

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, SURVEY NO.1275/3,
5TH FLOOR, ROOM NO. 503
ELEPHANT GATE BRIDGE ROAD, CHENNAI - 3**

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

Members present are:

1. Ms. Manasa Gangotri Kata, I.R.S., Additional Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai -34

2.Thiru. Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A.,
Joint Commissioner (CT) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 02/ARA/2020 Dated 31.01.2020

GSTIN Number, if any / User id		Un-registered
Legal Name of Applicant		Smt. Kamalavadani Udayakumar
Registered Address / Address provided while obtaining user id		9 Harleys Road, Chennai 600 010.
Details of Application		Form GST ARA – 001 Application SI.No.45 Dated 14.11.2019
Concerned Officer		State: The Assistant Commissioner(ST), Kilpauk Assessment Circle, Centre: Chennai North Commissionerate Division: Purasawalkam
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Provision of Service
B	Description (in brief)	The applicant intends to carry on business activity of constructing commercial building for the purpose of letting out of the same.
Issue/s on which advance ruling required		Admissibility of Input Tax Credit of tax paid or deemed to have been paid on Works Contract service
Question(s) on which advance ruling is required		Whether input tax credit can be claimed on works contract services when the output service is not for the purpose of sale but leasing out?

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.

Smt. Kamalavadani Udayakumar No. 9, Harleys Road, Chennai 600 010 (hereinafter referred to as 'Applicant') is not registered under GST. The Applicant has preferred an application seeking Advance Ruling on

Whether input tax credit can be claimed on works contract services when the output service is not for the purpose of sale but leasing out?

The Applicant has submitted the copy of application in Form GST ARA - 01 and 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 possesses a piece of land in the State of Tamil Nadu and intends to obtain a GST registration in Tamil Nadu to engage in the business of constructing buildings for commercial use and leasing them to companies. The construction work will be sub-contracted to different service providers such as construction companies, architects and other service providers. Some of these contracts would be works contracts while others are stand-alone contracts with professionals such as architects etc. As part of the construction activity, the applicant will receive GST invoices from service providers and works contractors. GST will be charged at applicable rates and for the activity of leasing, the applicant will charge GST @ 18% on the invoices.

2.2 The applicant has stated that as per Section 16(1) of CGST Act 2017 Input Tax Credit can be claimed on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. Further, the applicant has opined that Section 17(5)c goes against the spirit of Section 16(1) of CGST Act 2017 as it artificially disallows credit on certain items.

The applicant has relied on the judgement of the Orissa High Court in the case Safari Retreats Private Limited Vs Chief Commissioner of Central Goods and Service Tax. The applicant has also stated that the issue was prevalent even in the erstwhile CENVAT Credit and the issue was clarified by CBEC vide circular No.98/1/2008 ST dated 04.01.2008 and it was stated that immovable property is neither 'Service' nor 'goods' and input credit cannot be taken. The applicant has further stated that it is an indisputable fact that the service provider cannot provide his service unless he owns or leases a building and hence eligibility of CENVAT credit on construction services has resulted into litigation. The applicant has also referred to the decisions in the cases of CCE vs Sai Sahmita Storages(P) Ltd(A.P High Court)2011-TIOL-863-HC-AP-CX, Navaratan S G Highway Prop.Pvt Ltd Vs. CST 2011-TIOL-1703-CESTAT-AHM and Venus Investments vs CCEX (Ahmedabad tribunal) 2012-TIOL-474-CESTAT-AHM

2.3 In view of the aforesaid facts, the applicant has sought ruling with the authority of advance ruling on the question raised in para 1 supra. The applicant's basis for reasoning that input tax credit can be claimed is as follows:

- Section 16(1) permits credit on all inputs used for furtherance of business. The section does not draw any references to Section 17(5).
- Section 17(5) goes against the intent and purpose of Section 16(1) by creating an artificial disallowance.
- In the case of Safari Retreats, the Orissa High Court has struck down Section 17(5).
- Under the erstwhile Cenvat Credit Rules, 2004 ITC on works contract services was permitted as a deduction.
- The artificial restriction on credit is anti-vires the main principle of GST laws-permitting seamless input tax credit.
- The restriction is artificial because ITC is permitted if the building is sold but is not permitted if it leased.

3. The applicant was given an opportunity to be personally heard on 13.12.2019. The authorised representative of the applicant appeared before the authority for Advance Ruling. However, it was seen that the letter for Personal Hearing has been returned by post stating "insufficient address". The authorized person was instructed to verify the details and submit the correct details of the applicant. The state jurisdictional officer appeared and submitted a written

submission. Further, they said they will verify the address details of the applicant and submit the fact of verification of the place of business within 2 weeks. Then another personal hearing was decided to be offered to the applicant.

3.1 The State Tax officer vide their letter RC/1340/2019/A4 dated 10.12.2019 submitted their comments on the issue raised by the applicant in the application for Advance Ruling, wherein it was stated that Leasing is a supply of service which attracts GST (CGST 9% + SGST 9%) when the leasing of landed property building for commercial purpose situated within the State of Registration and IGST 18% in case of leasing of landed property building for commercial purpose situated in a place other than the State of Registration. It was also stated that the applicant would be eligible for input tax credit if he/she becomes a registered taxable person filing regular returns envisaged under Section 39 of the TNGST Act, 2017 in respect of his/her supplies being leasing of buildings for commercial purposes.

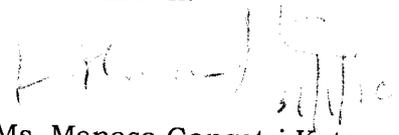
3.2 Further, vide letter dated 13.12.2019 the State Tax officer has stated that on verification of the stated address of the applicant, it was found that Tvl.Pifzer Pharmaceuticals were running their business in the address mentioned by the applicant in their application and it was ascertained from the manager of the concern and watchman of the building that no such person in the name of Smt. Kamalavadani Udayakumar lived in that place.

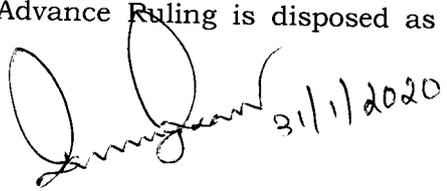
4. The applicant vide her letter dated 16.01.2020 has stated that she had gone through the decision of the Hon'ble Authority for Advance Ruling in the case of Sree Varalakshmi Mahal LLP. Since the facts in the application filed by the applicant are similar to the case above, the applicant sought the permission of the Hon'ble authority for Advance Ruling to withdraw her application.

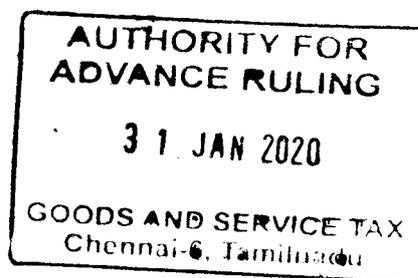
5. In view of the above facts, we rule as under

RULING

The application filed by the Applicant seeking Advance Ruling is disposed as withdrawn.


Ms. Manasa Gangotri Kata,
Member, CGST


Shri Kurinji Selvaan.V.S.,
Member, TNGST



To

M/s. Kamalavadani Udayakumar.
9 Harleys Road, Chennai 600 010.

// By SPAD//

Copy submitted to :-

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

Copy to:

3. The Commissioner of GST & Central Excise, North Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai- 600 034.
4. The Assistant Commissioner (ST)
Kilpauk Assessment Circle,
F-50, 1st Avenue,
Annanagar (East), Chennai – 600 102.
5. Master/ Spare.

