

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32, 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. Ms. Manasa Gangotri Kata, IRS, Additional Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai 34
And
2. Thiru Kurinji Selvaan V.S.,M.Sc.(Agri.), M.B.A., Joint Commissioner (ST) /Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No.31/ARA/2020 Dated: 12.05.2020

GSTIN Number, if any / User id		33AAECE7680D1ZR
Legal Name of Applicant		M/s Erode Infrastructures Private Limited
Trade Name of The applicant		M/s Erode Infrastructures Private Limited
Registered Address / Address provided while obtaining user id		Sri Nivaas 4/337, Athappampalayam Vallipurathampalayam, Erode. 638 112.
Details of Application		46/ARA dated 18.11.2019
Concerned Officer		State : Assistant commissioner, Kodumudi Assessment Circle, Commercial Taxes Building, R.D.O. Office Campus, North Pradakshanam Road, Karur – 639 001. Centre : Salem Commissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	
Issue/s on which advance ruling required		Applicability of a notification issued under the provisions of this Act.
Question(s) on which advance ruling is required		Whether Upfront lease amount paid to M/s. RLDA for the development of Multi functional complex (Operational building) at Erode railway Junction for Long term lease for 45 years is exempt as per Sl.No. 41 of Notification No. 12/2017 CT(R) dated 28.06.2017 as amended.

Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed 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.

M/s. Erode Infrastructures Private Limited, SriNivaas 4/337, Vallipurathampalayam, Erode 638 112 (hereinafter referred as 'Applicant') is registered under the GST Act 2017 vide GSTIN No.33AAECE7680D1ZR. The applicant has sought Advance Ruling on the following question:

Whether upfront lease amount paid to M/s. RLDA for the development of Multi-functional complex (Operational building) at Erode railway Junction for Long term lease for 45 years is exempt under GST

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 they are incorporated with the sole objective of development of "Multifunctional Complex" at Erode Railway Station, a project of Rail Land Development Authority for furtherance of business. The applicant are a successful bidder from Rail Land Development Authority for "Erode MFC" vide their Letter of Acceptance (LOA) dated 13.06.2017 in the name of M/s. Thirukumaran HP Gas Agency. The applicant has stated that the Rail Land Development Authority (RLDA) is constituted by the Central government u/s 4A of Railways Act 1989 and authorized by the Ministry of Railways to identify surplus lands in the hands of Railways, suitable for Multifunctional complex to passengers' amenities. The applicant has been awarded lease of the plot measuring 3140 sq.mt. Of land situated at the Erode Railway Station for Long term Lease of 45 years for development of a Multi functional Complex for the usage of railway passengers and return of the asset on the expiry of lease. The offer by RLDA involves the payment

Rs. 3, 08, 27,800/- towards upfront Lease premium and Rs. 7, 80,000/- towards annual rent.

2.2 The applicant has stated that as per notification issued by government of India Ministry of Finance (Department of Revenue) in No. 41/2016- Service Tax Dated 22nd September 2016, the Service Tax is exempted for long term lease of industrial plots provided by State Government Industrial Development Corporations/Undertaking to Industrial Units under Section 66 B of the said Act, as is levied on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease. The above exemption in Service Tax has been extended in GST also vide Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017. The GST Council in its 22nd meeting held on 6th Oct 2017 has exempted GST on the One Time Upfront amounts for the Government Infrastructure projects on long term lease of 30 years or more by way of notification No. 32/2017 – Central Tax Rate dated 13.10.2017. GST for Infrastructure Development projects on long term of 30 years or more are exempted under Sl.No. 41 (SAC 9972) Notification No. 12/2017 –CT (Rate) dated 28.06.2017, as amended vide Notification No.32/2017 – CT (Rate) 13.10.2017 and Notification No.23/2018 – CT(Rate) dated 20.09.2018 and the infrastructure development projects on long term lease of 30 years or more got GST exempted on the one time upfront fees. The applicant has requested to provide the clarification regarding the exemption of GST on One Time Lease Premium paid/payable by the said applicant to RLDA

3.1 The applicant was extended an opportunity to be heard in person and was heard on 13.12.2019. The Authorised Representative appeared and furnished a written submission along with copy of Letter of Undertaking dated 13.06.2017 and Copy of Invoice of RLDA dated 29.09.2017; Copy of Railway Amendments Act 2005-formation of RLDA; Copy of Railway Board letter dated 26.07.2012; copy of relied on Notifications and Circulars; copy of the Advance Ruling of GGL Hotel and Resort Company Ltd in Appeal Case No. 01/WBAAAR/Appeal/2019 dated 06.02.2019; Copy of the Advance Ruling of Yamuna Express Way Industrial Development Authority in AAR /9 of 2018 dated 06.06.2018; Master Plan of Erode Local Planning Area. They stated that in this case, the land belongs to Railways which is to be developed by RLDA, and they have won the tender and letter of acceptance is signed, but the contract yet to be signed. The issue is regarding leasing of commercial land for 45 years by the applicant to develop into

commercial space for which they have to pay an upfront premium along with annual rent. The ownership of the commercial complex (which will be further leased out) will rest with railways. They stated that they are eligible for exemption at Sl.No. 41 of Notification No. 12/2017 as amended as they state that commercial activity covers industrial or financial business. They stated that they are also doing a supply of construction of complex hence the application may be accepted. They undertook to submit copies of the tender, contract copies within 2 weeks time and sought for another personal hearing. The state jurisdiction officer gave a written submission stating that upfront premium is exempt.

3.2 In the written submission, the applicant has reiterated their submissions made in their application. In the Notes to written submission, the applicant has stated as follows:

- As far as the applicability of application for advance ruling is concerned though they are recipient of services from the Central Government Entity RLDA, they are also eligible to apply for rulings for the following stated reasons:-
 - The word 'in relation to the supply of goods or services or both' in Section 95(a) of CGST Act 2017, can be interpreted to include, supply of both inward supply and outward supply.
 - The inward supply or outward supply are specifically defined in the Act which are two parts of the supply.
 - As per section 97(2) (d) of the CGST Act 2017 applicant can ask question or administering of input tax credit of tax paid or deemed to have been paid.
 - In respect of the above questions applicable to inward supply, where the receiver of goods or services or both alone can ask for his inward supply
 - Hence, the cogent reading of sections 95(a) and 97(2) of the CGST Act 2017, doesn't deny the application of AAR by the person who is receiving the goods or services or both as applicant to obtain the advance ruling.
 - Moreover, the recipient only is paying the tax and the supplier merely collecting the tax from recipient and paying to the government, mere as an agent for the recipient

- If the AAR applies only for supplier not for the recipient then such a view may be considered to be violating the principles of constitution
- Further, in the definition of advance ruling, the word mentioned as supply of goods or services or both, not as a supplier of goods or services both means, both the inward supplier(that is recipient) and outward supplier(that is supplier)

Hence, their application can be entertained.

3.3 The applicant vide letter dated 27.12.2019 furnished written submissions, tender documents, special conditions of Lease Agreement, General Conditions for Lease Agreement-RLDA; Note on Beneficient Statutes and Beneficient Rules of Construction.

4.1 The applicant was extended another opportunity and was heard on 29.01.2020. The Authorised representative appeared on 29.01.2020. They stated that they are also a supplier in this present transaction even though no separate consideration is given in the tender. They stated that as per section 97(2)(d), admissibility of ITC is also covered and as they are also suppliers, the application should be admissible. The invoice for the premium was raised after the amendment in Notification No. 32/2017. They stated that they are developers of industrial area as Railways land is classified as Industrial Area. However, they stated that they will clarify from RLDA whether the development which they are now doing, (to provide amenities to passenger such as shops, Banks, ATM etc) constitutes an Industrial Area from the Nodal Office as per Para 21 of the tender(Part IV). They undertook to submit the same within 1 month.

4.2 The applicant filed the written submission vide their letter dated 27.02.2020. In the submission they have stated as follows:

- Their role in the development of Multi-functional Complex at Erode Railway junction is as a “Developer” of the project. To establish this fact, they relied upon the Articles and Rules given in the Tender documents and presented the relevant Articles and Rules that narrates the scope of the project as “Invitation for the Development of MFC at Erode Junction”.
- It is well established that Erode Infrastructures (P) Ltd., which is a developer in this MFC development Project is a supplier of services to the RLDA by way of developing the Multi-Functional Complex.

- Based on the above said facts and circumstances, Erode Infrastructures (P) Ltd., a supplier of services can be an Applicant to apply to the Authority for Advance Ruling under Section 97 of GST Act and can seek clarification regarding the applicability of the Notification No.32/2017 CT (RATE) which exempts the GST on upfront premium amounts for long term lease of land for 30 Years or more.

The applicant requested one more opportunity to be heard in person.

5. The applicant was accordingly extended another opportunity to be heard on 27.03.2020. The applicant vide their mail dated 18th March 2020 stated that they had made detailed written submission and requested to waive the personal hearing.

6.1 The applicant is under the administrative control of State Tax and the said authority has opined that the lease premium payable by M/s. Erode infrastructures Private Limited to Rail Land Development Authority for long term lease of the 3140 sqm railway land plot for 45 years for the purpose of development of Multi-Functional Complex (Operational building) at Erode railways Junction is exempt. Further, as per the consent letter given by Rail Land Development Authority, M/s. Erode Infrastructures Private Limited are bound to pay Rs. 7,80,000/- towards annual lease rent in addition to the lease premium for which advance ruling has not been sought by them, hence, this advance ruling shall not cover the annual lease rent payable by the applicant.

6.2 The Central Tax Officer has stated that the applicant is under the State Jurisdiction and no penal proceedings are initiated against the applicant.

7. We have carefully examined the various submissions of the applicant made in their application, during the hearing and thereafter. It is seen the tender has been floated by RLDA seeking to identify a bidder who will be permitted build or develop commercial real estate on lands belonging to the Railway and which they can subsequently rent to third parties the developed commercial property for a period of 45 years. For this, the bidder is required to pay an upfront lease amount and also pay an annual rent to RLDA. The applicant is before us seeking ruling on

Whether the Upfront lease amount paid to M/s. RLDA for the development of Multi-functional complex (Operational building) at Erode railway Junction for Long term lease for 45 years is exempt under GST

In the case at hand, the applicant has sought clarification on the tax liability on the services specified in the agreement. It is the contention of the applicant that the advance ruling can be sought by them on the said question as they also supply services and as per the definition of advance ruling, the ruling can be sought in relation to the supply of goods or services and it does not stipulate that only supplier has to seek the ruling.

8.1 It is seen from the agreement signed between the applicant and RLDA that it is a Lease Agreement with RLDA as 'Lessor' and the applicant as 'Lessee' and the consideration is the upfront payment along with the annual rent that has to be paid by the lessee i.e. the applicant. The agreement also specifies the terms and conditions for which the leased land should be used which the requirement to construct Multipurpose complex facilitating the railway consumers and has been allowed to sub-rent/lease the utilities constructed therein on it to third parties with certain specifications. After the tenure of the lease, the facilities are to be given back to RLDA. It is clear from the above that RLDA is leasing out the land belonging to them/Indian Railways to the applicant to be used as per the terms and conditions specified in the Lease Agreement.

Section 2(105) of the CGST/TNGST Act states:

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Supply is defined under Section 7 of the CGST Act 2017 and the same is reproduced below for reference:

*7. (1) For the purposes of this Act, the expression "supply" includes—
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

In the instant case, the lease agreement for a consideration of an upfront payment and annual rent to lease out the property by RLDA for the construction of Multipurpose complex facilitating the railway consumers is a supply of services in the course or furtherance of business by RLDA to the applicant as per Section 7 (1)(a) of the Act. Further, as per Section 2(105), RLDA is the 'supplier' as they are supplying the leasing of property service. The applicant's contention is that they are the supplier as they are developing the property for RLDA. However, in any

transaction there has to a supplier and recipient. In the terms of the Lease agreement, the supplier is RLDA and recipient is the applicant who is leasing the land from RLDA for a fixed tenure and using it as permitted in the terms and conditions of the lease agreement. In this transaction, the applicant is the recipient and their contention that they are the supplier is incorrect.

8.2 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:

From the above, it is evident that 'advance ruling' are decisions on questions specified in sub-section 97(2) of the Act in relation to the **supply** of goods or services undertaken or proposed to be **undertaken by the applicant** seeking the same. Hence, supplies undertaken or proposed to be undertaken by the applicant alone are covered under the advance ruling as per Section 95(a) of the Act. In the instant case the applicant is not making the supply but RLDA. Accordingly, the application is not admitted and rejected without going into merits.

8.3 In light of above, the contention of the applicant that advance ruling can be given for the supplies where the applicant is the recipient is incorrect.

The applicant has also contented that one of the questions permitted as per Section 97(2) on admissibility of Input Tax Credit means that the recipient can seek a ruling on the admissibility of ITC for the supply.

Section 97(2) states:

(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;

.....

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

.....

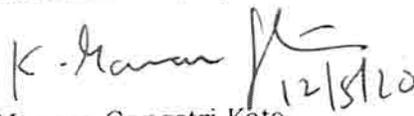
It is seen from above that Section 95(a) by definition 'advance ruling' has specified that the applicant can only be seek a ruling about the supplies undertaken or proposed to be undertaken by the applicant i.e. the applicant is the supplier in the supply in question. Accordingly, all the question the applicant can ask as specified in Section 97 pertain only to him. Specifically, Section 97(2) (d) pertains to the admissibility of Input Tax Credit of tax paid of deemed to have been paid by the

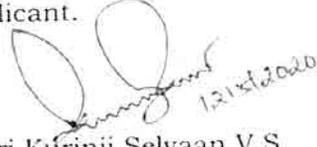
applicant (i.e. applicant as per the Act). This question would deal with the admissibility of ITC on all the inputs/input services/ capital goods etc. used by the applicant (i.e. applicant as per the Act) to make or propose to make the supply in question. Therefore, the question does not pertain to the recipient of the supply in question as contended by M/s Erode Infrastructures nor is there any dichotomy in stating that that as per the Act recipient of the supply in question cannot seek advance ruling under the Act. Accordingly, the application is not admitted and rejected without going into merits.

9. In view of the foregoing, we rule an under

RULING

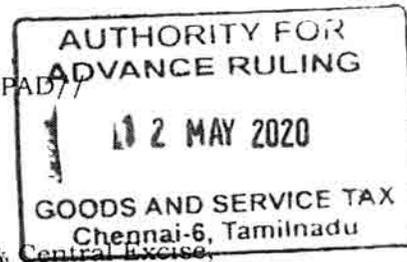
The Application for Advance Ruling filed by the applicant is not admitted under Sub-section (2) of Section 98 of the CGST Act 2017 and the TNGST Act 2017 as the supply based on the Lease Agreement between the applicant and RLDA for which the applicability of the Notification is sought is not undertaken or proposed to be undertaken by the applicant.


Ms. Manasa Gangotri Kata,
Member, CGST


Shri Kúrinji Selvaan.V.S.
Member, TNGST

To

M/s. Erode Infrastructures Private Limited, //BY SPAD//
SriNivaas 4/337, Vallipurathampalayam,
Erode. 638 112.



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 Additional Chief Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Salem Commissionerate
4. Assistant commissioner,
Kodumudi Assessment Circle,
Commercial Taxes Building, R.D.O. Office Campus,
North Pradakshanam Road, Karur - 639 001.
5. Master File / spare