

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, 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, 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 (ST) / Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No.09 /ARA/2020 Dated: 25.02.2020

GSTIN Number, if any / User id		Unregistered
Legal Name of Applicant		M/s. Latest Developers Advisory Limited
Trade Name of the Applicant		M/s. Latest Developers Advisory Limited
Registered Address / Address provided while obtaining user id		No. 10, 1 st Floor, GJ Complex, 1 st Main Road, CIT Nagar, Chennai 600 035.Tamil Nadu.
Details of Application		Form GST ARA – 001 Application SI.No.48 Dated 03.12.2019
Concerned Officer		State: The Assistant Commissioner(ST), Nandanam Assessment Circle, Centre: Chennai South Commissionerate Division: Guindy
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Works Contract
B	Description (in brief)	Developer of residential properties.
Issue/s on which advance ruling required		1. Classification of goods and /or services or both. 2. Determination of the liability to pay tax on any goods or services or both.

Question(s) on which advance ruling is required	1. Whether the activities of construction carried out by the Applicant for its customer under the Construction Agreement, being composite supply of works contract, are appropriately classifiable under Heading 9997, and chargeable to CGST @ 9% under S.No. 35 of Notification No. 11/2017-CT(Rate), dated 28.06.2017?"
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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.

M/s. Latest Developers Advisory Limited, No. 10, 1st Floor, GJ Complex, 1st Main Road, CIT Nagar, Chennai 600 035 (hereinafter referred to as 'Applicant') is a company registered in India and is a real estate developer. They are not registered under GST. The Applicant has preferred an application seeking Advance Ruling on the following Question:

Whether the activities of construction carried out by the Applicant for its customer under the Construction Agreement, being composite supply of works contract, are appropriately classifiable under Heading 9997, and chargeable to CGST @ 9% under S.No. 35 of Notification No. 11/2017-CT(Rate), dated 28.06.2017?"

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 they propose to enter into an arrangement in which they hold the development rights to develop a particular parcel of land. They will simultaneously enter into two agreements with their customer. The First agreement will be an Agreement for Sale of undivided share in land (for short '**UDS**') to the customer (for short '**UDS Agreement**'). The Second agreement will be an Agreement for Construction (for short '**Construction Agreement**'), whereby the customer will appoint the Applicant for construction of units on the said UDS. Such arrangement will be under an umbrella Indenture of Undertaking (for short '**IOU**') recording the understanding of both the UDS Agreement and Construction Agreement. On completion of the construction, a Sale Deed will be executed for sale of UDS to the customer, on which appropriate Stamp Duty will be paid. The Construction Agreement will be registered separately on payment of appropriate Stamp Duty..

2.2 The applicant on the interpretation of law has stated that under the proposed arrangement, as a result of UDS Agreement, there will be a transfer of title in UDS to the customer, i.e. transfer of title in immovable property.; Such transfer of title in immovable property is not chargeable to GST and is not a subject-matter of the present application.; Vide the Construction Agreement, the customer will appoint the Applicant for purposes of undertaking construction of the specified unit on the UDS agreed to be sold to the customer and they will accordingly undertake construction activities for the customer. In the course of such construction activities, there will be a transfer of title in goods (whether as goods or in some other form) from the Applicant to the customer and therefore is 'Works Contract' as defined under Section 2(119) of the CGST Act. The activities carried out by the Applicant under the Construction Agreement are subject-matter of the present application.

2.3 The applicant has stated that the activities of construction carried out by them for their customers under the Construction Agreement on UDS agreed to be sold to the customer are classifiable as works contract service falling under Heading 9997 and chargeable to CGST @ 9% under S. No. 35 of Notification No. 11/2017-CT (Rate) dated 28.06.2017. The applicant has referred/relied on the ratio of the decision in the following case laws to substantiate their contention:

- ***State of Madras v. Gannon Dunkerley & Co (Madras) Limited*, [1955 SCR 379];**
- ***K Raheja Development Corporation v. State of Karnataka* [2005 (5) SCC 162];**
- ***Larsen & Toubro Limited v. State of Karnataka*, [SLP (C) No. 17741 of 2007];**
- ***Larsen & Toubro Limited v. State of Karnataka* [2014 (303) ELT 3 (SC)]**

3.1 The applicant was given an opportunity to be personally heard on 28.01.2020. The applicant through their authorised representative, sought adjournment stating that they require four weeks' time for preparation of hearing. The applicant was again extended an opportunity to appear for personal hearing on 11.02.2020.

4.1 The state tax officer submitted the following comments in respect of the advance ruling application of the applicant. They stated that the proposed place of business of M/s. Latest Developers Advisory Limited, at Door No. 10, I Floor, GJ Complex, 1st Main Road, CIT Nagar, Chennai-35 was inspected by the assessing officer along with the STCI, Nandanam Assessment Circle, on 19.12.2019 at 2P.M. and found that the place is already occupied by Tvl. Ashiana Housing Limited, an assessee of Nandanam Assessment Circle, with GSTIN 33AADCA9093P1Z4. They contacted Mr. Varun through the mobile no. 98719 79660 and it was stated by him that he is stationed at Delhi and informed that M/s Latest Developers Advisory Limited is a proposed sister concern of Tvl. Ashiana Housing Limited.

4.2 The central tax officers has not furnished any comments on the issue raised by the applicant in their application.

5. The authorised representative of the applicant submitted a letter dated 10.02.2020 received by this authority on 11.02.2020. It is stated that the present application was filed in respect of a transaction proposed to be undertaken by the applicant in the state of TamilNadu however on account of unfavourable market conditions and other commercial factors, the applicant has not been in the position to proceed their business activity of identifying land for constructing apartments.

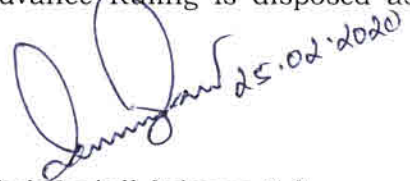
Thus, the applicant has taken a commercial call to not pursue the proposed business project in TamilNadu, Therefore, they prayed that the Hon'ble Authority permit the applicant to withdraw the subject application filed in this matter.

6. 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. Latest Developers Advisory Limited, // **By Speed Post with Ack. due** //
No. 10, 1st Floor, GJ Complex,
1st Main Road, CIT Nagar,
Chennai 600 035.



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.,
Chennai South Commissionerate,
MHU Complex, No. 692,
Anna Salai, Nandanam, Chennai 600 035.
4. The Assistant Commissioner (ST)
Nandanam Assessment Circle,
66, Pasumpon Muthuramalingam Salai,
Taluk Office Building, 3rd Floor,
RA Puram, Chennai - 600 028.
5. Master/ Spare.