

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 69 /2020

DATED 14.12.2020

PRESENT:

1. Shri Abhishek Chauhan

Joint Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri Dinesh Kumar Verma

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s PrasuInfrabuild Private Limited GH-0B, Sector-16B, Greater Noida (West), Gautam Budh Nagar-201308
2.	GSTIN or User ID	09AAGCP9220N1ZW
3.	Date of filing of Form GST ARA-01	24.09.2020
4.	Represented by	Shri Keshav Nand Jha (Authorized representative) & Shri Anuj Kumar (C.A & Authorized representative)
5.	Jurisdictional Authority-Centre	Division-I, Gautam Budh Nagar
6.	Jurisdictional Authority-State	Sector-1, Gautam Budh Nagar
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes CORP20060900025868

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

1. M/s PrasuInfrabuild Private Limited, GH-0B, Sector-16B, Greater Noida (West), Gautam Budh Nagar-201308 (hereinafter referred to as the applicant) is a registered assessee under GST having GSTN: 09AAGCP9220N1ZW.

2. The applicant is engaged in Real estate activities with own or leased property, including buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estate into lots, development and sale of land and cemetery lots, operating of apartment hotels and residential mobile home sites.

3. The applicant has submitted application for Advance Ruling dated 24.09.2020 enclosing dully filled Form ARA-01 (the application form for Advance Ruling) along with annexure and attachments. The applicant in his application has sought advance ruling on following questions-

1. If any Flat buyer otherwise qualified to get lower rate of GST under CLSS Scheme, get interest Subvention certificate and/or Interest subsidy in his / her bank account after
 - 1.1 Tower / Building get Completion Certificate from Competent Authority, or

1.2 Expiry of six months from end of financial year

Can builder pass-on benefit of lower rate of GST to this flat buyer in such situation? And How?

- 2 How can builder get GST Credit adjustment if builder does not have future GST liability in this project?
- 3 Will builder be entitled to GST refund if amount is not adjustable from future liability of GST under the project?

4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. The applicant has submitted that-

(i) they built a residential complex which got completion from competent authorities on 30th Sept 2019. Maximum numbers of residential flats were sold before completion of the project. Some Flat buyers who were otherwise qualified to get lower rate of GST (8% instead of 12%) as per Clarification issued by the Department of Revenue on 07th May 2018 under the CLSS Scheme and will get subvention certificate and/or interest subsidy in his/her Bank Account either after lapse of six months from end of financial year during which demand was raised and GST was charged or after Completion Date i.e. 30th Sept 2019 in this case but as per the clarification issued by the department of revenue, It is said that CLSS benefit will be available only if MHUA will prescribe a certificate by PLIs, and on the basis of which the builder may charge reduced rate of GST on houses constructed/acquired under CLSS but format of this certificate is not available to PLIs and no such certificate is issued in this regard.

(ii) they do not have sufficient future liability to set off these credit notes

(iii) time gap between actual tax invoice and criterion for full filling subsidies rate of GST is more than the period allowed under GST Law to adjust Credit Notes.

(iv) as they do not have sufficient future liability to set off these credit notes or time gap between actual tax invoice and criterion for full filling subsidies rate of GST is more than the period allowed under GST Law to adjust Credit Notes. Can they be allowed refund in this situation.

(v) as per *clarification issued by Ministry of Finance (TRU) F.No. 354/52/2018-TRU dated 07.05.2018*, Construction of houses is normally a continuous supply of service and in case of continuous supply of service, **invoice** shall be issued on or before the due date of payment or the date of receipt of payment by the supplier or completion of an event to which payment is

linked. The time of supply of the service shall be determined accordingly under section 13 of the CGST Act. Portion of continuous supply of service, time of supply of which is on 25th January, 2018 (the date of issue of clarification by Ministry of Finance (TRU) prescribing concessional GST for CLSS) or later shall be eligible for the concessional rate of GST applicable to houses acquired under CLSS irrespective of when the house is booked or approval for CLSS benefit is obtained.

Where the builder has collected higher GST from the buyer in earlier months, the excess can be adjusted by the builder against his future GST liability (by issue of credit notes). It is pertinent to point out here that the definition of taxable supply given in GSTR-3B, excludes value of credit notes. This means that the GST liability on the date of filing of return by the builder gets proportionate reduced on account of credit note issued. "[Credit notes can be issued by the builder/developer, inter alia, when the tax charged in a tax invoice is found to exceed the tax payable in respect of such supply, under section 34 of CGST Act. The same shall contain the particulars prescribed under rule 53 of CGST Rules including name and address of the recipient of the flat.]"

(vi) On the basis of above clarification, builder can charge reduced rate of GST but as per GST Act and Rules they can adjusted the same within 6 months from the end of the Financial Year. In actual circumstances Flat Buyer get subsidy certificate late or Subsidy in his bank account after expiry of period under which builder can adjust credit note/s. So Builder is finding it difficult to adjust GST liability if subsidy received after the six month from the end of the FY. There is no clarity in the law about all these situations.

(vii) As per their view point, keeping in view broad objective of implementation of GST as indirect tax reform, credit adjustment after expiry of six months from close of financial year should be allowed in such cases. In case of no future tax liability or less future tax liability refund of tax should be allowed as Refund of excess payment of Tax as GST was paid in excess of what it was supposed to be paid as per Government clarification at the point of time of supply.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Assistant Commissioner, CGST & Central Excise Division I, GB Nagar vide his letter C.No. V(30)Tech/Misc. Report/D-I/GBN/18/2018/1050 dated 27.11.2020 informed that no such case noticed under the jurisdiction of the concerned Range. The Additional Commissioner, Commercial Tax, Gautambudh Nagar Zone, Noida forwarded copy of the report bearing C.No. 752P-3/Advance Ruling/Joi. Comm./Va. Ka./San-Bee No./2020-21 dated 21.11.2020 of the Joint

Commissioner (Karyapalak), Commercial Tax, Gautambudh Nagar Sambhag-B, Noida vide his C.No. 1030/2020-21/Vidhi/Karya.AD.Comm.Va.Ka..Gau.Bu.Na.Zo.No. dated 27.11.2020. The administrative office of the applicant is of state GST office. The contents of the report dated 21.11.2020 of the Joint Commissioner (Karyapalak), Commercial Tax, Gautambudh Nagar Sambhag-B, Noida are as under-

(i) Question No. 1 & 2 is related with sl. No. 3 of the clarification issued under FNo.354/52/2018-TRU issued in respect to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and question no. 3 is related with Notification No. 15/2017-Central Tax (Rate) and Section 54 of the GST Act.

(ii) the question no. 1 is about procedure of clarification contained in sl. No. 3 of the clarification issued under FNo.354/52/2018-TRU as such out of ambit of advance ruling contained in Section 97(2) of the GST Act.

(iii) the questions on which advance ruling has been sought by the applicant is not related to applicability of notification and admissibility of input tax credit as such the application is out of ambit of advance ruling.

7. The applicant was granted a personal hearing on 09.12.2020 which was attended by Shri Kesav Nand Jha, Authorized Representative and Shri Anuj Kumar, CA & Authorized Representative during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We find that questions that can be sought in an application for advance ruling under the provisions of Section 97(2) of the CGST Act, 2017 are as under-

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

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

10. We find that the applicant in his application for advance ruling (Form GST ARA-01) has ticked clause (b) i.e. applicability of a notification issued under the provisions of this Act and (d) i.e. admissibility of input tax credit of tax paid or deemed to have been paid. We find that the questions are not related to clause (d) of Section 97(2) of the CGAT Act, 2017 as there is no issue of admissibility of input tax credit. However, question no. 1 raised by the

applicant is squarely covered in clause (b) as the question is related to lower rate of GST than prescribed rate vide Notification No. 11/2017-CT (Rate) dated 28.06.2017 due to CLSS scheme. We, therefore, admit the application for consideration.

11. We have gone through the submissions made by the applicant entirely and have examined the explanation submitted by them. We find that the applicant has sought advance ruling on following questions-

1. If any Flat buyer otherwise qualified to get lower rate of GST under CLSS Scheme, get interest Subvention certificate and/or Interest subsidy in his / her bank account after -

1.1 Tower / Building get Completion Certificate from Competent Authority, or

1.2 Expiry of six months from end of financial year

Can builder pass-on benefit of lower rate of GST to this flat buyer in such situation? And How?

2 How can builder get GST Credit adjustment if builder does not have future GST liability in this project?

3 Will builder be entitled to GST refund if amount is not adjustable from future liability of GST under the project.

12. The applicant is engaged in construction of residential complex. The effective rate of GST on advances received from customers of residential complex is 12 % (6% CGST and 6% SGST) as per Notification No. 11/2017-CT(Rate) dated 28.06.2017 after deducting value of land or undivided share of land equivalent to one third of the total amount charged for such supply. Concessional rate of GST of 8% {S.No. 3(iv)(db) of Notification No. 11/2017-Central Tax (Rate)} is applicable for houses constructed or acquired under the Credit Linked Subsidy Scheme (CLSS) provided value of land is included in the price of the house. The customers initially book flats from their own fund and later on apply for loan. So initially regular rate of GST @ 12% is charged and once the customer becomes eligible for CLSS benefit, concessional rate of GST is charged which is 8%.

13. As per clarification issued by the Tax Research Unit, Ministry of Finance, Govt. of India vide F.No. 354/52/2018/TRU dated 07.05.2018, where the builder has collected higher GST from the buyer in earlier months, the excess can be adjusted by the builder against his future GST liability by issue of credit notes as the definition of taxable supply given in GSTR-3B excludes value of credit notes.

14. The applicant appears to have been facing difficulty as there is time limit for issuance of credit notes as per Section 34(2) of the CGST Act, 2017 and there are cases where buyer becomes eligible for CLSS after due time limit for issuance of credit notes. Moreover, due to obtaining completion certificate for certain towers, the output GST liability is reduced and is not sufficient enough to adjust this reduced tax liability through such credit notes.

15. As per sub-section (1) of section 34 of Central Goods & Services Tax Act, 2017, the registered person, who has supplied such services, may issue to the recipient credit notes for supplies made in a financial year.

16. As per sub-section (2) of section 34 of Central Goods & Services Tax Act, 2017, any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

17. Alternatively, under Section 54 of Central Goods & Services Tax Act, 2017 read with Rule 89 of Central Goods & Services Tax Rules, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application in FORM GST RFD-01 before the expiry of two years from the relevant date provided that the incidence of such tax and interest had not been passed on to any other person. The party may seek such refund as "Refund of excess payment of tax" as per CBIC Circular No. 137/07/2020-GST dated 13.04.2020, if otherwise eligible.

Relevant portions of CBIC CIRCULAR NO. 137/07/2020-GST dated 13.04.2020 reads as follows:-

SN	Issue	Clarification
1.	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
2.	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act

	paid on advance or he is required to adjust his tax liability in his returns?	read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".
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Having gone through the circular, it is ample clear that in exceptional circumstances refund cases may be filed subject to satisfaction of above mentioned criteria.

18. However, the questions raised by the applicant are in nature of procedural clarification which is to avail benefit of reduced rate of GST under CLSS scheme as explained in above mentioned clarification issued by the Tax Research Unit, Ministry of Finance, Govt. of India. As due to time limit to issue credit note and also applicant's inability to adjust excess tax paid due to reduced tax liability, the applicant is not getting benefit of reduced tax liability under CLSS. It creates a very peculiar condition but the authority of advance ruling is not an appropriate authority for seeking procedures or clarifications in such exceptional circumstances. If the applicant is unable to issue credit note or unable to adjust their reduced tax liability due to any reason, they may approach to the GST Policy Wing for remedial measures.

In view of the above discussions, we, both the members unanimously rule as under;

RULING

Question No. 1 If any Flat buyer otherwise qualified to get lower rate of GST under CLSS Scheme, get interest Subvention certificate and/or Interest subsidy in his / her bank account after -

3.1 Tower / Building get Completion Certificate from Competent Authority, or

3.2 Expiry of six months from end of financial year

Can builder pass-on benefit of lower rate of GST to this flat buyer in such situation?
And How?

Ans:- The excess tax is to be adjusted as per clarification issued by Tax Research Unit, Ministry of Finance, Govt. of India vide F.No. 354/52/2018/TRU dated 07.05.2018. Even then if the applicant is unable to adjust the same, the applicant may approach to appropriate forum which is GST Policy Wing.

Question No. 2 How can builder get GST Credit adjustment if builder does not have future GST liability in this project?

Ans:- The question is out of purview of advance ruling authority. As such, the question raised by the applicant is not answered.

Question No. 3 Will builder be entitled to GST refund if amount is not adjustable from future liability of GST under the project?

Ans:- The question is out of purview of advance ruling authority. However, whether the applicant is entitled for refund or not, under Section 54 of Central Goods & Services Tax Act, 2017 read with Rule 89 of Central Goods & Services Tax Rules, 2017 would be decided by the jurisdictional authority subject to fulfillment of necessary conditions of refund.

19. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Dinesh Kumar Verma)
Member of Authority for Advance
Ruling



(Abhishek Chauhan)
Member of Authority for Advance
Ruling

To,

M/s Prasu Infrabuild Private Limited,
GH-0B, Sector-16B, Greater Noida (West),
Gautam Budh Nagar-201308

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Excise, 3rd Floor, Wegmens Business Park, KP-III, Greater Noida- 201306.
4. The Deputy/Assistant Commissioner, CGST & C. Excise, Division-1, Gautam Budh Nagar, 3rd Floor, Wegmens Business Park, KP-III, Greater Noida- 201306.
5. Through the Additional Commissioner, Commercial Tax, Gautam Budh Nagar Zone, Noida, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.