



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING  
CT Complex, M.J Road, Nampally, Hyderabad-500001.  
(Constituted under Section 96(1) of TGST Act, 2017)**

**Present:**

**Sri J. Laxminarayana, Additional Commissioner (State Tax)**

**Sri V. Srinivas, IRS, Joint Commissioner (Central Tax)**

**A.R.Com/6 /2018**

**Date. 26-07-2018**

**TSAAR Order No. 11/2018**

Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order.

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M/s. Gowra Ventures Private Ltd, 502, Gowra Grand, 1-8-384 & 385, Sardar Patel Road, Begumpet, Secunderabad-500003 registered under GSTIN 36AACCG5513B1Z5 has filed an application in Form GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 103 of CGST/TGST Rules, seeking Advance Ruling on the following issues.

**Questions on which advance ruling is requested :**

1. Whether in the facts and circumstances the pooling of land by way of amalgamation of the separate parcels viz Land 1 and Land 2 as described in the "Statement of relevant facts" would constitute a supply under the Central Goods and Services Tax Act, 2017 and Telangana Goods and Services Tax Act, 2017 (herein after referred to as Central and State GST Act)?
2. Whether in the facts and circumstances construction activity undertaken by the Company, with respect to the share belonging to the Partners (as described in the "Statement of relevant facts") would be treated a Supply of Service under the Central and State GST Act?
3. Whether in the facts and circumstances, the recovery of construction cost by the Company from the "Partners" would be the transaction value for purpose of Section 15 of the Central and State GST Act to be valued in accordance with Sec 15 read with Rule 30 of the Central Goods and Services Tax Rules 2017 and Telangana Goods and Services Tax Rules 2017 (Central and State GST Rules)?
4. Whether in the facts and circumstances the vesting of the constructed portion upon the "Partners", would independently constitute a supply besides the supply on account of recovery of construction cost as aforesaid by the Company?

**Statement of relevant facts having a bearing on the question(s) raised:**

Gowra Ventures ("GV" / the "Company"), is a private limited company having its registered office at Hyderabad carrying on real estate development activity and owns a parcel of land (hereinafter referred to as "land 1") in Survey No.84 at Madhapur, Hyderabad.

The Company intends to develop the said land and construct a multi-storeyed building, and applied for approval of Building Plan and was permitted to construct 41,419.95 sq. mtrs. vide Permit No. 53334/HO/WZ/Cir-11/2016 dated 12-09-2017.

Mr. Srinivas, Mr. Lakshminarayana, Mr. Subbaraj, Mr. Arvind Lakshmi Narayana, Mr. SubbaramLakshminarayana, Mr. Aditya Srinivas, Mr. Nagarjun Srinivas, (*herein after referred to as "Partners"*) own parcels of land (*hereinafter referred to as "land 2"*) adjoining the "land 1" owned by the Company in Survey Nos. 80 to 84 at Madhapur, Hyderabad. These Partners, who are also directors in the Company intend to develop the said land by constructing a multi-storeyed building and hence approached the Company for construction services.

Both the Company and the Partners have agreed to amalgamate their land parcels and construct a multi-storeyed building (Project) on the amalgamated land parcels, i.e., land 1 & land 2 taken together. This is found beneficial to all parties in terms of enhanced floor space index and area in addition to several other benefits like common areas and facilities.

As agreed a revised plan has been filed for approval by the competent authorities and the extra built-up area that will accrue on account of the amalgamated land parcels shall belong to the Partners on the condition that the construction cost of such additional floor area shall be paid by them to the company.

Following are the relevant terms and conditions of the MoU between the Company and the Partners in respect of the above arrangement:

1. Land 1 and Land 2 will be amalgamated for the purpose of construction of multi-storeyed building although the legal ownership of the said lands will continue to be vested with the existing owners, namely, the company and the Partners;
2. The cost of construction for the allowable floor area shall be paid by the Partners to the Company and the Company shall carry out the construction of the entire project.
3. Upon achieving the final milestone as agreed, the additional built-up area as mutually agreed shall vest with the Partners and the balance shall belong to the company, i.e., the company and the Partners will be the legal owners of their respective constructed portions.

The necessary documents or agreements as required under the relevant laws will be entered into by the Partners to give effect to the above arrangement.

**Statement containing the applicant's interpretation of law based on the facts, in respect of the aforesaid questions:**

**Whether the activity of pooling (amalgamation) of individual parcels of land is a supply?**

There is no disposal by any of the modes described in terms of Sec 7 of the Central and State GST Act for consideration in this case where the respective land parcels (land 1 and land 2) are amalgamated for purpose of constructing a multi-storied building after obtaining necessary approval from the competent authority under the Building Laws. This is because the parties to the amalgamation retain their respective shares in the combined parcel of land.

**Whether the construction activity undertaken by the Company is a supply?**

The construction activity undertaken by the Company falls within the definition of the business as it includes any adventure, whether or not for a pecuniary benefit Sec 2 (17) the Central and State GST Act.

The reimbursement of construction cost by the Partners to the Company would fall within the definition of consideration under Sec 2(31) Central and State GST Act as it includes (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both;

Hence, the construction activity is a “Supply of Service as per the terms of section 7 of the Central and State GST Act]

*As per Section 7 of the Central Goods and Services Tax Act, 2017 and The Telangana Goods and Services Tax Act, 2017 (GST) 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;***
  - (b) import of services for a consideration whether or not in the course or furtherance of business;*
  - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*
  - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*
- (2) Notwithstanding anything contained in sub-section (1),—*
- (a) **activities or transactions specified in Schedule III; or***
  - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*
- (3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*
- (a) a supply of goods and not as a supply of services; or*
  - (b) a supply of services and not as a supply of goods.*

*As per Section 2(31) of the Central and State GST Act “consideration” in relation to the supply of goods or services or both includes-*

- (a) **any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both,***  
*whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*  
*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*

*As per Section 2 (17) of the Central and State GST Act “business” includes—*

- (a) **any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;***

- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

**Whether the construction cost recovered by the Company from the Partners would be the transaction value within the meaning of Section 15 of the Central and State GST Act for the purpose of levy of tax under Section 9 of the Central and State GST Act?**

[The value for the purpose of supply of construction service by the Company to the Partners shall be

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, GST Rules in that order

On application of Rule 28 of the Central and State GST Rules since the open market value or value of like kind and quality of the service is not available, Rule 30 of the Central and State GST Rules shall apply and one hundred and ten percent of the cost of construction would represent the value in this case where the parties are related in terms of Rule 30 of the Central and State GST Rules]

*As per Section 15 Central and State GST Act*

- (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- (4) *Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*

*As per explanation to Section 15, the persons shall be deemed to be related if-*

- (i) **such persons are officers or directors of one another's businesses;**
- (ii) *such persons are legally recognized partners in business;*
- (iii) *such persons are employer and employee;*
- (iv) *any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;*
- (v) *one of them directly or indirectly controls the other;*
- (vi) *both of them are directly or indirectly controlled by a third person;*
- (vii) *together they directly or indirectly control a third person; or*
- (viii) *they are members of the same family;*

As per Rule 28 of the Central Goods and Services Tax (CGST) Rules, 2017 and Telangana Goods and Services Tax (CGST) Rules, 2017

***The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-***

- (a) be the open market value of such supply;*
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

*Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

*Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.*

*Rule 30. Value of supply of goods or services or both based on cost.-*

*Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.*

**Whether the vesting of the constructed portion to the Partners would be regarded as an independent supply?**

[No, this is not an independent supply because the land and the superstructure thereon have always remained during the construction activity as the property of the respective parties as represented by their shares in the Project].

During the time of personal hearing held on 17.05.2018 Mr Sampath Thirumalai Advocate & authorized representative of the applicant appeared for the hearing and reiterated the submissions made in their application and requested for advance ruling. Further the applicant submitted a copy of the agreement entered between the partners vide their letter dated 16.7.2018.

#### **Discussion & Findings:**

The applicant sought advance ruling on different issues and each issue is discussed below:

- 1) *Whether in the facts and circumstances the pooling of land by way of amalgamation of the separate parcels viz Land 1 and Land2 as described in the "Statement of relevant facts" would constitute a supply under the Central Goods and Services Tax act, 2017 and Telangana Goods and Services Tax Act, 2017?*
  - As per the copy of the MOU for construction of Commercial Complex at Madhapur, furnished by M/s Gowra Ventures Pvt Ltd vide their letter dated 16-07-2018, Parcels of land pertaining to the Owners 2 to 8 of the said MOU are amalgamated with the land of the assessee (Owner 1).

The activity of pooling of land owned by Owner1 with that of the owners 2 to 8 needs to be examined in the light of the provisions of Section 7 of the CGST/TGST Act,2017 and the Schedules there under.

The provisions of Section 7 of the CGST Act, 2017 is extracted hereunder:

- “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;
  - (b) import of services for a consideration whether or not in the course or furtherance of business;
  - (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
  - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1),—
- (a) activities or transactions specified in Schedule III; or
  - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
- (3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
- (a) a supply of goods and not as a supply of services; or
  - (b) a supply of services and not as a supply of goods.”

On a careful reading of the above provisions of Section 7 it can be inferred that the said activity of amalgamation of the land do not fall under any of the sub-clauses (1) to (3) of Section 7 of the CGST Act, 2017. Further, in terms of clause 1(c) of Schedule II of the GST Act, 2017 any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods. But as per Section 2(52) of the CGST Act, 2017, ‘goods’ includes only moveable property but land is not covered under the definition of ‘goods’. Hence pooling of land by way of as described in the “Statement of relevant facts” of the subject Application would **not constitute a supply** under the Central Goods and Services Tax act, 2017 and Telangana Goods and Services Tax Act, 2017.

2) *Whether in the facts and circumstances construction activity undertaken by the Company with respect to the share belonging to the Partners (as described in the “Statement of relevant facts”) would be treated a Supply of service under the Central and State GST act?*

- As per the copy of the MOU for construction of Commercial Complex at Madhapur, furnished by M/s Gowra Ventures Pvt Ltd vide their letter dated 16-07-2018, condition mentioned at Sl.No.3 ( page 4 of said MOU) stipulates to authorize M/s Gowra Ventures Pvt Ltd to take lead for construction of the subject commercial complex.

In terms of clause 5 (b) of Schedule II of the CGST, Act, 2017, ‘construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or 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 shall be treated as supply of service’. In view of the above the activity undertaken by M/s Gowra Venture Pvt Ltd with respect to the share belonging to the said partners (as described in the “Statement of relevant facts” of the subject Application) is a supply of service under the Central and State GST Act, 2017.

- 3) *Whether in the facts and circumstances, the recovery of construction cost by the Company from the “partners” would be the transaction value for purpose of Section 15 of the Central and state GST Act to be valued in accordance with Sec 15 read with Rule 30 of the Central Goods and Services Tax Rules, 2017 and Telangana Goods and Service Tax Rules, 2017(Central & State GST Rules)?*
- *M/s Gowra Ventures Pvt Ltd(owner 1) is providing the construction service to the Owners 2 to 8 on the amalgamated land belonging to the owner1 and owners 2 to 8 and it is also seen from the subject Application and the said MOU that the Owners 2 to 8 are also Directors of M/s Gowra Ventures Pvt Ltd.*

Further Section 15 of CGST Act,2017 which stipulates the issue of valuation is extracted hereunder:

*“15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

*(2) The value of supply shall include—*

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*

*(3) The value of the supply shall not include any discount which is given—*

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*
- (b) after the supply has been effected, if—*
  - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
  - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*

*(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*

*(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.*

*Explanation.—For the purposes of this Act,—*

- (a) persons shall be deemed to be “related persons” if—*
  - (i) such persons are officers or directors of one another’s businesses;*
  - (ii) such persons are legally recognized partners in business;*
  - (iii) such persons are employer and employee;*
  - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;*
  - (v) one of them directly or indirectly controls the other;*
  - (vi) both of them are directly or indirectly controlled by a third person;*
  - (vii) together they directly or indirectly control a third person; or*
  - (viii) they are members of the same family;*
- (b) the term “person” also includes legal persons;*
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.”*

On going through the MOU, the nature of service provided by the assessee and in the light of the provisions of the Section 15 of CGST Act,2017 recourse needs to be made to the provisions of Rule 28 and Rule 30 of the CGST Rules, 2017. Rule 28 and Rule 30 of the CGST Rules, 2017 are extracted hereunder:

*“28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or **where the supplier and recipient are related, other than where the supply is made through an agent**, shall-*

- (a) be the open market value of such supply;*
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

*Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

*Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.”*

Having regard to the nature of service, value cannot be determined under clause (a) or (b) of Rule 28 of the said Rules and therefore in terms of clause (c) of Rule 28 of the said Rules, the value needs to be determined by applying the provisions of rule 30 of CGST Rules, 2017.

Rule 30 of CGST Rules, 2017 is extracted hereunder for ready reference:

*“30. Value of supply of goods or services or both based on cost.-*  
*Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the **value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services**”*

In view of the above, the applicant is providing service to owners 2 to 8 who are related persons and therefore the value of the construction service supplied by M/s Gowra Ventures Pvt. Ltd shall be **110%** of the cost of provision of the said service.

- 4) *Whether in the facts and circumstance the vesting of the constructed portion upon the “Partners”, would independently constitute a supply besides the supply on account of recovery of construction cost as aforesaid by the Company?*

As per the copy of the MOU for construction of Commercial Complex at Madhapur, furnished by M/s Gowra Ventures Pvt Ltd vide their letter dated 16-07-2018, Parcels of land pertaining to the Owners 2 to 8 of the said MOU are amalgamated with the land of the assessee (Owner 1) and the title of the property of the parcels of land remained with the respective owners at any point of time. Further M/s Gowra Ventures Pvt Ltd have provided construction service on the amalgamated land for a consideration to the Owners 2 to 8. Neither any service nor any consideration has been received by owner1 for vesting of constructed portion to the partners (owners 2 to 8) and hence the same cannot be treated as an independent supply.

In view of the foregoing discussion, the following ruling is passed.

**Advance Ruling**

1. The pooling of land by way of amalgamation of the separate parcels viz Land 1 and Land 2 as described in the “Statement of relevant facts” would **not constitute a supply** under the CGST/TGST Act, 2017.
2. The activity undertaken by M/s Gowra Venture Pvt. Ltd., with respect to the share belonging to the partners (as described in the “Statement of relevant facts” of the subject Application) is a **supply of service** under the CGST/TGST Act, 2017.
3. The applicant is providing service to owners 2 to 8 who are related persons and therefore the value of the construction service supplied by M/s Gowra Ventures Pvt. Ltd shall be **110%** of the cost of provision of the said service.
4. The vesting of the constructed portion upon the partners cannot be treated as an independent supply as neither any service nor any consideration has been received by owner1 for vesting of constructed portion to the partners (owners 2 to 8).

Sd/- J. LAKSHMINARAYANA  
ADDL. COMMISSIONER (State Tax)

Sd/- V. SRINIVAS  
JOINT COMMISSIONER (Central Tax)

To  
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Copy to:

- 1.The Joint Commissioner (State Tax), Begumpet Division.
- 2.The Assistant Commissioner (State Tax), Begumpet Circle.