M/s Durga Projects & Infrastructure Private Limited

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 16/2019, Date: 25-07-2019 Dated **25.07.2019**

Q Questions Before the Authority

- Applicability of GST on partially completed flats having identified customers before the GST regime.
- Applicability of GST on partially completed flats where customers are identified after implementation of the GST regime.
- Applicability of GST on partially completed flats where no customers are identified.

F Facts

The applicant is a company engaged in construction and sale of residential apartments and complexes under joint development agreements (JDA) with land owners, under an agreed ratio of built-up area. Construction began in the pre-GST period and continued under GST, and a substantial portion of the work has been sub-contracted to another registered person. The completion certificate had not been issued by the competent authority when the ruling was sought.

H Ruling

Partially completed flats, customers identified before GST regime	**Service tax under Finance Act 1994 on services up to 30.06.2017; GST on services from 01.07.2017**	Apportioned by period under Section 142(11)(b) CGST Act. No rate is stated in the order.
Partially completed flats, customers identified after GST implementation	**Liable to GST on the transaction value of supply**	Applicant's contention that tax is due only on work executed after the appointed date was not accepted. No rate is stated in the order.
Partially completed flats, no customers identified	**Not liable to GST, as no supply is involved**	If a supply is made before the completion certificate is issued, GST is payable on the transaction value as in the second item. No rate is stated in the order.

For flats with customers identified before 01.07.2017, the applicant is liable to service tax under the Finance Act 1994 on services up to 30.06.2017 and to GST on services from 01.07.2017 under Section 142(11)(b) of the CGST Act. Where customers are identified after GST implementation, GST is payable on the transaction value of supply, and the applicant's argument that tax should be limited to work executed after the appointed day was rejected. Where no customers are identified, no GST arises, but if a supply is made before the completion certificate, GST is payable on the transaction value.

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

R Reasoning

The authority accepted that construction relating to immovable property is a works contract treated as a supply of service under Schedule II, but held that under para 5(b) of Schedule II and para 5 of Schedule III, a transaction where the entire consideration is received after the completion certificate or first occupation is not a supply. For pre-GST customers, Section 142(11)(b) apportions liability between service tax up to 30.06.2017 and GST thereafter. For post-GST customers, Section 13 fixes the time of supply, and Section 15(1) makes the transaction value the taxable value, so work done before the appointed day on an applicant's own account was not treated as a supply. The authority also noted that the Supreme Court decision in Larsen and Toubro treats a works contract as arising only from the stage of entering an agreement with a customer.

P Provisions Relied On

- Section 142(11)(a), (b) and (c) of the CGST Act 2017 and the corresponding KGST Act provisions
- Section 13 of the CGST Act 2017 (time of supply)
- Section 15(1) of the CGST Act 2017 (value of supply / transaction value)
- Schedule II, para 5(b) of the CGST Act 2017
- Schedule III, para 5 of the CGST Act 2017
- Chapter V of the Finance Act 1994 (service tax, as referred to in Section 142(11)(b))
- Sections 141, 142 and 143 of the CGST Act 2017 (cited by the applicant)
- Larsen and Toubro Limited v State of Karnataka (Supreme Court), cited in the order as (2013) 75 VST 1 in one place and [20…

! For the Practitioner

A developer with partly built projects under JDAs can use this ruling to see how pre-GST and post-GST customer contracts are apportioned, and that work done on its own account before any customer contract is not a taxable supply. The ruling settles the three scenarios on its stated facts, namely that completion certificate had not been issued and that the Schedule III para 5 exemption applies only after completion. It does not determine rates, HSN, valuation of mixed-period contracts beyond the transaction value point, or the treatment of sub-contracted work, and the authority's citation of the Larsen and Toubro report is inconsistent within the order and should be checked.

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_aar_16_2019_dp_ipl_25.07.2019.pdf

Prepared 05-11-2026.

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