

AUTHORITY FOR ADVANCE RULING, TAMILNADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING, NO.1, GREAMS ROAD,
CHENNAI - 600 006.

RULING UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.

Members present:

Smt. D. Jayapriya, I.R.S., Additional Commissioner/ Member(CGST), Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. A Valli, M.Sc., Joint Commissioner/Member(SGST), Office of the Commissioner of Commercial Taxes, Chennai-600 006.
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Advance Ruling No. 09/ARA/2024 Dated: 30.05.2024

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling.*
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.*
- 3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
- 4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any / User id		33AANCP1700C1Z0
Legal Name of Applicant		Prime Expat Infra Private Limited
Registered Address / Address provided while obtaining user id		33, Ground and First Floor, Mandapam Road, Chennai, Tamil Nadu, 600 010.
Details of Application		GST ARA – 01 Application Sl.No.86/2023 dated 18.05.2023
Jurisdictional Officer		Centre: Chennai North Commissionerate Division: Anna Nagar
Concerned Officer		State: Kilpauk Assessment Circle Division: Chennai (Central)
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service provider
B	Description (in brief)	The applicant is engaged in the business of providing construction services in respect of Commercial or Residential buildings and Civil Structures. The applicant was registered as a partnership firm with GSTIN 33AAOFP4878M1ZF and converted into a Private Limited Company w.e.f. 22.08.2022 and are presently holding GSTIN 33AANCP1700C1Z0.
Issue/s 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.
Question(s) on which advance ruling is required		1. Whether the applicant can levy and discharge Output tax on services provided by it at the effective rate of 8% (12% less 1/3 rd value deducted on account of land) under entry number 3(ie) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification 03/2019-Central Tax (Rate) dated 29.03.2019.

1. At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act are in *parimateria* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The applicant submitted a copy of challan dated 22.04.2023 evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017. The online application form for advance ruling dated 10.03.2023 was physically received on 11.04.2023, as mandated under Rule 107A.

3.1 Prime Expat Infra (hereinafter referred to as "Applicant") is a partnership firm registered under the Indian Partnerships Act, 1932 and is registered under the provisions of GST law vide GSTIN 33AAOFP4878M1ZF. The Applicant is engaged in the business of providing construction services in respect of Commercial or Residential buildings and Civil structures. The Applicant is converted into a Private Limited Company w.e.f. 22nd August 2022. Since the Applicant is converted into a Private Limited Company, the Advance Ruling Application has been made under the GTIN 33AANCP1700C1Z0 (Private Limited Company).

3.2. The applicant had started the construction of Tower 'Block A7' in the year February 2019. The said project included residential units measuring approximately 42 Sq. meter per unit. The said project includes residential units as well as commercial units. The area of Commercial unit is less than 15% of the total area of the project and accordingly the project is an RREP Project

3.3. With effect from April 2019, vide Notification no. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended by Notification 03/2019- Central Tax (Rate) dated 29.03.2019, the applicant had an option to opt for the new rate of 1%/5% without claim of input tax credit or continue with the old rate of 8%/12% with claim of input tax credit. The Applicants have opted to continue with the old rate of paying output tax with the claim of input tax credit.

3.4 The applicant believes that as their project is an RREP project, the rate applicable to them is 8% and accordingly, the output liability should be determined at the rate of 8% by virtue of Notification No. 11/2017 - Central tax (Rate) dated 28.06.2017 as amended by Notification 03/2019 - Central tax (Rate) dated 29.03.2019.

3.5 On interpretation of law, the applicant stated that the Notification no 11/2017-Central Tax (Rate) dated 28.06.2017, as amended by Notification 03/2019-Central Tax (Rate) dated 29.03.2019, notifies the rate at which output tax liability needs to be determined in case of services provided as described in column (3) of the table and reproduced the relevant portion of Notification as follows;

"The Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the Central Tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

Description of service	Rate	Condition
(3)	(4)	(5)
(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item	6	<p>Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th of May, 2019;</p> <p>Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;</p> <p>Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;</p>

...

(xx) the term "ongoing project" shall mean a project which meets all the following conditions, namely-

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub clause (a) above that construction of the project has started on or before the 31st March, 2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation.- For the purpose of sub- clause (a) and (b) above , construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

3.6 That the conditions for applicability of CGST rate of 6% and corresponding SGST rate of 6% the following parameters are essential for determination:

a) Services should be construction service falling under any of the schemes as stated in the Notification.

b) The project must be an ongoing project.

c) Option to pay tax at such rate shall be exercised in the form at Annexure IV on or before 10.05.2019

3.7 With regard to the condition that the services should be "construction service" falling under any of the schemes as stated in the Notification, the applicant submitted that as stated in para 'ie' of the Notification no. 11/2017-Central; tax (rate) dated 28.06.2017 as amended by Notification 03/2019-Central tax (rate) dated 29.03.2019, the construction of apartments should fall under any of the following schemes

Sub item and item as specified in Entry 'ie'	Description of Service	Applicability in present case.
Sub-item (b) of item (iv)	a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv AwaasYojana;	Not applicable
Sub-item (c) of item (iv)	(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)	Not applicable

Sub-item (d) of item (iv)	(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana	Not applicable
Sub-item (da) of item (iv)	(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)	Not applicable
Sub-item (db) of item (iv)	(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)	Not applicable
Sub-item (b) of item (v)	(b) a single residential unit otherwise than as a part of a residential complex;	Not applicable
Sub-item (c) of item (v)	(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India	Not applicable
Sub-item (d) of item (v)	(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government	Not applicable
Sub-item (da) of item (v)	(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017	Applicable in Present Case
Sub-item (c) of item (vi)	(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.	Not applicable

3.8. The applicant submitted that as per Notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F.No. 13/6/2009-INF, dated the 30th of March 2017, the term Affordable Housing is added under 'Social and Commercial Infrastructure'. The term Affordable Housing has been defined to mean -

"Affordable Housing" is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters."

3.9. The applicant submitted that their case falls under scheme specified at sub-item (da) of item (v) of the above Notification and they are attaching the project plans along with the Unit configuration of 'Block A 7' as Annexure "A-3" to demonstrate that all the units are below 60 square meters. They submitted that thus, the 1st condition of the construction of apartments falling in the schemes specified has been fulfilled.

3.10. With regard to the condition that the project must be an ongoing project the applicant submitted that the term ongoing project is also defined in the Notification no. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification 03/2019- Central Tax (Rate) dated 29.03.2019 and reproduced the said definition as below;

(xx) the term "ongoing project" shall mean a project which meets all the following conditions, namely-

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019: -

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (a) above that construction of the project has started on or before the 31st March, 2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation. For the purpose of sub-clauses (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019."

3.11. The applicant submitted that the **commencement certificate** of the project is attached and marked as Annexure "A-4" which demonstrates that the project commenced before 31.03.2019 and the Chartered engineers' certificate dated 15.04.2019 attached and marked as Annexure "A-5", also certifies that the work has already commenced as on 31.03.2019. Thus, the first requirement has been fulfilled as the project commenced before 31.03.2019.

3.12. The applicant further submitted that the Chartered engineer's certificate dated 15.04.2019 certified the percentage of work completed as on 31.03.2019 showing that the project was not completed as on 31.03.2019 and the completion certificate is also not received. The applicant submitted that the construction of the project is still ongoing and thus, the second requirement of non-issuance of completion certificate on or before 31.03.2020 has been fulfilled.

3.13. The applicant submitted that the last condition to be fulfilled for a project to be an ongoing project is apartments being constructed under the project should have been, partly or wholly, booked on or before the 31st of March, 2019 and in their case, apartments have been booked much earlier than 31st March, 2019. They submitted that the said facts can be verified from the ledger accounts of the flat owners wherein the payments received, and the date of receipt can be verified. The same have been attached and marked as Annexure "A-6". The applicant submitted that all the conditions of the project being an ongoing project are fulfilled in their project under consideration.

3.14 With regard to option to pay tax at such rate shall be exercised in the form at Annexure IV on or before 10.05.2019 the applicant submitted that in order to pay central tax on the construction of apartments at the rate specified in the entry which is mentioned above, the registered person shall exercise a one-time option to pay tax at such rate in the form at Annexure IV on or before 10.05.2019. The applicant submitted that they have exercised this option on 09.05.2019 and the proof of submission of Annexure IV is attached and marked as Annexure "A-7".

3.15. The applicant further submitted that based on the above, they have fulfilled all the conditions to be eligible for the rate of 6% CGST and 6% SGST on the output services provided by them. Further, they would also like to state that the said rate has been reduced by 1/3rd, being the portion of land and thus, resulting in effective rate of 8% on the output services provided by the applicant. Citing the relevant portion of Notification no. 11/2017- Central tax (rate) dated 28.06.2017 as amended by Notification 03/2019-Central Tax (Rate) dated 29.03.2019, reproduced below,

they stated that thus, the rate applicable in their case should be 8% (4% CGST and 4% SGST).:

2. In case of supply of service specified in column (3), in items (i), 96[(ia), (ib), (ic), (id), (ie) and (if)] against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply."

3.16. The applicant further submitted that they would also like to draw attention to the FAQs on real estate sector issued by CBIC vide circular F. No. 354/32/2019-TRU dated 07.05.2019 the relevant FAQs of which are reproduced as under:

Sr No	Question	Answer						
1.	What are the rates of GST applicable on construction of residential apartments?	<p>With effect from 01-04-2019, effective rate of GST applicable on construction of residential apartments by promoters in a real estate project are as under:</p> <table><tr><th>Description</th><th>Effective rate</th></tr><tr><td>Construction of affordable residential apartments</td><td>1% without ITC on total consideration</td></tr><tr><td>Construction of residential apartments other than affordable residential apartments</td><td>5% without ITC on total consideration</td></tr></table> <p>The above rates are effective from 01-04-2019 and are applicable to construction of residential apartments in a project which commences on or after 01-04-2019 as well as in on-going projects. However, in case of on-going project, the promoter has an option to pay GST at the old rates, i.e. at the effective rate of 8% on affordable residential apartments and effective rate of 12% on other than affordable residential apartments and, consequently, to avail permissible credit of inputs taxes; in such cases the promoter is also expected to pass the benefit of the credit availed by him to the buyers.</p>	Description	Effective rate	Construction of affordable residential apartments	1% without ITC on total consideration	Construction of residential apartments other than affordable residential apartments	5% without ITC on total consideration
Description	Effective rate							
Construction of affordable residential apartments	1% without ITC on total consideration							
Construction of residential apartments other than affordable residential apartments	5% without ITC on total consideration							
2	Does a promoter or a builder has option to pay tax at old rates of 8% & 12% with ITC?	<p>Yes, but such an option is available in the case of an ongoing project. In case of such a project, the promoter or builder has option to pay GST at old effective rate of 8% and 12% with ITC.</p> <p>To continue with the old rates, the promoter/ builder has to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10th of May, 2019.</p>						

		<p>However, in case where a promoter or builder does not exercise option in the prescribed form, it shall be deemed that he has opted for new rates in respect of ongoing projects and accordingly new rate of GST i.e. 5% / 1% shall be applicable and all the provisions of new scheme including transitional provisions shall be applied.</p> <p>There is no such option available in case of projects which commence on or after 01.04.2019. Construction of residential apartments in projects commencing on or after 01.04.2019 shall compulsorily attract new rate of GST @ 1% or 5% without ITC.</p>
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3.17 The applicant submitted that based on the above interpretation they believe that the rate applicable for the project under consideration should be 8%.

4.1 The applicant is under the administrative control of Central Tax. The concerned authorities of the Centre and State were addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised.

4.2 The concerned Central authority vide letter GEXCOM/TECH/MISC/2525/2023-TECH dated 06-02-2024 informed that the pending proceedings on the issue raised in the Advance Ruling is Nil as per the records available and with regard to the comments on the issue raised the Central Authority submitted that the relevant clause does not say reducing the tax rate to one-third of 12%; rather, it states that the value of land in such a supply shall be one-third of the entire amount paid for such a supply.

4.3 The State jurisdictional officer, did not submit any remarks and hence it is presumed that there are no proceedings pending or decided on the issue raised in the application by the Applicant.

PERSONAL HEARING

5. The applicant, was given an opportunity to be heard on 08.01.2024. Ms Kushboo Vora, Chartered Accountant and Mr R Subramanian, Chartered Accountant appeared for the personal hearing as the Authorised Representatives (AR) of the Applicant. They reiterated the submissions made in their application and submitted additional submissions before the Authority and reiterated the points made in their submissions.

The members enquired as to whether they have complied with the conditions in the Notification, for which they stated that the conditions have been fulfilled and the relevant documents have been attached. The representatives agreed that they would submit any further details, if required.

DISCUSSION AND FINDINGS

6.1 We have carefully considered the submissions made by the applicant in the advance ruling application and the additional submissions made during the personal hearing.

6.2 In terms of Section 97(2) of the CGST/TNGST Act, 2017 questions on which advance ruling is sought under the Act, falls within the scope of Section 97(2)(b) and (e) of the CGST/TNGST Act, 2017, and therefore the application is admissible.

6.3 The Applicant is before us seeking Advance ruling on the question whether the applicant can levy and discharge Output tax on services provided by it at the effective rate 8% (12% less 1/3rd value deducted on account of land) under entry number 3(ie) of Notification no. 11/2017-Central Tax (rate) dated 28.06.2017 as amended by Notification 03/2019-central tax (rate) dated 29.03.2019.

6.4 The Applicant submits that they are engaged in the business of providing construction services in respect of Commercial or Residential buildings and Civil structures and they had started the construction of Tower 'Block A7' in the year February 2019. They further submit that the said project included residential units, measuring approximately 42 Sq. meter per unit, as well as commercial units. They also submit that the area of Commercial unit is less than 15% of the total area of the project and accordingly the project is an RREP Project. With effect from April 2019, vide Notification no. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification 03/2019- Central Tax (Rate) dated 29.03.2019, the applicant had an option to opt for the new rate of 1%/5% without claim of input tax credit or continue with the old rate of 8%/12% with claim of input tax credit and as such the applicant submits that they have opted to continue with the old rate of paying output tax with the claim of input tax credit. The applicant believes that as their project is an RREP project, the rate applicable to them is 8% and accordingly, the output liability should be determined at the rate of 8% by virtue of Notification No. 11/2017-Central tax (rate) dated 28.06.2017 as amended by Notification 03/2019- Central tax (rate) dated 29.03.2019.

6.5 With regard to construction services we find that construction services under Heading 9954 were initially taxable @ 18% [CGST @ 9% + SGST @ 9%] vide entry serial number 3 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The relevant extract of Notification pertaining to construction services is reproduced below;

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or	9	-

		partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. Explanation.—For the purposes of paragraph 2, “total amount” means the sum total of, -(a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be.

6.6 We find that the applicant states that the item ‘ie’ of sl no 3 of the Notification no. 11/2017-Central Tax (rate) dated 28.06.2017 as amended by Notification 03/2019- Central tax (Rate) dated 29.03.2019 is applicable to them. The relevant portion of the Notification is reproduced at para 3.5 above and the same is not repeated here for the sake of brevity. We find that the Notification 11/2017-Central Tax (rate) dated 28.06.2017 was further amended vide Notification No 06/2023 Central Tax (Rate) dated 26-07-2023 by insertion of an explanation against serial number 3, in column (3), in item (ie), the same is reproduced below;

“Explanation. –This item refers to sub-items of the item (iv), (v) and (vi), against serial number 3 of the Table as they existed in the notification prior to their omission vide notification No. 03/2022-Central Tax (Rate) dated the 13th July, 2022.”;

6.7 On perusal of the said entry i.e “(ie) **Construction of an apartment in an ongoing project under any of the schemes** specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the **promoter has exercised option to**

pay central tax on construction of apartments at the rates as specified for this item" it can be seen that the supply should be construction services in respect of an ongoing project falling under any of the schemes specified therein and promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item. We find that the applicant has submitted that they had started the construction of Tower 'Block A7' in the year February 2019 and the said project included residential units (measuring approximately 42 Sq. meter per unit) as well as commercial units. They also submit that the area of Commercial unit is less than 15% of the total area of the project and accordingly the project is an RREP Project. Hence we find that the said supply is construction services of RREP Project.

6.8 We find that the term *"ongoing project"* is defined in Notification 11/2017 and shall mean a project which meets all the following conditions, namely-

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019: -

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub-clause (a) above that construction of the project has started on or before the 31st March, 2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;

(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Explanation. For the purpose of sub-clauses (a) and (b) above, construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019."

6.9 With regard to the above we find that the applicant has submitted that the project in question meets all the stipulated conditions to qualify as an ongoing project. We find that the applicant has submitted copies of plan approval certificate dated 19.06.2018 issued by the Assistant Director, Urban Planning, Thiruvallur Zone and Chartered Engineers certificate dated 15.04.2019 in support of the claim and in lieu of proof that the first condition is satisfied. We find that in respect of second condition that completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March 2019 the applicant states that the Chartered Engineers certificate dated 15.04.2019 certifies the percentage of work completed as on 31.03.2019. We notice that the percentage of work completed as on 31.03.2019 is mentioned as **20%** in respect of 'A7 Block' in the Chartered Engineers certificate dated 15.04.2019. We find that the applicant also states that the construction of the project is still on going i.e., as on the date of filing of the application for advance ruling, and thus the second requirement is also satisfied. Further with regard to the last condition that the apartments being constructed under the project should have been, partly or wholly, booked on or before the 31st March 2019 the applicant has stated that apartments have been booked much earlier than 31.03.2019 and has submitted ledger accounts, of the flat owners showing payments received and date of receipt. On the basis of the documents submitted by the applicant we find that the project qualifies to be an ongoing project as it meets all the conditions stipulated in the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended.

6.10 We find that under in the item 'ie' of Sl No 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, it is mentioned that the **"promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item"**. Further under the conditions against item ie the following conditions are mentioned;

"Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the [20th] of May, 2019

Provided also that where the option is not exercised in Form at Annexure IV by the [20th] of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;"

We find that only if a promoter has exercised option to pay central tax on construction of apartments at the rates as specified for item 'ie' before the stipulated date i.e. 20.05.2019 the said item 'ie' shall be applicable. If the promoter fails to exercise one time option in the Form at Annexure IV as stipulated by the Notification then option to pay tax at the rates as applicable to item (i) or (ia) or (ib)

or (ic) or (id) shall be deemed to be applicable. We find that the applicant submits that the option was exercised by way of submission of Form in Annexure IV to the Assistant Commissioner, Kilpauk Assessment Circle on 09.05.2019. We find that the applicant has submitted an extract of letter delivery book showing that "Annexure IV along with supporting documents" was submitted to the Assistant Commissioner, Kilpauk Assessment and hence also satisfied the condition as mentioned in item 'ie' of Sl No 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.

6.11 Further, with regard to the schemes mentioned in item 'ie' of Sl No 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 we find that the applicant has submitted that the scheme specified in sub-item **(da) of item (v)** is applicable to them. In this regard we find that the scheme "(da) of item (v) - low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;" was inserted vide Notification 1/2018-C.T. (Rate) dated 25-Jan-2018. Further, vide Notification 3/2022-C.T. (Rate) dated 13-July-2022 the items (iii), (iv), **(v)**, (va), (vi) and (ix) and the corresponding entries relating thereto in columns (4) and (5) of sl no 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 were omitted. However, we find that an explanation in item 'ie' of sl no 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 was inserted vide Notification 6/2023-C.T. (Rate) dated 26-July-2023. The explanation is reproduced below;

"Explanation. -This item refers to sub-items of the item (iv), (v) and (vi), against serial number 3 of the Table as they existed in the notification prior to their omission vide notification No. 03/2022-Central Tax (Rate) dated the 13th July,2022."

We find that though the items (iii), (iv), **(v)**, (va), (vi) and (ix) and the corresponding entries relating thereto in columns (4) and (5) of sl no 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 were omitted and did not exist as on the date of filing of the advance ruling application by the applicant the above said explanation inserted vide Notification 6/2023-C.T. (Rate) dated 26-July-2023 provides clarity that in the item 'ie' of sl no 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 refers to sub-items of the item (iv), (v) and (vi), against serial number 3 of the Table as they existed in the Notification prior to their omission.

6.12 We also find that that one of the issues raised by the builders association namely, CREDAI vide their letter no. CREDAI/MoF/2018/14 dated 19th March, 2018 was regarding **Requirement of specific approval/ certificate for residential projects to qualify as 'Infrastructure status'**. In response, the Government vide

F.No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th May, 2018 has clarified that "Low cost houses up to a carpet area of 60 square metres per house in an affordable housing project, which has been given infrastructure status under Notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). **Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/ developer as per the definition of affordable housing given in the above mentioned Notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.**"

6.13 We find that in the instant case the applicant has stated that all the units are below 60 square metres and has submitted the project plans and Unit configuration of 'Block 7' in support of the same. We also find that the applicant has stated that the area of Commercial unit is less than 15% of the total area of the project.

6.14 From a reading of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended, the clarification issued by Government of India Ministry of Finance Department of Revenue (TRU) mentioned above, the submissions of the taxpayer and the facts on record we find that the item 'ie' of SL no 3 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended, is applicable to the applicant as the applicant's case falls under the scheme specified at sub-item (da) of item (v) in case of construction of residential units of less than 60sq mts and not for commercial units.

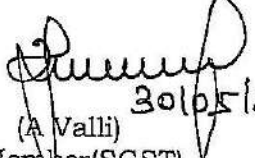
6.15 We find that the applicant citing the para 2 of the Notification, which provides that in case of supply of services involving transfer of land or undivided share of land, the value of supply shall be reduced by one third, has stated that the effective rate applicable in their case should be 8% (CGST 4% and SGST 4%). The applicant has also drawn attention to the FAQs on real estate sector issued by CBIC vide circular F. No. 354/32/2019-TRU dated 07.05.2019 which are reproduced in the table in para 3.16 above.

6.16 In this regard we find that the sub item 'da' of item 'v' mentioned in item 'ie' of SL No 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended is applicable to the applicant and the rates as mentioned against the said item 'ie' which is 12% (CGST 6% + SGST 6%) shall be applicable to the applicant. Further in case of supply of services involving transfer of land or undivided share of land the value of supply shall be reduced by one third making the effective rate 8%(CGST 4% + SGST 4%)

7. In view of the above, we rule as under,

RULING

The sub item "da" of item "v" mentioned in item "ie" of SL No 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended is applicable to the applicant and the rates as mentioned against the said item 'ie' which is 12% (CGST 6% + SGST 6%) shall be applicable to the applicant, in respect of supply of construction services of residential flats qualifying the scheme mentioned in sub item "da" of item "v". Further in case of supply of services involving transfer of land or undivided share of land the value of supply shall be reduced by one third making the effective rate 8%(CGST 4% + SGST 4%).


(A Valli)
Member(SGST) 30/05/2024




(D. Jayapriya)
Member (CGST) 30/05/2024.

To

Prime Expat Infra Private Limited,
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Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.
3. The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

Copy to:

1. The Assistant Commissioner (ST),
Kilpauk Assessment Circle,
No. F-50, 1st Avenue, Anna Nagar East,
Chennai – 600 102.
2. Master File / spare – 1.

