

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri T.G.Venkatesh, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt. K. Latha, M.Sc., (Agri), Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

ORDER No. 05 /ARA/2022 Dated: 28.02.2022

GSTIN Number, if any / User id		Unregistered
Legal Name of Applicant		A. Nirmala
Registered Address / Address provided while obtaining user id		No. 17/480, 19 th Street, 4 th Sector, K K Nagar, Chennai – 600 078.
Details of Application		Form GST ARA – 001 Application Sl.No.38 dated 12.11.2021
Concerned Officer		Centre: Chennai <i>South</i> Commissionerate State: K K Nagar Assessment circle
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	
B	Description (in brief)	
Issue/s on which advance ruling required		Value to be adopted
Question(s) on which advance ruling is required		What should be the taxable value in respect of the supply of construction services provided by the developer to the applicant as per Clause (b) of the notification No.4/2018?

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service 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 Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

Tvl. A. Nirmala No. 17/480, 19th Street, 4th Sector, K K Nagar, Chennai 600 078. (hereinafter called the 'Applicant') is an unregistered dealer under the Goods and Services Act and is a Service recipient of Construction service. They have sought Advance Ruling on the following questions:

“What should be the taxable value in respect of the supply of construction services provided by the developer to the applicant as per Clause (b) of the notification No.4/2018?”

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan 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.

2.1 The applicant has stated that she, along with her sisters have inherited the property from her late father at Plot No 480, 19th Street, 4th Sector, K K Nagar, Chennai - 600 078, being a land admeasuring 3440 Sq.ft. They have entered into a Joint Development agreement with the developer, M/s Nu Tech Associates dated 10.04.2019. As per the Joint Development agreement, the developer should develop 6 Nos of Flats and the applicant was entitled to 1255 sq.ft of Super Built-up area in the Second Floor of the premises and another 1255 Sq.ft by virtue of her being guardian to another Sister. The developer is entitled to 2 Nos of Flats out of 6 Nos of

Flats. The completion certificate for the Construction of the Flat was obtained in March 2021 and the construction is almost completed, but the flat is yet to be handed over. The notification No.4/2018 – Central Tax (Rate) dated 25.01.2018 establishes liability of payment of GST and categories the coverage into two parts -

- (a) Supply of developmental rights
- (b) Supply of construction service

The landowner being an unregistered person under GST, will not attract the liability of payment towards GST for the supply of development rights for the development of the property at Plot No 480, 19th Street, 4th Sector, K K Nagar, Chennai - 600 078. In respect of category (b) above viz., the Supply of Construction Service, the liability of payment of GST shall arise to a registered person, who supply construction service of complex, building or civil structure to the supplier of development rights against consideration wholly or partly in the form of transfer of development rights at the time when the said developer, builder, construction company or any other registered persons, as the case may be, transfers possession or the right in the constructed complex, building or civil structure to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example, allotment letter). From this notification, it can be derived that

- (a) The supply in the transaction is the supply of construction service of residential flat admeasuring 2510 Sq.ft of building at Plot No 480, 19th Street, 4th Sector, K K Nagar, Chennai - 600 078 by the developer, viz., M/s Nu Tech Associates.
- (b) The value of supply being the consideration in lieu of construction of residential building measuring approximately 2510 sq. ft. is in the form of transfer of development rights of 1146.66 sq. ft. of undivided interest in the land.
- (c) The time of supply is the time when the developer transfers possession or the right in the constructed area. The developer, viz., M/s Nu Tech Associates. is yet to handover the possession of 2 Nos of flats to the landowner in question as per the agreement entered into by the landowner(s) with the developer dated 10.04.2019 and hence as of today the liability towards GST has not arisen.
- (d) The developer must be a registered person to attract the liability of payment of GST. In the case under question, M/s Nu Tech Associates. is a registered person under GST, having a valid and active GSTIN 33AAEPN4673Q 1Z5 and hence the transaction by the landowner with the

developer is covered under this category for the supply of construction services rendered in the property at Plot No 480, 19th Street, 4th Sector, K K Nagar, Chennai - 600 078.

2.2 The rate of GST for General Construction Services of Multi Storied Residential Building other than affordable building under Chapter 99 Service Account Code 995411 and under entry No 3 (ia) R is 5% without Input Credit, as per notification No.07/2019 – Central Tax (Rate) dated 29.03.2019, effective from 01.04.2019. The Builder / Developer is liable to pay GST even on the share of the landowner, as per Notification No 4/2018 dated 25.01.2018 only in respect of the Supply of Construction Service. In the case under question the applicant has consented to pay the GST on her share as per Clause No.11 of the agreement. The developed has demanded a sum of Rs. 5,69,230/- per flat towards GST and in respect of 2 Nos of Flats has demanded a sum of Rs. 11,38,460/-. The working for the construction cost and the demand thereof @5% towards GST has not been furnished. The value of the constructed flats supplied to the applicant by the developer has to be determined under the provisions of Section 15 of the GST Act, 2017, read with Rules governing the valuation as envisaged under Rules 27 to 35 of the CGST Rules, 2017.

2.3 In terms of the Rule 27 of the CGST Rules, 2017, where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall

- (a) **Be the open market value of such supply:** The developer has registered the construction agreement entered by him Vide Document No 326/2021 with the first buyer belonging to the developer portion of the constructed premises Viz., P.M.Sriram for value Rs. 90,87,080/- towards construction of 1255 Sq.ft. i.e at the rate of 7240.70 per sq. ft. which is the open market value of supply as per the GST Rules. In this regard, it is submitted that –
- (i) The value of construction of Rs.7,240.70 per sq. ft. on the constructed portion of the landowner can never be considered as the open market value of the supply of construction for the purpose of GST, as the same was unilaterally decided by the developer at the outset.
 - (ii) The value of construction of Rs.7,240.70 per sq. ft. defy all the logic of construction cost even assuming that the building is constructed out of precious metals.

- (iii) In general, the developer fixes the selling price on per sq. ft. basis with the buyer(s) which includes the cost of land, construction, registration cost, stamp duty and other amenities offered by the developer. As the values are fixed with the buyer, the developer in order to increase his volume of profit has executed sale of undivided share of land at the prevailing guideline value of the land by ignoring the market value of the undivided share of the land and compensated the difference between the guideline value and the market value of the land by increasing the cost of construction in the construction agreement entered into with the buyer by the developer. The main purpose of resorting to this compensatory method is that the stamp duty and registration charges in Tamil Nadu at present for registering the undivided share of the land is @ 11% of the market value, while the stamp duty on construction agreement is @ 2%. **Assuming that the actual Cost of Construction is Rs. 2,000/- Per Sq.ft, as more specifically stated in Clause 2 of the Joint Development Agreement**, the profit earned by the developer at the cost of evasion of Stamp Duty is (9% on Rs. 5,240.70 Per Sq.ft i.e, Rs. 471.663/- Per Sq.ft for the developer portion of 2510 Sq.ft) Rs. 11,83,874/-. The developer having earned at the cost of Government revenue is not contended, but rather would like to earn much more by placing a demand on GST on landowners share on an illegitimate value of supply of construction service. In nutshell, the developer would like to earn at the cost of Government by way of interpreting provisions of the GST rules as per their whims and fancies. Nevertheless, the landowner is not a party to the transaction in view of the joint development agreement and it is purely between the buyer and the developer. The problem arises only when the landowner is affected on account of registering the property much below the market value and increasing the cost of construction in the construction agreement entered into with the buyer by the developer and based on the illegitimate value reported in the construction agreement, demand GST on the constructed value reported in the construction agreement, without any basis. Moreover, as per Clause 2 of the Joint Development agreement, the Developer has consented to construct the building at Rs.2,000/- Per Sq.ft. Having consented to construct the building at a cost of

Rs.2,000/-, the demand to consider GST based on the open market value of supply as per the first registered document in respect of the sale of flat belonging to the developer portion is unjustified, particularly when the demand is 2.62 times more than the consented value for construction.

- (iv) The landowner is not bound by the illegitimate construction agreement entered into by the developer with the buyer, for the simple reason that the owner was not taken into cognizance for the value of construction reported in the construction agreement entered with the buyer, particularly when the cost of construction is the subject matter for the owners share for GST Purposes.
 - (v) An illogical value of construction cannot be imposed on the landowner for the purpose of GST. The GST rules do not prescribe to the illogical values but rather has offered options to arrive at a Conclusion on value of supply.
 - (vi) There is no stipulation that the cost of supply of construction service is to be arrived only based on the registered construction agreement entered by the developer.
 - (vii) The open market value of Supply is not for the developer alone to determine and dictate the same to the Landowner nor the GST Act has empowered the developer to determine the same.
 - (viii) The open market value of the supply is to be ascertained based on the JDA and the first sale of the flat and certainly not based on the value of supply of construction service determined by the developer.
 - (ix) The developer has demanded GST of a sum of Rs. 5,69,230/- Per Flat from the applicant @ 5% on Cost of Construction from the applicant i.e, Rs. 9,071.39 Per Sq.ft. This cost of Civil Construction demanded by the developer is unheard in the annals of GST and not provided either in the GST Act or as per the rules. The illogical demand works out to Rs. 11,38,460/- for 2 Nos of Flats, which works out to Rs. 454/- Per Sq.ft as against Rs.100/- Per Sq.ft as per Clause 2 of the Registered Joint Development agreement.
- (b) If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply.- In the case under question, the value of supply of service

is the value of undivided share of the land relinquished by the landowner in favour of the developer to enable him to register the undivided share of land belonging to the developer portion. In that case, the area of the land surrendered by the landowner is 1146.66 Sq.ft in favour of the developer based on the 2 Nos of registration agreement No.327/2021 dated 3.2.2021 and 1397/2021 dated 29.4.2021 works out to Rs.57,33,300/- (@Rs. 28,66,650/- Per agreement) which can be considered as the open market value of the supply of construction service and the GST @5% on the above is Rs. 2,86,665/- for 4 Nos of Flats and Rs. 1,43,333/-, for 2 Nos of Flats, as against the demand of Rs. 11,38,460/- by the developer. The Cost of Construction as per the above with regard to the land owner portion works out to Rs.1,142/- Per Sq.ft. Considering the fact, that all the materials included in the project are not subjected to GST, the above cost of construction may also be considered as reasonable for the purpose of GST.

- (c) If the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality. - Under this clause, the developer may be requested to submit the value of supply of goods and services utilised in the project by means of copy of the bills, evidencing delivery of material and services at the site to the landowner for his verification. In the event of the developer not maintaining separate accounts for the project, valuation report from approved Panel Valuer, preferably from Central Public Works Department or the Income-tax Panel Valuer may be obtained for arriving at the cost of supply of construction service.
- (d) Question No 26 in FAQs (Part II) on real estate dated 14-5-2019 issued by the Tax Research Unit of the Government of India, Ministry of Finance, Department of Revenue in F No 354/32/2019 and the answer given in this regard are reproduced hereunder;

Q. No 26

How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered.

Answer

Value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers,

other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017.

Thus the guiding factor when the prices of flats undergo a change over a period of sale from the first sale of flat to the last sale of flat, the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax. Since the cost of construction in the construction agreement has been inflated to a greater extent, the market value of the supply of construction service is to be ascertained based on the JDA under which the land was made available for construction to the developer by the land owner.

Computation Of The Market Value Of Supply Of Construction Service:-The computation of the market value of supply of construction service is governed by the JDA entered into by the Land owner with the developer, under which in the total area of the land of 3,440 Sq.ft, the Land owner relinquishes an undivided share in the land of area 1146.66 sq.ft and retain an area of 2293.33 Sq.ft. In lieu of the relinquishment, the land owner is entitled to a super built-up area of 5,020 Sq.ft and the developer is entitled to a super built-up area of 2510 sq.ft on a total super built -up area of 7,530 sq.ft. The first sale of flat was executed in favour of P M Sriram, vide Document No 326/2021 for a consideration of Rs. 90,87,080/- towards Construction agreement and vide Document 328/2021 for a consideration of Rs. 28,66,650/-towards undivided share of Land, by means of which a super built-up area of 1,255 Sq.ft was sold together with 573.33 sq.ft of undivided share of the land. The total cost of the flat is Rs. 1,19,53,730/- @Rs.9,524.88 Per Sq.ft. This price of Rs. 9,524.88 per sq.ft comprises of both the market value of the Land and Building. The market value of the project based on the first sale is 7,530 Sq.ft @Rs.9,524.88 Per Sq.ft, works out to Rs. 7,17,22,380/-. The computation is as follows;

Let x be the market value of the Undivided Share of Land and y be the market value of Supply of Construction Service. For the first sale executed by the Developer the mathematical equation is as follows;

$$573.33x + 1255y = 1,19,53,730/-$$

- Equation 1

The Land owner is entitled to 5,020 sq.ft of super built up area on surrendering an undivided share of area 1146.66 sq.ft. Therefore, the mathematical equation is

$$1146.66x = 5020y \quad - \quad \text{Equation 2}$$

$$\text{Therefore } x = \frac{5020}{1146.66} y = 4.378 y \quad - \quad \text{Equation 3}$$

Substituting Equation 3 in Equation 1,

$$573.33 \times 4.378y + 1255y = 1,19,53,730$$

$$3765 y = 1,19,53,730$$

$$Y = 1,19,53,730 / 3765 = 3174.96$$

Thus, the open market value of the supply of construction service based on JDA and the first sale of the flat is Rs. 3,174.96 Per Sq.ft and not what has been registered by the developer in favour of the buyer by manipulating the cost of construction with the sole aim to earn at the cost of revenue . Therefore, the market value of the Land as on the date of first sale and based on JDA is Rs. 6,349.91 Per Sq.ft.

The open market value of supply of service in respect of 5,020 Sq.ft @ Rs. 3,175/- Per Sq.ft is Rs. 1,59,38,500/- and the GST @ 5% on the above works out to Rs. 7,96,925 for 4 Nos of Flats and for the 2 Nos of Flats, the GST is Rs.3,98,463/-

For the reasons stated above and for other reasons that the unregistered applicant may deem it necessary for the submission, it is requested that the advance ruling authority may please advise the applicant on the issue of value of supply of construction service provided by the developer, to enable the developer to pay the requisite GST on reverse charge mechanism.

3.1 Due to the pandemic situation and not to delay the proceedings, the applicant was addressed seeking their willingness to appear for hearing in digital Mode. The Authorised representative, Shri. J. Santhana Gopalan appeared for the hearing virtually and reiterated the submissions. He referred to the ARA order issued in respect of M/s Neelakanta Realtors Limited Liability. The State Member stated that M/s Neelakanta Realtors was the supplier of service and requested the applicant to give reasoning on how as recipient they are eligible to file the Advance Ruling Application.

3.2 In pursuance of the Virtual Personal Hearing the details as sought during the virtual personal hearing as follows was furnished vide their letter dated 17th February 2022, wherein, inter-alia, it was stated as follows:

1. The application in Form GST ARA – 01 seeking ‘Advance Ruling’ was accepted at the outset by allotment of a Temporary GSTIN Number /User id : 332100000490ARD. The prescribed fees for the same was paid both to the State and Centre and the Department admitted the application in the said Form and this jurisdiction has, thus, been availed and as such, on the foot of it, having withstood without having dismissed at the limine, this matter requires to be ruled under this proviso.
2. The applicant in question is a recipient of Construction Service from a Registered Applicant, having valid GSTIN 33AAEPN4673Q1Z5 with Jurisdiction-Center Commissionerate, Chennai – South Division – Thyagaraya Nagar, Range IV. The Joint Development Agreement entered in to by the applicant with the Registered applicant dated 10.04.2019 provides for payment of GST by the applicant with regard to the share of the landowner. The applicant is the payee of GST in to the GSTIN 33AAEPN4673Q1Z5 on the portion of the construction services received from the Registered applicant and thus step into the shoes of the Registered applicant and is obligated to pay GST. It is in this regard the department has granted a temporary registration with GSTIN/User id : 332100000490ARD. The fact that the applicant is the payee of GST in respect of the issue under question, a Temporary User Id has been granted, the prescribed fees has been paid by the applicant and that the application for advance ruling was not rejected in limine, make him/her eligible to seek Advance ruling.
3. Moreso, there was an element of supply by way of supply of land in the nature of Undivided Share of land, the positive interpretation should benefit the Party and the Department having fastened with jurisdiction stated supra, should not shy away from laying the ratio to the given set of facts. The issue under question cannot be thrown under the carpet at the guise of technicalities. Any action under the guise of technicality without proper application and direction shall be against the tenet of the natural justice.
4. The ratio to be laid in the given set of facts is a ratio in the ambit of ‘right in rem’ and the decision shall apply mutatis-mutandis as this is omni in nature.

5. It is pertinent to note that on FAQs > Advance Ruling for Unregistered Dealers (FORM GST ARA-01), the answer to Q No 1, 2 and 4 furnished in the website read as follows;

1. Who can apply for Advance Ruling?

An application for Advance Ruling can be made by any person who is registered or is **desirous of obtaining an advance ruling on the matters prescribed under the GST act** with the prescribed fee. The process for registered taxpayer is different for seeking advance ruling. Click here to know more about it.

2. Who needs to file an application (FORM ARA 01) for seeking Advance Ruling?

In GST regime, the application for seeking Advance Ruling can be filed by a registered person as well as an unregistered person who is desirous of obtaining Advance Ruling under the CGST Act.

Unregistered persons should create a User ID on GST Portal, using which they can create challan and make Payment in pre-login mode. Download the application from "Download -> Offline Tools", print it, fill it and submit to Jurisdictional Tax Office along with Payment Receipt.

4. On what matters an applicant can file an application for Advance Ruling?

A registered person as well as **any other person desirous of obtaining an advance ruling can apply for Advance Ruling** on the following matters, as prescribed under the act with the prescribed fee.

- 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.

Thus, even as per the information provided by the FAQ in the website, the applicant in question is eligible to seek advance ruling and has sought

advance ruling to determine the liability to pay tax on services as per Q No 4 (e).

6. The Department having stood over and collected the prescribed fees, has taken the jurisdiction and no prejudice whatsoever shall happen if advance ruling is provided on the subject matter.
7. On the contrary, if an order of rejection is give, it shall run against the interest of justice in the absence of genuine construction in the light of the contextual matter holistically.

4.1 The State Jurisdictional Authority, Assistant Commissioner (ST) K K Nagar Assessment Circle, vide letter RC. No. 686/2021/A-1, dated: 30.12.2021 has stated that:

- The Applicant is a service recipient of construction service under a Joint Venture Agreement. In this connection, I submit my remarks on the transactions effected under the GST Act, 2017.
 - 1) A Deed of Joint Development Agreement was executed on 10.04.2019 with the Applicant namely Tmt. A. Nirmala and others called as "Owners" and Tvl. Nu Tech Associates called as "Developers" whereas the Stamp Paper No. 46AB 763650 was purchased on 09.07.2019.
 - 2) Transfer of Construction services by Developer or Building to Land Owner against consideration, wholly or partly, in the form of transfer of development rights (Notification No. 4/2018 Central Tax (Rate & Notification NO, 3/2019.
 - 3) As per the Agreement, the Developer should construct a building consists of residential Flats as per the plan of the Super built up Area and Undivided Share Area allotted to the owners and as well as the Developer.
 - 4) As per the Agreement, the Developer agrees to construct the Flats as per plan and the cost of Construction is Rs. 2,000 Per Sq.Ft. as per all applicable building bye-laws, rules and regulations. The total construction cost for the total Built up area is 5020 Sq. Feet and the undivided share is 2293.33 Sq. Feet and therefore the total construction value for four Flats works out to (7313.33 Sq. Feet x Rs. 2,000) Rs. 1,46,26,660.
 - 5) The Completion Certificate for the construction of Flats was obtained in March 2021.
 - 6) Valuation: While calculating the value of supply, in case of sale of under-construction property, 1/3rd of total amount charged for transfer is deducted, to arrive at the taxable value of supply. Accordingly, value of taxable supply

shall be 2/3rd of total value of supply. 1/3rd of the total amount is deemed as value of land or undivided share of land supplied to the buyer and is not taxable under GST.

- 7) In the instant case value of land is not come under the purview of GST taxation net. Hence GST at 18% (SAC code - 9972) is applicable on the Running Account Bills issued by the Developer up- to the date of Completion Certificate which was obtained in March 2021.

5. We have carefully examined the submissions of the applicant in their application, and additional submission along with the remarks of the State Jurisdiction Officer. The applicant is an unregistered person under the Goods and Services Act and a "Service Recipient" of construction service. The applicant is a joint owner of a vacant land admeasuring 3440 sq.ft. Land along with her two sisters inherited from their expired father. The applicant has entered into a Joint Development agreement with the developer M/s Nu Tech Associates. As per the Joint Development agreement, the developer should develop 6 Nos. of Flats and the applicant was entitled to 1255 sq.ft. of Super Built-up area in the second Floor of the premises and another 1255 Sq.ft. by virtue of her being guardian to another Sister. The developer was entitled to 2 nos. of Flats of 6nos of flats. The completion certificate for the Construction of the Flat was obtained in March 2021 and the construction is almost completed, but the flat is yet to be handed over. The issue raised is on the value to be adopted for the construction service on which the developer builder has to pay GST. i.e., **what should be the taxable value in respect of the supply of the construction services provided by the developer to the applicant as per Clause (b) of the notification No.4/2018?**

6.1 In the case on hand the applicant herself admits in the question raised by her that the services are provided by the developer to the applicant. The applicant is the recipient of the construction service of the flat for which an agreement was also entered on 10.4.2019 between the applicant and the developer for providing the services of the construction service. The cost of the construction service is determined by the developer and recovered from the applicant for handing over the flats to the applicant. In the subject case, we find that the applicant is a recipient of services and has raised the questions as a recipient of services.

6.2 This authority is governed by the provisions at Chapter XVII of GST Act and the relevant sections are 95 to 98, 102, 103, and 104. Therefore, before we decide the question raised by the applicant in this application on merits, it is essential that we first determine whether or not the activities undertaken by the applicant pertain to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant and that the application is admissible under the ambit of this authority.

6.3 Section 95 (a) of CGST and TNGST Act defines 'Advance Ruling' as

(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.**

(c) **"applicant"** means any person registered or desirous of obtaining registration under this Act;

Section 95 of the CGST Act 2017 allows this authority to decide the matters in respect of supply of goods or services or both undertaken or proposed to be undertaken by the applicant. We find that the applicant has not undertaken the supply in the subject case. Rather the applicant is a recipient of impugned services in the subject case. The impugned transactions are not in relation to the supply of goods and services or both undertaken or proposed to be undertaken by the applicant

6.4 The claim that the application is filed after paying the necessary fees and that once the application acknowledgement number stands generated, the application is to be answered is the opinion of the applicant without any statutory substantiation. As explained in para supra, this authority is governed by the statutory provisions of Chapter XVII of the GST Act. Section 98 of the Act, prescribes the procedure to be followed on receipt of the application and it clearly states that prima-facie, on receipt of the application, the authority should examine its admissibility after extending an opportunity of hearing to the applicant. The relevant provision is extracted as under;

(2) *The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*

6.5 Further, the provisions of S.103 categorically states that the ruling pronounced is binding only on the appellant. The section reads as under:

S.103 (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter 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;

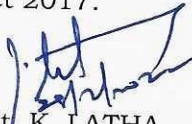
(b) on the concerned officer or the jurisdictional officer in respect of the applicant.

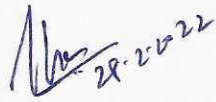
From the above, it flows that if a recipient obtains a ruling on the value to be adopted of his inward supply of goods or services, the supplier of such goods or services is not bound by that ruling and he is free to assess the supply according to his own determination, in which case, the ruling loses its relevance and applicability even. Any law provision has to be interpreted in a constructive and harmonious way keeping in mind the object of the purpose of the provision. All parts of it should be read in aid of and not in derogation of that purpose. Any interpretation, if it defeats the very purpose of the objective and purpose of the law provision, is not only incorrect but also improper and bad in law. On a conjoint reading of the provisions of S.95(a) and S.103, it is our opinion that only a supplier and not the recipient is eligible to seek an advance ruling and therefore the subject application cannot be admitted as per the provisions of Section 95 of the CGST Act. Hence, without discussing the merits of the case, we reject the subject application as not admissible.

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

RULING

For the reasons discussed Para 6 above, the application is rejected as not admitted as per Section 98(2) read with S. 95(a)/103(1) of the CGST/TNGST Act 2017.


Smt. K. LATHA
Member (SGST)


Shri T.G. VENKATESH
(Member CGST)



To,

Tvl. A. Nirmala,

No. 17/480,

19th Street, 4th Sector,

K K Nagar, Chennai – 600 078.

// BY SPEED POST WITH ACK.DUE //

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise, Chennai ~~South~~ Commissionerate.
~~692, 41 H complex, Annasalai, Nandanam, Chennai - 600 025.~~
4. The Assistant Commissioner (ST) K K Nagar Assessment circle,
No. 1, PAPJM Annexure Building,
Vth Floor, Greams Road,
Chennai – 600 006.
5. Master File/ Spare-2

