

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Mangalam Developers
Address	2, Iswar Ganguly Street, 1 st floor, Kolkata-700026
GSTIN	19ABQFM3221Q1ZL
Case Number	WBAAR 06 of 2024
ARN	AD1903240207819
Date of application	April 09, 2024
Jurisdictional authority (State)	Alipur Charge
Jurisdictional authority (Centre)	Ballygunge Division, Kolkata North Commissionerate
Order number and date	08/WBAAR/2024-25 dated 10.09.2024
Applicant's representative heard	Mr. Sanjoy Todi (Partner)

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar

provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression “GST Act” would mean the CGST Act and the WBGST Act both.

1.2 The applicant is involved in construction business of building and selling of residential flats under affordable housing scheme. The applicant has availed finance from HDFC Bank Ltd and paying interest to the bank against monthly invoice raised by the bank.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

- (i) Whether interest charges by HDFC Bank Ltd should be treated as inward supply from registered suppliers for calculating threshold of 80% since HDFC Bank Ltd is a registered company.

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (b) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act. No reply from the revenue in this respect has been received.

1.6 The application is, therefore, admitted.

2. Submission of the Applicant

2.1. The applicant is engaged in construction business of building and selling residential flats under affordable housing scheme. The applicant is charging GST @1% on the buyers of flats and doesn't avail any input tax credit.

2.2 The applicant, being a promoter, is required to procure all capital goods and at least 80% of inputs and inputs services from registered suppliers. If not so procured, tax is payable by the applicant under reverse charge on the balance amount.

2.3 The applicant submits that as per FAQ (Part-II) no. 18 issued by CBIC vide circular F. No. 354/32/2019-TRU dated 14/05/2019, inward supplies of exempted goods/services shall be

included in the value of suppliers from unregistered persons while calculating threshold of 80%.

2.4 The applicant has availed construction finance from HDFC Bank Ltd and paying interest to the bank against monthly invoice raised by the bank. Since Interest on loan is an exempted supply, HDFC Bank Ltd is not charging any GST. The applicant argues that HDFC bank should be treated as registered vendor while calculating threshold of 80% to be procured from registered person by the applicant.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during personal hearing.

4.2 In terms of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, supply of services for construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay tax at a higher rate of 12% or 18%, as the case may be, attracts tax @ 1% subject to certain conditions which inter alia includes as follows:

- eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;
- inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;
- where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of

2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;

- notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;

4.3 In this context, relevant part of the Notification No.07/2019-Central Tax (Rate) dated 29.03.2019 may be reproduced which notifies that the registered person namely Promoter shall pay tax on reverse charge basis as recipient of goods or services or both, as specified in the said notification, when received from an unregistered supplier.

Sl No.	Category of supply of goods and services	Recipient of goods and services
(1)	(2)	(3)
1.	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter
2.	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central	Promoter

	Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

4.4 It thus appears that a promoter has to pay tax @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid at the applicable rate (currently @ 28%) by the promoter on reverse charge basis. The specified limit of eighty percent includes value of inputs and input services both. In regard to input services, such value however shall not include value of services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI). This has been clarified in the FAQs (Part II) on real estate issued by the Tax Research Unit, Department of Revenue, ministry of Finance on 14.05.2019 as under:

Question: Whether the purchase of Land from an unregistered person shall be required to be included in the value of Input and Input Services for the purpose of calculation of 80% threshold?

Answer: No. As per Schedule III, Entry No 5, of CGST Act, sale of land is not a supply. In addition, as per 5th proviso to entries at Sl. No. (i), (ia), (ib), (ic) and (id) against Serial No 3 in the Notification No.11 / 2017-CTR dated 28.06.2017 as amended by Notification No. 3 / 2019-CTR dated 30/03/2019, transactions by way of grant of development rights, long term lease, FSI etc. are not required to be included in the value of Input and Input Services for evaluation of criteria of 80% from registered persons.

4.5 Further, in regard to inward supplies of exempted goods or services, clarification is given in the said FAQ as under:

Question: Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold?

Answer: Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.

4.6 Therefore, for the purpose of determining 80% of inward supplies and services which are to be received from a registered person, the promoter has to determine the value of total inward supplies of goods and services. And to determine the total value of inward supplies, the promoter shall exclude services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) and value of electricity, high speed diesel, motor spirit, natural gas. However, the total value of supply shall include inward supplies of exempted goods / services and the promoter shall compute the threshold of 80% of inwards supplies accordingly.

4.7 The issue involved in the instant case is to decide whether interest charges by HDFC Bank Ltd should be treated as inward supply from registered suppliers for calculating threshold of 80%. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempted from payment of tax vide serial number 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. So, services by way of extending loans by HDFC Bank to the applicant against consideration payable in the form of interest is an inward supply of exempted services of the applicant. Such services, therefore, would be a part of total inward supply for the purpose of computing the threshold limit of 80% and since HDFC Bank is a registered person under the GST Act, the supply admittedly has been made from a registered person.

In view of the foregoing, we rule as under:

RULING

Question: Whether interest charges by HDFC Bank Ltd should be treated as inward supply from registered suppliers for calculating threshold of 80% since HDFC Bank Ltd is a registered company.

Answer: Yes. Services by way of extending loans by HDFC Bank to the applicant against consideration payable in the form of interest is an inward supply of exempted services of the

applicant received from a registered person and therefore would be a part for computing the threshold limit of 80%.

(Dr. Tanisha Dutta)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 10th September, 2024

To,

Mangalam Developers
2, Iswar Ganguly Street, 1st floor, Kolkata-700026

Copy to,

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata-700107
- (4) The Charge Officer, Alipur Charge, 620, Diamond Harbour Road, Behala Industrial Complex, Kolkata-700034
- (5) Office Copy