

T. NO-58/2024-25

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 34 / 2024

Dated: 02.07.2024

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. T. Kiran Reddy

Additional Commissioner of Customs & Indirect Taxes Member (Central)

1.	Name and address of the applicant	M/s. SRINIVAS PLYWOODS, CTS No 122/83, A and B Hubli Building, New Cotton Market, Hubli, Dharwad, Karnataka, 580029
2.	GSTIN or User ID	29AKPPH2961J1ZN
3.	Date of filing of Form GST ARA-01	27.11.2023
4.	Represented by	Sri Siddartha S Javali, CA
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Taxes, Belagavi Commissionerate, Hubli Division, Hubli-B Range
6.	Jurisdictional Authority - State	ACCT, LGSTO 330 - Hubli
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference No. DC 2912230039927 Dated 11.12.2023

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

M/s.Srinivas Plywoods, CTS No 122/83, A and B Hubli Building, New Cotton Market, Hubli, Dharwad, Karnataka, 580029 having GSTIN 29AKPPH2961J1ZN have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Proprietorship concern registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The

Srinivas Plywoods

Applicant states that they are engaged in supply of plywood and also into the construction of commercial complex and let it on rent.

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

- a. *Input eligibility on renting of commercial Property.*
- b. *Applicability of RCM on freight inward.*
- c. *How to set off Input and Output in a situation where the Applicant is having more than one business done under the same GST Number?*

4. Admissibility of the application: The question raised in serial number 'a' is about the "admissibility of input tax credit of tax paid or deemed to have been paid;" and question raised in serial number 'b' is about "determination of the liability to pay tax on any goods or service or both" and is admissible under Section 97(2)(d) and 97(2)(e) of the CGST Act 2017 respectively.

However, the question raised in serial number appears to be not covered under section 97(2) of CGST Act 2017, and the same will be discussed in detail in the findings. Hence the Application is admitted partially.

PERSONAL HEARING/ PROCEEDINGS HELD ON 14.03.2024

5. Sri Siddartha S Javali, CA and Duly Authorised Representative of the applicant appeared for personal hearing proceedings held on 14.03.2024 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

6. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

7. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by the applicant and their submissions made by their learned representative during the time of hearing.

8. The Applicant states that they are constructing a commercial complex and they would like to know whether they can avail input tax credit on building materials purchased and utilised for the construction of the commercial complex.

8.1 The Applicant has referred to M/s. Safari Retreats Private Limited V/s Chief Commissioner of Central Goods and Service Tax under W P (C) no 20463 of 2018 and stated that the Hon'ble Odisha High Court has held that "the provision requires to be read down to the extent that Section 17(5)(d) of the CGST Act shall only cover those cases where the immovable property is sold after grant of completion certificate since there

would not be any further tax incidence. However, since the Petitioner is retaining the property even after completion and letting it out on rental basis, it will be eligible to claim ITC since the subsequent transactions of letting out will be covered by GST."

8.2 However, the above-mentioned Hon'ble Odisha High Court's order has been appealed before the Hon'ble Supreme Court of India vide case number C.A. No. 002948 / 2023 and is still pending before the Hon'ble Supreme Court.

The Applicant has sought advance ruling in respect of claiming ITC on building materials purchased and utilised for the construction of commercial complex. Since the same issue is pending before the Hon'ble Supreme Court, the same cannot be answered by this Authority as the case is sub judice.

9. The Applicant wants to know the applicability of RCM on freight inward. An Audit Report dated 13.12.2022 u/s.65 (6) of the KGST & CGST Act, 2017 is issued by the Deputy Commissioner of Commercial Taxes (Audit), Dharwad. The audit objection raised in the audit report pertains to freight and hamali charges for the year July 2017-March 2018. The audit objection raised is that, the Applicant has not paid tax @5% on freight charges. The audit officer has issued proceedings under section 73(9) of CGST Act 2017 for the year July 2017-March 2018 and has stated that the Applicant has not paid the tax pertaining to the above audit objection.

9.1 First proviso to Section 98(2) of the CGST Act, 2017, reads as under:

"The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of applicant under any provisions of this Act".

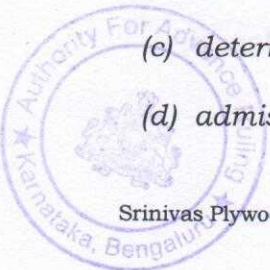
The issue raised in the instant application and the audit objection raised in the audit report are one and the same and the same has already been decided in the proceedings. Thus, first proviso to Section 98(2) of the CGST Act 2017 is squarely applicable to the instant case and hence is inadmissible.

10. The Applicant wants to know How to set off Input and Output in a situation where the Applicant is having more than one business done under the same GST Number.

Section 97(2) of the CGST Act 2017 specifies the issues in respect of which the advance ruling can be sought and the same is reproduced below:

97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*



- (e) *determination of the liability to pay tax on any goods or services or both;*
- (f) *whether applicant is required to be registered;*
- (g) *whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term*

10.1 It could be seen from the above that the authority can't give any decision on the issues that are not covered under Section 97(2) of the CGST Act 2017. In the instant case the questions at serial No. 'c' mentioned in para 3 supra is not covered under the issues specified under Section 97(2) mentioned supra. Thus, the same cannot be answered.

11. In view of the foregoing, we pass the following order:

RULING

- a) *The issue covered under question 'a' cannot be answered as the same is sub judice.*
- b) *The issue covered under question 'b' is inadmissible and cannot be answered by this Authority.*
- c) *The issue covered under question 'c' cannot be answered as the same is beyond the jurisdiction of this Authority.*


(Dr. M.P. Ravi Prasad)
Member

MEMBER
Karnataka Advance Ruling Authority
Place: Bengaluru - 560 009


(T. Kiran Reddy)
Member
MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date: 02.06.2024

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Principal Commissioner of Central Tax, Belagavi Commissionerate, Belagavi.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-330, Hubli.
5. Office Folder.

Srinivas Plywoods