

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Smt. P. Vinitha Sekhar, Addl. Commissioner of Central Tax, (Member)

(2) Shri. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	271900000446 ARK
Legal Name of Applicant	ANJU KUSHAL JAIN
Registered Address/Address provided while obtaining user id	Flat No. 202, Sumatinath Apartment, Plot No. 142 Ramdaspath, Nagpur- 440010
Details of application	GST-ARA, Application No. 48 Dated 03.10.2019
Concerned officer	City Division, Commissionerate, Nagpur I.
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Leasing Business
B Description (in brief)	The application is being filed by 'Anju Kushal Jain' (hereinafter referred as 'Applicant'); desirous of obtaining GST registration for Providing Service categorised as Renting of Immovable Property.
Issue/s on which advance ruling required	(vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by ANJU KUSHAL JAIN, the applicant, seeking an advance ruling in respect of the following question.

1. **“Whether GST is leviable on the sale of shop which is 44yrs old and between lessor to the lessee / or any other person?”**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a

reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by the Applicant is as under:-

- 2.1 'Anju Kushal Jain', the Applicant is desirous of obtaining GST registration for providing Service categorized as Renting of Immovable Property. Applicant was interested in purchasing certain shops in Rajkamal Complex, within the limit of Nagpur Municipal Corporation. The said shops were given on lease to M/s. Shah Nanji Nagasi & Co. on 2nd March 1974 for 5 years and was renewed orally from time to time. Then M/s. Shah Nanji Nagasi & Co. put M/s. Vidharbha Vehicles Pvt. Ltd. (herein after referred to as Tenant or Lessee) in October 1984 in occupation of the said premises. Presently the property is occupied by M/s. Vidharbha Vehicles Pvt. Ltd. and they have been paying rent till date regularly. Applicant is one of the Directors in M/s. Vidharbha Vehicles Pvt. Ltd. and now, the applicant has purchased the said property in her individual name along with two of her family members by entering into an Agreement to Sell on 5th September 2019 with Mr. Satish Gopalrao Ghatate having Sr. No. 267/6176 (hereinafter referred as Vendor' or 'Landlord' or 'Lessor') along with tenant liability of M/s Vidharbha Vehicles Pvt. Ltd. Even in Agreement to Sell it is mentioned the said property is 44 yrs old.
- 2.2 Apart from rent of said shops, tenant has also incurred and paid the expenses of electricity since the inception of the rent agreement and the bill was in name of tenant.
- 2.3 The building "Rajkamal Complex" as per Nagpur Municipal Corporation records was sanctioned on 19th March 1971 and Building Permit along with Sanction Drawing has been attached with this application. Also, on 01/04/1986 the Municipal Tax Department of Nagpur Municipal Corporation incorporated the name of Vidharbha Vehicles Pvt. Ltd' as registered tenant / Occupant of the said Premise and since then the Tax has been paid by the Tenant through Landlord Shri Satish Ghatate, the records were asked from the Municipal Department via RTI and has been enclosed with this application.
- 2.4 Applicant submits that, as per Clause 5(b) of Schedule II of CGST Act read with Notification 11/2017 - Central Tax Rate dated 28th June 2017, construction of a complex or building, intended for a sale to a buyer, wholly or partly, shall not be treated as supply of service and no tax shall be charged if the entire consideration is received after the issuance of completion certificate, by competent authority, or after its first occupation, whichever is earlier. Given this, the transaction entered in between the parties is not liable to GST.



- 2.5 In view of the above, the subject question has been raised by the applicant.
- 2.6 The applicant has cited the definition of “Supply” as defined under Section 7, Schedule II and III of the CGST Act and have submitted that a combined reading of the entries in Schedule II and Schedule III may lead to a conclusion that in following two scenarios, the sale of building will not be covered under the definition of supply, and will be excluded from the purview of GST
- a) where entire consideration is received after completion certificate.
- b) after first occupancy whichever is earlier.
- 2.21 The applicant relying on the decision of the Hon. Delhi High Court in the case of *K. Industries v. Mohan Investments and Properties Private Limited (Suit No. 507 of 1984)*, have submitted that sale of the shops by the landlord/vendor to the applicant is out of the purview of GST.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

No written submissions have been made by the jurisdictional officer.

04. HEARING

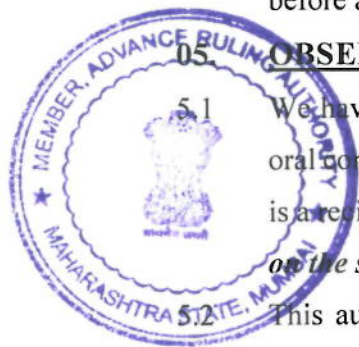
Preliminary hearing in the matter was held on 10.12.2019. Sh. Saurabh Lodha, C.A. appeared, and requested for admission of the application. Jurisdictional Officer Sh. Mukul Patil, Jt. Commissioner of CGST, Commissionerate, Nagpur –I, also appeared. He had orally submitted that the activity carried out by applicant and stated that, the question posed before authority is not covered under Section 97(2) of CGST ACT 2017.

05. OBSERVATIONS AND FINDINGS:

We have gone through the facts of the case, written submission of the applicant and the oral contention of the jurisdictional authority. In the subject case we find that the applicant is a recipient of immovable property and has raised the question ‘*whether GST is leviable on the sale of shop which is 44 years old and between lessor to lessee/ to any person*’.

This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections are 95 to 98, 102, 103, 104 and 105. As per Section 95, the term ‘*advance ruling*’ means a decision provided by this authority to an applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

- 5.3 Therefore, before we decide the question raised by the applicant in this application, it is essential that we first determine whether or not the activities undertaken by the applicant pertains to the supply of goods or services or both, being undertaken or proposed to be undertaken by the applicant.



- 5.4 From a perusal of activity undertaken by applicant as submitted, the applicant has purchased four shops i.e. Shop No. A3, A4, A5 and A6 at House No. 1, City Survey No. 110, Panchsheel Square, Dhantoli, Nagpur and wants to know the liability under GST Act on this transaction.
- 5.5 Section 95 allows this authority to decide the matter in respect of supply of goods or services or both, undertaken or proposed to be undertaken by the applicant. We find that the applicant has not undertaken the supply in the subject case. In fact, the applicant is a recipient of property in subject transaction. Thus, the condition under Section 95 is not satisfied by the applicant and hence, the issue is not within purview of this authority. The impugned transactions in not in relation to the supply of goods or services or both undertaken by the applicant and therefore, the subject application cannot be admitted. Hence we do not discuss the merits of the case.
- 5.6 In view of the above we find that the present application seeking ruling on question stated hereinabove is not maintainable and liable for rejection.
06. In view of the extensive deliberations as held hereinabove, we pass an order as follows

ORDER

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

NO.GST-ARA- 48/2019-20/B-

05

Mumbai, dt.

15/01/2020

For reasons as discussed in the body of the order, the subject application for advance ruling made by the applicant is rejected under the provisions of sub-section 2 of Section 98 of the CGST Act, 2017.



— sd —
P. VINITHA SEKHAR
(MEMBER)

— sd —
A. A. CHAHURE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

A. A. Chahure
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.