

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 30 / 2018

Dated : 28th November 2018

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Nforce Infrastructure India Pvt. Ltd., #25-14-840/1, Victoria, Near Valencia Church, Kankanady, Dakshina Kannada , Mangalore - 575 002, Karnataka.
2.	GSTIN or User ID	29AADCN3089J1Z0
3.	Date of filing of Form GST ARA-01	17-03-2018
4.	Represented by	Sri. Rudolph M C Rodrigues, Chartered Accountant
5.	Jurisdictional Authority - Centre	---NA---
6.	Jurisdictional Authority - State	ACCT, LVO-260, Mangaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.10,000-00 CGST : Rs.5,000-00 and SGST : Rs.5,000-00 CIN: ICIC18022900287680 dated 21.02.2018.

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

M/s Nforce Infrastructure India Pvt. Ltd., #25-14-840/1, Victoria, Near Valencia Church, Kankanady, Dakshina Kannada, Mangalore - 575 002, Karnataka (herein after referred to as Applicant) having GSTIN number 29AADCN3089J1Z0, have filed an application, on 17.03.2018, for advance ruling under Section 97 of CGST Act,2017, KGST Act, 2017 & IGST Act, 2017 read with rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01, discharging the fee of Rs.10,000/- (CGST - Rs.5,000/- & SGST - Rs.5,000/-), vide challan bearing CIN number ICIC18022900287680 dated 21.02.2018.

2. The Applicant, M/s Enforce Infrastructure India Pvt. Ltd., Builders & Developers, entered into an agreement with Mr. Patrick B D'sa, Mrs. Winnfred J. D'sa, Mr. Prem Alousius D'sa, Mrs. Preethika Vinay, Mrs. Priya Maria Dominica Kutinha and Mr Praveen Nobert Savio D'sa, for construction & to handover 8828 square feet of residential apartment area, 1630 square feet of commercial area and 8 car parkings on the land belonging to the aforesaid six persons.

3. The applicant is of the view that they were liable to pay service tax on the taxable value of building constructed & handed over to the land owner, at the time of completion of the project, in terms of Circular No. 151/02/2012-ST dated 10.02.2012. The project is completed post 01.07.2017 i.e. in the GST regime. The applicant is also of the view that they are liable to pay GST @ 12% on the aggregate value of the building constructed and handed over to the land owner and the underlying value of the land. Therefore the applicant filed this instant application seeking advance ruling on the following issues :

1. *Whether the applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement ?*
2. *If there is liability to pay GST on what value is the GST to be paid since there is no monetary consideration involved?*
3. *Is the applicant liable to pay service tax up to 30.06.2017 and GST thereafter?*

PERSONAL HEARING: / PROCEEDINGS HELD ON 03.04.2018.

4. The Applicant submitted power of attorney, issued by Sri. Ivan Mark Sequeira, Managing Director, M/s Nforce Infrastructure India Pvt. Ltd., authorizing Sri. Rudolph M C Rodrigues, Chartered Accountant to represent the applicant before the Authority for Advance Ruling in connection with the instant application for Advance Ruling. The said authorized representative appeared for personal hearing proceedings and submitted that the Joint Development Agreement had been entered into in January 2016, for construction of 12 apartments and 2 shops, that the point of taxation has been clarified vide circular No.4/2018 dated 25.01.2018, that the value to be adopted for the land owners share for payment of GST need to be clarified as to whether the price at the time of JDA or the market value as on date.

FINDINGS & DISCUSSION:

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Rudolph M C Rodrigues, Chartered Accountant, the authorized representative, during the personal hearing. We also considered the issues

involved on which advance ruling is sought by the applicant, relevant facts of the issue involved.

6. The Applicant, filed the instant application dated 17.03.2018 for advance ruling, seeking clarifications as to

1. *Whether the applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement ?*
2. *If there is liability to pay GST on what value is the GST to be paid since there is no monetary consideration involved?*
3. *Is the applicant liable to pay service tax up to 30.06.2017 and GST thereafter?*

7. Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, notifies the following classes of registered persons, namely :-

- a) Registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- b) Registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, 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)

8. Section 2(94) of CGST Act' 2017 defines "Registered Person" as a *person who is registered under Section 25 but does not include a person having a Unique Identity Number.*

Section 25 of the CGST Act' 2017 prescribes the procedure for registration and stipulates that *"Every person who is liable to be registered under Section 22 or Section 24 of the CGST Act 2017 shall apply for*

registration in every such state or Union territory in which he is so liable within thirty days from the date on which he comes liable to registration, in such manner and subject to such conditions as may be prescribed;"

Section 22 of the CGST Act 2017 tells about the persons liable for registration and stipulates that Every supplier, who makes a taxable supply of goods or services or both, shall be liable to be registered, if his aggregate turnover crosses the threshold limit prescribed in the Act.

9. In the instant case the applicant, a registered person, is supplying the construction service of building / civil structure to supplier of the development rights (the land owner) against consideration in the form of transfer of development rights. Notification No.4/2018-Central Tax (Rate) dated 25.01.2018, at para (b), stipulates that the supplier of construction service, to the supplier of development rights, is liable to pay GST for the service provided to the land owner in terms of the Joint Development Agreement.

10. The applicant needs to pay tax towards the construction service provided to the land owner, on the value to be determined in terms of para 2 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, which is appended as under:

2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation .- For the purposes of paragraph 2, "total amount" means the sum total of,-

- a) consideration charged for aforesaid service; and*
- b) amount charged for transfer of land or undivided share of land, as the case may be.*

11. The third question of the applicant relates to their liability to pay service tax up to 30.06.2017. In this regard we draw reference to Section 142 (11) of the CGST/KGST Act'2017, which is appended below :

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

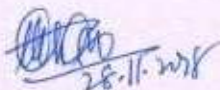
12. It is clearly evident from Section 142(11)(b) that the service tax is liable to be paid, which is leviable under the Finance Act' 1994, on the services provided up to 30.06.2017. Also the GST is liable to be paid under the CGST Act'2017 /KGST Act'2017, on the services provided after 01.07.2017. Therefore we are of the opinion that the Applicant has to pay service tax / GST proportionate to the services provided before / after 30.06.2017 respectively.

13. In view of the foregoing, we pass the following

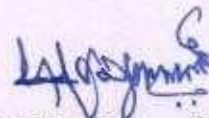
RULING

The rulings in the three questions are respectively as follows:

1. The applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement.
2. The value on which the applicant is liable to pay GST is to be determined in terms of para 2 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.
3. The Applicant is liable to pay service tax / GST proportionate to the services provided before / after 30.06.2017 respectively.



(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 28.11.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Mangalore Commissionerate, Mangalore


The Asst. Commissioner, LVO-260, Mangalore

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- 1. The applicant is liable to pay GST on the sale of building materials and allied services.
- 2. The applicant is liable to pay GST on the sale of building materials and allied services.
- 3. The applicant is liable to pay GST on the sale of building materials and allied services.


 (Dr. Ravindra M.R.)
 Member


 (Member)
 Member

Date: 28.11.2018
 Place: Bangalore