M/s Bindu Ventures (partnership firm, GSTIN 29AAPFB6663D1Z5)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 32 / 2018, Dated: 3rd December 2018 Dated **03.12.2018**

Q Questions Before the Authority

- Which date should be considered as the date of completion of the property: the date of receipt of necessary approvals from BBMP / Karnataka Pollution Control Board / Karnataka Electricity Board, or the date of receipt of completion certificate from a registered Chartered Engineer?
- Whether the applicant is liable to pay GST on any amount received as consideration towards sale of completed offices after the date of completion, where part of the consideration was received prior to the date of completion as determined in question (a)?
- Whether the applicant is liable to pay GST on the consideration received towards the sale of completed offices, where the entire consideration is received after the date of completion of construction as determined in question (a)?

F Facts

The applicant is a partnership firm in the real estate business that constructs commercial complexes for sale or rent. It built a commercial complex called Bindu Galaxy in Bengaluru, starting construction in February 2016 on its own land, and it entered into sale agreements and took advances from prospective buyers. It has paid GST on advances received after 01.07.2017 at 18% with one-third of the amount treated as land value, and it has obtained approvals from state authorities but no occupancy certificate from BBMP. A Chartered Engineer's completion certificate dated 01.12.2017 was obtained, and the applicant claims occupation of units from September 2017.

H Ruling

Q1: Date of completion of the property (approvals vs Chartered Engineer completion certificate)	****Date of Occupancy Certificate issued by BBMP** (the competent authority)**	The Chartered Engineer's completion certificate and the approvals were held not to be the completion date. Date of first occupation was held irrelevant, since no occupation before the Occupancy Certificate is lawful.
Q2: GST where part consideration received before completion and balance after completion	****Liable to GST**, as a supply of services under entry 5 of Schedule II**	Ruling para 2 says the transaction is liable. The order does not expressly spell out whether post-completion receipts are taxed on their own, so the scope needs checking in the full order.
Q3: GST where entire consideration received after completion	****Not liable to GST****	Applies only where the entire consideration is received after the date of the Occupancy Certificate.

The authority held that the date of the Occupancy Certificate issued by the competent authority, Bruhat Bengaluru Mahanagara Palike, is the date of completion of construction, and that the Chartered Engineer's certificate cannot

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

substitute for it. Where any part of the consideration is received before that date, the transaction is a supply of services under entry 5 of Schedule II and is liable to GST. Where the entire consideration is received after that date, the transaction is not liable to GST.

R Reasoning

The authority read entry 5 of Schedule II to the CGST and KGST Acts, which treats construction of a complex intended for sale as a supply of services unless the entire consideration is received after the issuance of the completion certificate, where required, by the competent authority, or after first occupation, whichever is earlier. It relied on the definition of competent authority in section 2(29) and the Explanation to entry 5, and held that the Chartered Engineer certificate was only a supporting pre-inspection document. Relying on Bye-laws 5.6 and 5.7 of the Bengaluru Mahanagara Palike Building Bye-Laws 2003, it treated the Occupancy Certificate as equivalent to a completion certificate. It held that first occupation cannot precede the Occupancy Certificate, so the Occupancy Certificate date governs.

P Provisions Relied On

- Entry 5 of Schedule II to the CGST Act, 2017 and the KGST Act, 2017
- Explanation to entry 5 of Schedule II (meaning of competent authority)
- Section 2(29) CGST Act, 2017 (definition of competent authority)
- Section 2(80) CGST Act, 2017 (definition of notification)
- Section 97 CGST Act, 2017 and KGST Act, 2017 (advance ruling application)
- Sub-section (4) of Section 98 CGST Act, 2017 and KGST Act, 2017
- Rule 104 CGST Rules, 2017 and KGST Rules, 2017
- Bengaluru Mahanagara Palike Building Bye-Laws 2003, clauses 5.6 and 5.7

! For the Practitioner

A practitioner can use this ruling to advise that, for a Karnataka commercial project, the taxable-or-not line for advance-receipt builders is drawn by the BBMP Occupancy Certificate date, not by a Chartered Engineer certificate or first occupation. It settles that a builder's receipts made wholly after that date fall outside GST under entry 5. It does not decide how to treat receipts split across the date in detail, the treatment of land value, or the position in other states where the local law provides a different completion certificate.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> krntk_32_2018_bv.pdf

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