

### **Advance ruling cannot be sought by recipient of works contract services**

The AAR, Maharashtra in *M/s Romell Real Estate Pvt. Ltd. [Advance Ruling No. GST- ARA- 69/2020-21/B-51 dated April 21, 2022]* has held that recipient of works contract services cannot seek advance ruling under Section 95(a) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”), since the advance ruling is not binding on the supplier, and the supplier may not follow the ruling and In such a scenario, the advance ruling loses its relevance and applicability.

#### **Facts:**

M/s Romell Real Estate Private Limited (“the Applicant”) is engaged in certain Residential Real Estate Projects (RREP). The Applicant being a recipient of work contract services supplied by the Developer or the Contractor, had sought an advance ruling on:

- Whether *Entry No. 3(v) (da) of Notification 11/2017-Central Tax (Rate) dated June 28, 2017* (“the Service Rate Notification”), applies to the works contract service received from the contractors?
- Whether the benefit of concessional rate would be available to construction of common amenities such as club house, swimming pool and amenities of like nature?

#### **Issue:**

- Whether advance ruling can be sought by the Applicant being the recipient of the works contract services?

#### **Held:**

The AAR, Maharashtra in *Advance Ruling No. GST- ARA- 69/2020-21/B-51 dated April 21, 2022* held as under:

- Noted that, the questions asked are such that in these transactions, the Applicant is the recipient and not the supplier of goods or services or both.
- Observed that, under Section 95(a) of the CGST Act, only a supplier can file an application for advance ruling.
- Further observed that under Section 100(1) of CGST Act, the ruling pronounced is binding only on the Applicant and on the concerned officer or the jurisdictional officer in respect of the Applicant.
- Analysed Section 103(1) of the CGST Act and Noted that, if an application is filed by the recipient of goods or services or both on the taxability of his inward supply of goods or services and ruling is pronounced accordingly, such ruling shall be binding only on him and on the concerned officer or the jurisdictional officer of him. In no way, the ruling shall be binding on the supplier of such goods or services.
- Stated that, since the advance ruling is not binding on the supplier, and the supplier may not follow the ruling. In such a scenario, the ruling loses its relevance and applicability. Any provisions of the Law, therefore, should not be interpreted in a way which defeats the very purpose of the objective and purpose of the law provision.
- Held that the Applicant cannot seek an advance ruling and such application filed by the Applicant is not maintainable under Section 95(a) of the CGST Act.

**Relevant Provision:**

**Section 95(a) of the CGST Act:**

*“95. In this Chapter, unless the context otherwise requires, —*

*(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority or the National 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, or of section 101C shall be inserted; in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.”*

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