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Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 104/2019, Dated: 30th September, 2019 Dated **30.09.2019**

Q Questions Before the Authority

- Whether the 1% and 5% rates notified for construction services (affordable housing and other residential projects) apply to a construction comprising entirely commercial space; if not, what rate applies with ITC and without ITC?
- Whether the applicant, as a service provider of construction of commercial space, can utilise ITC relating to the construction activity against the supply of other goods and services?
- Whether input tax on inputs relating to construction of buildings or built-up space can be utilised against the output tax payable on letting out the same space?
- Whether providing residential accommodation as paying guest to students outside the premises of a university, college or school is taxable under GST and, if so, at what rate? (Withdrawn at the hearing.)

F Facts

The applicant is an LLP in the business of developing, constructing and trading in immovable property. Under a Joint Development Agreement dated 11.02.2019, it is developing a purely commercial property on land of 57,974 sq ft at Whitefield, Bengaluru, with the applicant entitled to 60% and the landowners to 40% of the built-up area. The applicant bears the entire construction cost, and the landowners transfer 60% of the undivided land share to the applicant on completion. The applicant intends to lease the commercial space rather than sell it to buyers.

H Ruling

Q1: Whether the 1%/5% construction rates apply to an entirely commercial construction; if not, what rate applies with and without ITC	****9% CGST and 9% KGST** under entry 3(xii) of Notification 11/2017-CT(Rate) as amended by 3/2019-CT(Rate), for the construction service supplied to the landowner in lieu of transfer of development rights**	The order addresses the supply to the landowner and states that ITC is available on it. It does not separately state a rate without ITC. The 1%/5% rates were held not to apply because the project is not a real estate project under RERA section 2(zn).

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

Q2: Whether the applicant can utilise ITC on construction against supplies of other goods and services	****No**, not to the extent of the applicant's own portion of the building**	Blocked under section 17(5)(d) of the CGST Act because the applicant capitalises that portion as immovable property. ITC on the landowner-facing construction supply is treated separately and is available.
Q3: Whether input tax on construction can be set off against output tax on letting out the same space	****No****	Follows from the answer to Q2, since the ITC on the applicant's own portion is not available.
Q4: Whether paying guest accommodation to students is taxable and at what rate	**Not answered; the applicant withdrew the question**	The order states that similar treatment is to be provided under the KGST Act.

The authority held that the supply of construction service by the applicant to the landowner, in lieu of the transfer of development rights for the promoter's portion, attracts 9% CGST and 9% KGST under entry 3(xii) of Notification 11/2017-Central Tax (Rate), as amended, and that ITC is available on it. The applicant cannot take ITC on inputs and input services to the extent used for construction of its own portion of the building, which it capitalises as immovable property. For the same reason, that blocked ITC cannot be set off against output tax on letting out the space. The fourth question was not answered because the applicant withdrew it.

R Reasoning

The authority examined the JDA and found that the landowners transfer development rights in exchange for construction services, so the applicant makes two supplies: works-contract construction to the landowners for their share, and works-contract supplies to any prospective purchasers. Because the applicant does not intend to sell the commercial space, the project is not a real estate project under section 2(zn) of RERA as incorporated in the notification, so the commercial-apartment entry 3(if) does not apply. The supply therefore fell under the residual entry 3(xii) at 9%. Under section 17(5)(d) of the CGST Act, ITC is barred on goods and services used for constructing an immovable property on the taxable person's own account, which blocks ITC on the applicant's own share and consequently any set-off against letting income.

P Provisions Relied On

- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, entry 3(xii), as amended by Notification No. 3/2019-Central Ta…
- Notification No. 11/2017-Central Tax (Rate), entry 3(ib) and 3(if), as examined in the order
- Clause (xviii) of paragraph 4 of the Notification, cross-referring to clause (zn) of section 2 of the Real Estate (Regulation and…
- Section 17(5)(d) of the CGST Act, 2017
- Section 97 and section 98(4) of the CGST Act, 2017 and KGST Act, 2017 (advance ruling procedure)
- Corresponding KGST Act provisions, treated as the same as the CGST Act provisions

! For the Practitioner

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

This ruling is useful for developers under a JDA who build commercial space and intend to lease it rather than sell. It confirms that the 1% and 5% rates for residential and commercial-apartment projects do not apply where there is no intended sale, and it confirms that the construction supplied to a landowner in exchange for land rights is taxed at 9%. It also confirms that ITC on the developer's own capitalised share is blocked under section 17(5)(d). It does not settle the rate applicable to the developer's own supplies to buyers, the rate without ITC, or the treatment of paying guest accommodation, which was withdrawn.

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 -> kar_aar_104_2019_30.09.2019_td_llp.pdf

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