Smt. Kamalavadani Udayakumar (printed as 'Smt. Kamalavadani Udayakumar', 9 Harleys Road, Chennai 600 010; unregistered)

Authority for Advance Ruling — Tamil Nadu

ORDER No. 02/ARA/2020 Dated **31.01.2020**

Q Questions Before the Authority

- Whether input tax credit can be claimed on works contract services when the output service is not for the purpose of sale but leasing out?

F Facts

The applicant owns land in Tamil Nadu and proposed to register under GST and construct commercial buildings to lease to companies. Construction would be sub-contracted to works contractors and to professionals such as architects, and she would charge GST at 18% on the leasing income. The applicant argued that Section 17(5)(c) artificially blocks credit on works contract services for leased property, although credit is available where the building is sold.

H Ruling

The application was disposed of as withdrawn; the authority did not rule on the merits of the input tax credit question. The applicant withdrew after reviewing the authority's decision in Sree Varalakshmi Mahal LLP, which she said had similar facts. The State jurisdictional officer's comments on leasing tax rates and credit eligibility are recorded in the order but are not the authority's ruling.

R Reasoning

The authority recorded that the applicant sought permission to withdraw because her facts were similar to those in Sree Varalakshmi Mahal LLP, and the application was closed on that basis. Separately, the State officer reported that on field verification the stated address was occupied by another concern and no person of the applicant's name lived there, which weighed against proceeding. The order therefore turns on procedure and withdrawal, not on Section 16(1) or Section 17(5). The applicant's arguments on Safari Retreats (Orissa High Court) and the earlier CENVAT position are recorded only as submissions.

P Provisions Relied On

Section 98 of the CGST Act, 2017 and the corresponding TNGST Act provision (advance ruling jurisdiction)

Section 16(1) of the CGST Act, 2017 (as relied on by the applicant)

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

Section 17(5)(c) of the CGST Act, 2017 (as printed in the order; relied on by the applicant)

Section 39 of the TNGST Act, 2017 (return filing, cited by the State officer)

Sub-rule (1) of Rule 104 of the CGST Rules, 2017 and the SGST Rules (application fee of Rs. 5,000)

CBEC Circular No. 98/1/2008-ST dated 04.01.2008 (cited by applicant; numeral partly unclear on scan)

Safari Retreats Private Limited v. Chief Commissioner of CGST (Orissa High Court) (cited by applicant)

Sree Varalakshmi Mahal LLP advance ruling (relied on by applicant for withdrawal)

! For the Practitioner

This order does not settle whether credit on works contract services is available for buildings let out, so it should not be cited as authority on that question. The useful content is the State officer's stated view that leasing of commercial property attracts CGST and SGST at 9% each (IGST at 18% for out-of-state property) and that credit is available only to a registered person filing regular returns. A practitioner advising a would-be lessor should also note that the authority accepts withdrawal where the applicant's facts match an earlier ruling, and that unverifiable addresses can stall an application. For the merits of Section 17(5), the Safari Retreats judgment and the Sree Varalakshmi Mahal LLP ruling should be read directly.

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 -> tn_aar_02_2020_31.01.2020_sku.pdf

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