant has neither raised Tax Invoice for Rs. 1,92,50,247/- on ONGC nor received the said amount. As per the recommendation of O.E.C, contract value would automatically get enhanced to the extent of Rs. 1,92,50,247/- which can be said to be upward revision in price i.e. contract value. Therefore, provision of Section 142 (2)(a) would be applicable which deals with revision in price pertaining to ongoing contract. Section 142(2) (a) provides that, where in pursuance of ongoing contract, price of goods of services is increased after appointed day, then it shall be treated as outward supply by registered person under CGST Act and such person shall issue supplementary invoice or debit note within thirty days from date of such price revision. In present case, as a result of O.E.C. report, dated 21/05/2019, there would be upward price revision in the ongoing contract and outward supply to the extent of such enhanced price and therefore, it should liable to tax under GST Act. The applicant has not yet issued supplementary invoice or debit note, however considering mandatory time limit for issued of such invoice, will issue such invoices within 30 days of O.E.C. report.



2.16 Applicant has completed work awarded by ONGC of mainly interior and civil work to some extent. As per explanation note to scheme of classification of services under GST Act, it would be covered under Tariff – 995478 - other building completion and finishing services and CGST & MGST would be applicable @ 9% each.

2.17 The applicant has made further submissions on 13.02.2020 as under:-

2.17.1 There is no doubt that the work / supply is done and executed prior to 01/07/2017, but the Bill for deviation work is raised in GST era and as per GST provision section 142(2) i.e. it is an upward rate difference.

2.17.2 The amounts received/receivable by applicant amounting to Rs.2,85,67,320.64/- and Rs.2,27,15,291/- are against Invoice No.1 Dated 25/06/2018 and Tax Invoice no.19 dated 18/06/2019 respectively. Both the bills are raised during GST era (after 01/07/2017) though work and services are rendered during PRE GST era. They are approved by competent authorities, crystallised and billed in GST era & their status cannot be reduced to anything less than price upward revision of original civil & interior works undertaken

by the applicant .The "rate difference /price revision "has to be given proper meaning which results in increased outgo / costing from the point of view of the contract awarder i.e. ONGC. Hence the applicant is fulfilling & complying all the conditions as mentioned in section 142(2) of the CGST Act.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER

The Jurisdictional Officer has not submitted any written contention in this matter.

04. HEARING

Preliminary hearing in the matter was held on 20.11.2019, Sh. M. M. Kanadje, G.S.T.P appeared and requested for admission of application as per details in their application. The Jurisdictional Officer Sh. Dhananjay Palande, Assistant. Commissioner of State Tax (D-201) Pune-1 appeared. He has not submitted any written contention.

05. OBSERVATIONS AND FINDINGS.

We have gone through the facts of the case and written contention of the applicant. The questions raised by the applicant are discussed as under:-

5.1 This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections 95 to 98, 102, 103, 104 and 105. As per Section 95, the term 'advance ruling' means a decision provided by this authority to an applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5.2 Before we decide the questions raised by the applicant in this application, it is essential that it be first determined whether or not the activities undertaken by the applicant pertains to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5.3 From the perusal of activity undertaken by applicant as discussed earlier in this order in detail, it is observed that M/s Woodkraft India Ltd was holding registration under MVAT Act and Service Tax Law in pre-GST period and is also currently registered under GST Act. The applicant had undertaken the work of civil and interior in respect of M/s Oil & Natural Gas Corporation Ltd. issued to them vide order No MR/PO/4BP/BK/52 2013 dated 01/10/2013. This work was completed upto 31/01/2016 i.e. during pre-GST period. The tax invoice (R.A. Bill No 22) in respect of this completed work was raised by applicant on 25.6.2018 i.e. during GST period along with levy of GST @ 18% whereas as per the provisions of Under Rule 4A of the erstwhile Service Tax Rules, 1994, it was

compulsory for a service tax assessee to issue a bill or invoice within 14 days from the date on which the taxable service was completed or the date on which the payment was received for the service, whichever came first. Applicant has contended that, the said invoice is pertaining to upward revision in price and therefore in view of Section 142(2) (a) of CGST Act, it is outward supply under GST law and liable to tax under CGST & MGST Act. Section 142(2) (a) of CGST Act provides that in respect of on-going contract, if there is upward revision in supply of goods or services, then such registered person should issue supplementary invoice or debit note and it should be deemed as outward supply under GST law.

5.4 From the submissions made by the applicant we observe that the amount mentioned in RA Bill No. 22 is the amount payable by ONGC out of the contract amount, in respect of the contract under which work was completed before the GST regime. Hence, since the said invoice has been raised in pursuance of the contract value, the provisions of Section 142(2) (a) of CGST Act, is not applicable in respect of RA. Bill. No. 22. We find that in respect of RA Bill No. 22 Dated 25.06.2018, the applicant had already undertaken and completed the work in the service tax regime and the activities undertaken by the applicant (for which RA Bill No. 22 was issued), does not pertain to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. This amount has been received by them as per the original contract value and therefore the said amount cannot be treated as an increase in the contract value.

5.7 We now discuss the relevant provisions of Section 142, which deals with the Transitional Provisions, as submitted by the applicant.

5.7.1 "Section 142 (2) (a)- *where, in pursuance of a contract entered prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;*"

"Section 142(10) – *save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act*".

"Section 142(11) (a) – *notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State.*

Section 142(11) (b) - *notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;*

5.5 We observe that Section 142(10) allows the levy tax on goods or services under GST Act, that are supplied only after appointed day i.e. 01/07/2017. In respect of RA Bill No. 22, (issue in the first two questions raised by the applicant), the applicant has carried out and completed the total work before the appointed day and only billing is done after the appointed day and that too after a two year period. The applicant relies on the provisions of time of supply under Section 13 of GST Act. However, even as per the provisions under Section 13(2) (b) of GST Act, time of supply will be date of provision of service, if the invoice is not issued within the prescribed period. So this is not the activity being undertaken or proposed to be undertaken after the appointed day.

5.6 Further, the applicant has referred to the provisions under Section 142(2)(a) and submitted that the provisions under this Section allows the applicant to raise question on above issue under advance ruling provisions under the GST Act. Therefore, we have referred the provision under this Section. The provisions under this section provides for the treatment to be given under GST Act in case of upward revision of prices and levy of tax thereon. The applicant has completed its work upto 31/01/2016 and raised the tax invoice on 25/06/2018. This tax invoice is in respect of the work done by him in pre-GST period. The amount charged in the invoice is in respect of work done as per the prices originally agreed upon in pre-GST period. Thus, there is no upward revision of any prices, as claimed by applicant. The contention of applicant is therefore not accepted. Thus, questions posed by applicant at Sr. No. (a) & (b) are non-maintainable under the provision of Section 95 of the GST Act.

5.5 The second question raised by the applicant is to clarify the rate of GST if the ruling on question no. 1 is in the affirmative.

5.5.1 Since the question no.1 is out of the purview of this Authority, we do not take up the second question for discussion at all and would not answer the same.

5.6 Now, we discuss the subsequent questions at Sr. No. (3) and (4). The questions are as follows.

3) *Whether in the facts and circumstances of case applicant is liable to pay GST on proposed reimbursement of Rs. 1,92,50,247/ from M/s Oil & Natural Gas Corporation Ltd. toward operational site expenses and claim toward rectification of water damages, pertaining original civil & interior work contract awarded by ONGC.*

4) *If ruling on above question is affirmative kindly clarify rate of tax applicable thereon.*

5.6.1 The applicant submitted that, the work allotted by the ONGC was not completed within stipulated time and therefore, the period of completion of work had to be extended by around six months. This has led to the additional claim of operational site expenses and claim toward rectification of water damages. The applicant and the ONGC had a dispute on this additional claim and therefore, an Outside Expert Committee was appointed. This committee had gone into details of the facts and approved the additional claim of applicant to the extent of Rs. 1,92,50,247/. This claim is over and above the cost agreed in the contract for the sanctioned work.

5.6.2 In this situation also, Applicant has contended that, the said invoice is pertaining to upward revision in price and therefore in view of Section 142(2) (ε) of CGST Act, it is outward supply under GST law and liable to tax under CGST & MGST Act.

5.6.3 The documents submitted by the applicant as well as the oral submissions made, do not show that the said invoice has been raised in pursuance of increase in contract value. Further, from the submissions made by the applicant we find that in respect of additional claim of Rs. 1,92,50,247/-, the services of site expenses & rectification of water damages was undertaken by the applicant and completed during the service tax regime. These services of site expenses & rectification of water damages are in the nature of additional work entrusted to the applicant, claim against which was disputed by ONGC and on mediation by the O.E.C., the said amount has been said to be payable to the applicant. This amount does not appear to be paid to the applicant in lieu of increase in the value of the original contract. In fact, payment of this amount was being contested by ONGC only because they thought that the said damages had occurred during the course of performance of the contract by the applicant which was to be rectified by way of providing services of site expenses & rectification of water damages. Thus, we find that the amount of Rs. 1,92,50,247/- is nothing but payment to the applicant against services, rendered during the erstwhile service tax regime. Thus we find that even in the subject case where the invoice is not issued by the applicant, the work was already undertaken and completed well before the GST regime. Hence even in this case the activities undertaken by the applicant, does not pertain to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant as per the provisions of Section 95 of the GST Act. Hence we find that this authority cannot answer question no. 3 also.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 24/2019-20/B- 35 **Mumbai, dt.** 17/03/2020

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- Whether in the facts & circumstances of case, applicant is liable to pay GST in respect of Tax Invoice No 01 dated 25/06/2018 / R.A. bill No 22 for Rs. 2,42,09,594/- toward civil and interior work done of M/s Oil & Natural Gas Corporation Ltd. under provision GST Act.

- The question is non-maintainable, in view of the discussions made above.

Question 2:- If ruling on above question is affirmative kindly be clarified rate of tax applicable thereon.

- The question is non-maintainable, in view of the discussions made above.

Question 3 :- Whether in the facts and circumstances of case an applicant is liable to pay GST on proposed reimbursement of Rs. 1,92,50,247/ from M/s Oil & Natural Gas Corporation Ltd. toward operational site expenses and claim toward rectification of water damages, pertaining original civil & interior work contract awarded by M/s Oil & Natural Gas Corporation Ltd.

- The question is non-maintainable, in view of the discussions made above.

Question 4 :- If ruling on above question is affirmative kindly clarify rate of tax applicable thereon.

- The question is non-maintainable, in view of the discussions made above.

PLACE - Mumbai
DATE: 17/03/2020

—sd—
A. A. CHAHURE
(MEMBER)

—sd—
P. VINITHA SEKHAR
(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Copy to:-
1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax , Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021.