

GOA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Goa Goods and Services Tax Act,
2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and
Services Tax Rules, 2017)

BEFORE THE BENCH OF

(1) Shri. Ashok V. Rane, Addl. Commissioner of State Tax

(2) Shri. S. K. Sinha, Addl. Commissioner of Central Tax

Advance Ruling No. GOA/GAAR/4 of 2018-19/2429

Name of the Applicant	M/s Goa Tourism Development Corporation Ltd.
Address	3 rd Floor, Paryatan Bhavan, Patto, Panaji - Goa
GSTIN	30AAACG7220K1Z0
Date of Application	05/07/2018
Under Section 97(2) of the CGST/GGST Act, 2017 under which question raised	Whether GST is applicable on One Time Concession Fees Charged by M/s Goa Tourism Development Corporation Ltd. in respect of their property namely Anjuna property given to M/s Myrayash Hotels Pvt. Ltd. for a long term lease of 60 years for development of infrastructure for financial business on Private Investment mode on DBFOT basis (Design Build, Finance, Operate and Transfer) providing exclusive right, license and authority to construct, operate and maintain the project.
Date of Hearing	24/09/2018
Persons Present for Hearing	Shri Kapil Paiginkar, Dy. General Manager Companies Affairs alongwith C. A. H. V. Kagrani and Shri Rajan Naik, Authorised Representative



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PROCEEDING

(Under Section 98 of the Goa Goods and Services Tax, Act 2017)

The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017 (hereinafter referred to as the SGST Act and CGST Act) by M/s Goa Tourism Development Corporation Ltd., 3rd Floor, Paryatan Bhavan, Patto, Panaji – Goa (hereinafter referred to as the applicant) seeking an Advance Ruling in respect of the following question: *“Whether GST is applicable on One Time Concession Fees Charged by the applicant in respect of their property at Anjuna, Goa which is given to M/s Myrayash Hotels Pvt. Ltd. for a long term lease of 60 years for development of infrastructure for financial business on Private Investment mode on DBFOT basis (Design Build, Finance, Operate and Transfer) providing exclusive right, license and authority to construct, operate and maintain the project.”*

The applicant is a Government Company and is registered under the provisions of GST Act, 2017 having GSTIN 30AAACG7220K1Z0. The applicant has executed Concession Agreement for Renovation/Development of their Anjuna property through Private Investment Mode, with Myrayash Hotels Pvt. Ltd, Mumbai on 09th December 2016, given the exclusive right, license and authority to construct, operate and maintain the project for a period of 30 years extendable by further period of 30 years totalling 60 years.

The applicant has collected amount of Rs. 25,20,00,000/- from M/s Myrayash Hotels Pvt. Ltd., Mumbai in the name of onetime upfront Concession Fees for a term of 60 years @ Rs. 42,00,000/- per annum for use of their Anjuna Property through Private Investment mode on DBFOT Basis (Design Build, Finance, Operate and Transfer).

During the hearing, it was submitted by the authorised representative of the applicant that the one-time upfront concession fee charged by the applicant, an undertaking of Government of Goa, for lease of 60 years granted to M/s Myrayash Hotels Pvt. Ltd, Mumbai is exempted from payment of GST under Sr. No. 41 of Notification No. 12/2017-CT (Rate) 28/06/2017 as amended by Notification no 32/217-CT (Rate) dated 13/10/2017. The Entry No. 41 reads as follows:



“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots for development of infrastructure for financial business, provided by the State

Government Industrial Development Corporations or Undertakings or by any other entity having 50 percent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area."

Further the applicant submitted that all the conditions for claiming exemption under this entry is satisfied and complied and hence eligible for exemption under entry 41.

The applicant submitted that the conditions for claiming exemption under this entry are as follows:

- a) The exemption is for upfront payment;
- b) The lease shall be for a period of 30 years or more;
- c) The lease shall be for industrial plots for development of infrastructure for financial business;
- d) The lease shall be granted by State Government Industrial Development Corporation or State Government undertaking by any other entity having 50 % or more ownership of Central Government, State Government, Union territory;

They submitted that in their case, all the four conditions are satisfied which will be evident from their following submissions:

- (i) As per the concession agreement dated 9/12/2016 and letter no. GTDC/Hotel Properties/2012-13/3687 dated 24/12/2016 both of Goa Tourism Development Corporation Ltd, the upfront concession fees payable is Rs. 2,80,00,000/- (Rupees Twenty-Eight Crore) as specified in Clause No. 4.1.3 of the agreement and above said letter.

Therefore, the first condition that the exemption is for upfront concession fees, is satisfied, in fact, the invoices also give the description as 'Up-Front Concession Fees with respect to Anjuna Property.

- (ii) The period of lease is 60 years as mentioned in Clause No. 3.1.1 of the agreement with Goa Tourism Development Corporation Ltd. Therefore, the period of lease is more than 30 years as required under Entry No. 41 of the notification.

- (iii) The word 'industry' has been defined in Black's Law Dictionary as follows:

Black's Law Dictionary



“Industry’ – Any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labour and capital and is a distinct branch of trade.”

Thus, any activity which is meant for livelihood and employs labour and capital is considered as ‘industry’. In this case, M/s. Myrayash Hotel Pvt. Ltd. will provide accommodation services to the customer and will earn profit out of the services supplied by them.

The applicant has given plot of land on lease to M/s. Myrayash Hotel Pvt. Ltd. Since the plot is used for industrial purpose, the transaction is the lease for industrial plot.

- (iv) The lease right has been assigned by M/s. GTDC which is a State Government undertaking. As per the notification, the lease can be granted either by Industrial Development Corporation or by the State Government undertaking. In their case, GTDC is a State Government undertaking. Therefore, the fourth condition is also satisfied.

It is seen that, the applicant has signed concession agreement for DBFOT basis (Design, Build, Finance, Operate and Transfer) and received up front concession fee of Rs. 25,20,00,000/- for a period of 30 years, extendable by further period of 30 years totaling 60 years.

In the instance case M/s Goa Tourism Development Corporation, undertaking having more than 50% ownership of the State Government has leased property to M/s. Myrayash Hotel Pvt. Ltd., for development of infrastructure for financial business on Private Investment mode on DBFOT basis (Design, Build, Finance, Operate and Transfer) providing exclusive right, license and authority to construct, operate and maintain the project for a period of 30 years extendable by further period of 30 years totalling 60 years for upfront concession fees of Rs. 25,20,00,000/-.

The upfront concession fee received against the lease made for more than 30 years is exempted from the payment of GST under the provisions of entry No. 41 of Notification No. 12/2017-



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Central Tax (Rate), date 28.06.2017 as amended by Notification No. 32/2017-Central Tax (Rate), dated 13.10.2017, only when all the conditions are met. From the provisions of entry No. 41 of said Notification following criterion may be derived for availing exemption from GST- (a) the service provider should be 'State Government Industrial Development Corporation or Undertakings or any other entity having 50 percent or more ownership of Central Government, State Government, union territory'. In the matter of instant case it is on record that the service provider is an undertaking of Goa Government. (b) The lease shall be for a period of 30 years or more; in the present matter the lease is made for 60 years. (c) The long term lease shall be in respect of industrial plots or plots for development of infrastructure for financial business, located **in any industrial or financial business area**. The said Notification or GST Act, 2017 does not define the 'industrial or financial business area', therefore, this bench is inclined to borrow the definition of 'industrial or financial business area' from any other statute. As per sub-section (g) of Section 2 of the **Goa Industrial Development Act, 1965** the 'Industrial Area' means- **"any area declared to be an industrial area by the State Government by Notification in the Official Gazette, which is to be developed and where industries are to be accommodated"**. Thus, for considering any area as industrial or financial business area it is necessary that the area must be declared as industrial or financial business area by the state government by Notification. An area cannot be treated as industrial or financial business area merely on the ground that the area is being used for the purpose of industry/finance. It may often see that banking or some other financial/commercial activities are being carried out in residential area but the area is not considered as industrial/financial area. The approval/declaration from state government is mandatory for treatment of any area as industrial or financial business area.



In the matter of case on hand we find that no such Notification declaring the area consisting of plot leased out by the applicant, as industrial/financial business area, is on record. Therefore, the area cannot be treated as industrial or financial business area. Therefore, the benefits of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended by Notification

No. 32/2017-Central Tax (Rate), dated 13.10.2017 is not available to the applicant.

Recently, the Hon'ble High Court Bombay has dealt with the identical issue in the matter of Writ Petition No. 12194 of 2017 in the case of Builders Association of Navi Mumbai and Neelsidhi Realities Vs. Union of India and others. The issue before their lordship was to decide whether GST can be levied and collected on the long term lease granted by City Industrial and Development Corporation of Maharashtra Ltd. (CIDCO) for 60 years. While dealing with the issue the Hon'ble High Court has observed that lease premium amount is a consideration against supply of service and is subject to Goods and Services Tax.

Reliance may also be place on the decision of Hon'ble High Court Allahabad in the case of Greater Noida Industrial Development Authority Vs. Commissioner of Customs, Central Excise [2015 (40) STR 95, wherein the Hon'ble High Court while considering the demand, though not arising out of GST, but under the Finance Act, 1994 in relation to the services of renting of immovable property of Greater Noida, has arrived at the conclusion that the same was a taxable service and on the consideration received, the service tax could have been levied and demanded.

In their submission dated 24.09.2018 the applicant has submitted that as per section 142(10) of the GST Act, the provisions of GST shall apply only in cases where the supply of service has been after the appointed date i.e. introduction of levy of GST. Thus, in case services are provided prior to appointed date, the provisions of GST shall not apply. On this count we would like to draw the attention to the provisions of Section 142(10) of GST Act, 2017 which reads as - "Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act".

From the statute of the provisions of section 142(10) ibid it can be easily secreted that if the contract is made in Service Tax regime and the service is provided in the GST regime or the service is in the nature of continuous supply of service, the same shall be liable to tax under the GST Act. In the instant matter,

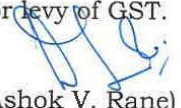


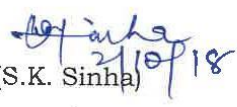
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though the consideration against service is received prior to the appointed day and the contract was made in service tax regime, it cannot be said that the supply of service is completed. It can easily be understood that the consideration is received against the services to be provided for next 60 years i.e. the supply of service is in the nature of continuous supply of service. Therefore, the same is liable to be taxed under GST Act.

ADVANCE RULING UNDER SECTION 98 OF THE CGST/GGST ACT, 2017

The service provided by the applicant in the instant matter, is not falling under the criterion mentioned at Sr. No. 41 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended by the Notification No. 32/2017-Central Tax (Rate), dated 13.10.2017. Therefore, the applicant is not entitled for the benefits of the said notification and the activity of long term lease is liable for levy of GST.


(Ashok V. Rane)
Member


(S.K. Sinha)
Member

Dated:
Place: Panaji – Goa

To,
M/s Goa Tourism Development Corporation Ltd.,
3rd Floor, Paryatan Bhavan, Patto, Panaji – Goa.


GOA TOURISM DEVELOPMENT CORPORATION LTD.
PARYATAN BHAVAN
3RD FLOOR
PATTO (WARD) - GOA.

Copy to

1. The Commercial Tax Officer, Panaji Ward, Panaji –Goa;
2. The Dy. Commissioner of State Tax, Panaji Ward, Panaji;
3. The Commissioner of State GST, Panaji – Goa;
4. The Commissioner of Central GST, Panaji – Goa;
5. Office file;
6. Guard file

