

Preliminary e-hearing in the matter was held on 12.10.2021 where the applicant was asked for a written submission as to how the recipient could seek advance ruling. Vide an additional submission dated 01.12.2021, it was further contended by the applicant that the words “in relation to the supply of goods or services or both” in Section 95(a) of the CGST Act, 2017, can be interpreted to include both inward and outward supply. Further on a combined reading of Sections 95(a) and 97(2) of the CGST Act, 2017, it can be easily inferred that even the recipient of goods or services or both, can as an applicant seek advance ruling because the recipient is ultimately paying the taxes and the supplier merely collects the tax from the recipient and pays it to the Government, acting as the agent of the recipient.

The aforesaid reasoning was supported by the fact that even the **West Bengal Advance Ruling Authority IN RE: PRIMARC PROJECTS PVT. LTD. [2020 (42) G.S.T.L. 536 (A.A.R. – GST -W.B.)]** has provided Advance Ruling exactly on rate of tax applicable to works contractor.

Additionally, the applicant presented the argument that the Notification entry is qua the supply and not qua the person and hence once a project qualifies as an Affordable Housing Project, the benefit of concessional rate of tax would be available in respect of “works contract services” pertaining to low cost houses, irrespective of it being supplied by the Developer or the Contractor.

The Concerned Officer requested to decide the application as per provisions of law.

Legal Provisions:-

Section 95 of the CGST Act, 2017:

“In this Chapter, unless the context otherwise requires, -

“advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;”

Section 103 of the CGST Act, 2017:

“Applicability of Advance Ruling-

The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only-

- On the applicant who had sought it in respect of any matter referred to in subsection(2) of section 97 for advance ruling:
- On the concerned officer or the jurisdictional officer in respect of the applicant.”

The provisions of both the CGST Act, 2017 and MGST Act, 2017 are same except for certain provisions. Therefore, unless otherwise mentioned, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act.

Judgement:

Taking into consideration the above-mentioned facts of the case and the corresponding provisions of CGST Act,2017 and Maharashtra GST Act, the Hon'ble Authority held as follows:-

On a plain reading of Section 95(a) of the CGST Act, 2017, it can be easily inferred that it is only the supplier who can ask a question by filing an application for advance ruling. Whereas in the given transactions, it was the recipient and not the supplier, who as an applicant was seeking an advance ruling for both the questions raised above.

Also, taking into note the provisions of Section 103(1) of CGST Act,2017, it was held that the ruling pronounced by the AAR is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. Hence if any ruling is given on the above mentioned questions, it would be binding only on the recipient being the applicant, his concerned officer or the jurisdictional officer and not on the supplier, thus defeating the very purpose of the provisions of law.

On the day of final e-hearing held on 05.04.2022, order was passed which held that based on the given provisions of law it is concluded that no ruling can be given on above two questions, since the nature of transaction in both the questions raised above is such that the applicant is the recipient and not the supplier. Hence the application is dismissed.

Author's View:

The very foundation of Chapter XVII dealing with the provisions of Advance Ruling is that an application under the given section can be made only by the supplier of goods or services or both. Also, the ruling is binding only on the applicant and the concerned officer or jurisdictional officer in respect of the applicant.

In the given case, the applicant is recipient of the services and not supplier of such services. Accordingly, the stand taken by the Authority that the application is not liable for admission and therefore rejected without going into the merits of the case is maintainable as per law.

Notes to News & Updates

Please note that Facts of the Case and Queries are as summarized by us based on our reading of case law and our interpretation based on law prevailing as on the judgement date. No assurance is being given on the correctness of the facts, and our opinion / analysis is given solely based on facts provided herein above.

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We hope you will find the above in order and we shall be too glad to provide any other assistance as may be required. In case you are looking specific expert help in relation to matters connected to this update or otherwise, please feel free to write to us on vaibhavjain@mehragoelco.com ; mg@mehragoelco.com

