

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 32 / 2018**

**Dated : 3<sup>rd</sup> December 2018**

Present:

1. Sri. Harish Dharnia,  
Additional Commissioner of Central Tax, . . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.  
Joint Commissioner of Commercial Taxes . . . . Member (State Tax)

|    |   |   |
|----|---|---|
| 1. | Name and address of the applicant                                     | M/s Bindu Ventures,<br>No.2, Bindu Galaxy,<br>1 <sup>st</sup> Main, West of Chord Road,<br>Rajajinagar Industrial Estate,<br>Bengaluru - 560044 |
| 2. | GSTIN or User ID  | 29AAPFB6663D1Z5   |
| 3. | Date of filing of Form GST ARA-01                                     | 16.03.2018  |
| 4. | Represented by  | Sri Jayesh Zaverchand Shah, Partner   |
| 5. | Jurisdictional Authority - Centre                                     | Central Tax Range, AWD-2, West Division -2, Bengaluru   |
| 6. | Jurisdictional Authority - State                                      | —NA--   |
| 7. | Whether the payment of fees discharged and if yes, the amount and CIN | Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN RBIS18032900003002 dated 01.03.2018                       |

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Bindu Ventures, (called as the 'Applicant' hereinafter), No.2, Bindu Galaxy, 1<sup>st</sup> Main, West of Chord Road, Rajajinagar Industrial Estate, Bengaluru - 560044, having GSTIN number 29AAPFB6663D1Z5, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.



2. The Applicant is a Partnership firm and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

- (a) Which date should be considered as the date of completion of the property – the date of receipt of necessary approvals from BBMP / Karnataka Pollution Control Board / Karnataka Electricity Board or the date of receipt of completion certificate from a registered Chartered Engineer?
- (b) Whether the applicant is liable to pay GST on any amount received as consideration towards sale of completed offices, after the date of completion, where part of the consideration was received prior to the date of completion as determined in question (a) above?
- (c) Whether the applicant is liable to pay GST on the consideration received as consideration towards the sale of completed offices, where the entire consideration is received after the date of completion of construction as determined in question number (a) above?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that he is engaged in the business of real estate in the form of a partnership firm. As a part of his business, he undertakes construction of commercial complexes which are subsequently sold or given on rent.
- b. The applicant states that they had undertaken one such project by the name "Bindu Galaxy" which is a commercial complex situated at No.2, 1<sup>st</sup> Main, Industrial Town, West of Chord Road, Rajajinagar, Bengaluru 560044 and they had started the construction on this project in the month of February 2016 on land owned by them. The construction of the commercial complex "Bindu Galaxy" was completed in all aspects by the end of the month of November 2017.
- c. The applicant states that he entered into agreement to sell with the prospective buyers and receive advances towards booking of commercial offices. He also states that they have discharged VAT and service tax on advances received on or before 30.06.2017 and GST on advances received on or after 01.07.2017. He states that they are paying GST at the rate of 18% with 1/3<sup>rd</sup> of the amount being appropriated towards sale of land (which is not liable to GST).



- d. The applicant states that subsequently, on receipt of the entire consideration from the prospective buyers, a sale deed is executed between themselves and the buyer to hand over the physical possession of the property.
- e. The applicant states that he has received all the necessary approvals from various government departments which are as follows:
- i. Approval to commission the Electrical installations at 'Bindu Galaxy' complex from the Government of Karnataka vide letter dated 01.08.2017;
  - ii. Consent from Karnataka State Pollution Control Board dated 03.11.2017; and
  - iii. Approval from Bangalore Water Supply and Sewerage Board vide letter dated 01.12.2017.
- f. The applicant states that in Karnataka, the state law does not provide for issuance of any completion certificate. However, the law provides for issuance of occupancy certificate on completion of construction of immovable property. He states that he is unable to obtain this occupancy certificate from the BBMP. However, he states that he has obtained a completion certificate from a chartered engineer stating that the construction of the building was complete in all respects by 01.12.2017.
4. The applicant has filed a statement containing his interpretation of facts and law in respect of the aforesaid questions and the same is as under:
- 4.1 Schedule II of the Central Goods and Services Tax Act, 2017 / Karnataka Goods and Services Tax Act, 2017 in entry 5 states as under:

*" 5. Supply of services*

*The following shall be treated as supply of service, namely:--*

- (a) renting of immovable property;*
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of*



completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

*Explanation.—For the purposes of this clause—*

(1) *the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*

- (i) *an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*
- (ii) *a chartered engineer registered with the Institution of Engineers (India); or*
- (iii) *a licensed surveyor of the respective local body of the city or town or village or development or planning authority;"*

4.2 The applicant states that from the above reading of the law, the following inferences can be drawn:

- a. Construction of complex, building, civil structure which is intended for sale to a buyer is considered as supply of service
- b. However, when the entire consideration, towards sale of immovable property, is received after the issuance of completion certificate, the same shall not be regarded as supply of service and hence would not be liable to GST.

4.3 Therefore, the applicant states that, if part of the amount of consideration, towards the sale of immovable property, is received prior to issuance of completion certificate, then, the entire amount, including the amount of consideration received after the issuance of complete certificate, shall be liable to GST.

4.4 The completion certificate may be obtained from the Government or any other prescribed governmental authority. However, in case where there is no requirement to obtain such certificate from the local government, then the same may be obtained from

- a. An architect registered with the Council of Architecture constituted under the Architects Act, 1972; or



- b. A Chartered Engineer registered with the Institute of Engineers (India); or
- c. A licensed surveyor of the respective local body of the city or town or village or development or planning authority.

4.5 Therefore, the applicant contends that in his opinion, the date mentioned on the completion certificate received from the Chartered Engineer shall be taken as the date of completion of construction for all purposes of the GST Law.

5. The applicant has filed an additional submission in which he has provided the extract of the Karnataka State local Law (Bengaluru Mahanagara Palike Building Bye-Laws 2003) for the reference and as per him, the same reads as under

*“ 5.6 Occupancy Certificate*

*5.6.1 (a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Schedule VIII certified by a Registered Architect / Engineer/ Supervisor and shall apply for permission to occupy the building. . .”*

The 'certificate in Schedule VIII' as mentioned above is a certificate from registered architect / engineer / supervisor stating that the building is complete in all respects. The applicant encloses a copy of the certificate obtained from a Chartered Engineer certifying that the building is completed in all respects including all essential amenities such as BESCO Power Connection, BWSSB Water Supply, Sanitation Connection” by 1<sup>st</sup> of December 2017 and is ready for occupation”.

Thus, the Bangalore Mahanagara Palike Building Byelaws, 2003 provides a clear distinction between a completion certificate and an occupancy certificate and that it cannot be deemed to be a completion certificate as contemplated under the GST Law.

5.1 The applicant states that the GST Law also defines the word “competent authority: as an explanation to clause 5 in Schedule II and the same is as under:



*“Explanation.—For the purposes of this clause—*

*(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*

- i. an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*
- ii. a chartered engineer registered with the Institution of Engineers (India); or*
- iii. a licensed surveyor of the respective local body of the city or town or village or development or planning authority;”*

As discussed above, the Bangalore Mahanagara Palike Building Bye Laws 2003 authorises a Registered Architect / Engineer / Supervisor to issue a completion certificate and therefore, it may be construed that under GST law a registered Architect / Engineer / Supervisor is the Authority authorised to issue completion certificate. Therefore, according to the applicant, the completion certificate issued to him by the Chartered Engineer could be considered as the completion certificate as contemplated under the GST Law.

5.2 The applicant also states that the law provides for exception from applicability of GST in case the whole consideration is received after the first occupancy. Hence, it would be of utmost importance to understand the meaning of the phrase “first occupation” used in the provision. While the GST Law at present does not provide the meaning of this phrase, support may be drawn from its ordinary meaning:

Meaning of the word “first”, as per Cambridge English Dictionary, Merriam-Webster Dictionary & Oxford English Dictionary respectively is as under:

- Coming before all others in time or order
- (a person or thing) coming before all others in order, time, amount, quality, or importance.
- Preceding all others in time, order, or importance.

Meaning of the word “occupation” as per Cambridge English Dictionary, Merriam-Webster Dictionary & Oxford English Dictionary respectively is as under:



- The action of living in or using a building or other place
- An occasion when someone moves into and starts using a building
- The act or process of taking possession of a place or area.

The applicant states, read together, the phrase “first occupation” may be understood to mean the act of occupying or using the complex, building or property for the first time by a person.

5.3 The applicant further states that, in context of the prevailing GST law, it may be understood that if any person has occupied a unit in the complex, then the construction activity of the complex is deemed to have been completed and that the complex is ready for occupation. Consequently, any amount received towards sale of units of the complex after its first occupation, would be deemed to have been received for the sale of immovable property which is not liable for GST. Therefore, it can be concluded that “first occupation” as contemplated in the GST law is with reference to occupation of any unit of a building/complex only.

5.4 The applicant claims that occupation in “Bindu Galaxy” had started as early as September 2017 and furnishes copies of affidavits from respective owners, stating the month of occupation, along with their respective sale deeds for purchase of respective property. They also furnishes a copy of Electricity Bill of the complex dated 01.12.2017, for the period 04.08.2017 to 30.11.2017, wherein the reading of the sub-meters installed for each is worked out, in support of their claim towards evidence of occupation of the building during the aforesaid period. The applicant requests to accede to their submissions.

#### **PERSONAL HEARING: / PROCEEDINGS HELD ON 03.04.2018.**

6. Sri. Jayesh Z Shah, Partner, M/s Bindu Ventures appeared on behalf of the applicant before the Authority for Advance Ruling on 21.03.2018 and submitted that the Applicant is into the business of construction of commercial complexes; they started construction of “Bindu Galaxy” in February 2016 & all necessary approvals are received in November 2017; no occupancy certificate is obtained but the office space is occupied; completion certificate from Chartered Engineer is obtained; Service Tax & GST has been paid on the advances received since February 2016 till November 2017. Further they furnished written additional submissions during the said hearing.



## 7. FINDINGS & DISCUSSION:

7.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the additional submissions made by Sri. Jayesh Z Shah, Partner, M/s Bindu Ventures, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

7.2 The Applicant seeks advance ruling on three questions, mentioned at para 2 supra. We proceed to consider and discuss the issues / questions.

7.3 The first question is about relevant date of completion of construction of the property. In this regard we draw the attention to entry No.5 of Schedule II of CGST Act'2017, as mentioned at para 4.1 supra, which stipulates that any construction of a complex or building or a civil structure or a part thereof would be treated as a supply of service and the constructions where the entire consideration has been received after the issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, are exempt.

7.4 The stress here is on the words "entire consideration", "after the issuance of completion certificate by the competent authority, where required" and "first occupation"

The competent authority is defined in clause (29) of section 2 of the Central Goods and Service Tax Act, 2017 and the same reads as under:

*(29) "competent authority" means such authority as may be notified by the Government;*

Clause (80) of section 2 of the Central Goods and Services Tax Act provides for the meaning of the words "notified" and the same reads as under:

*(80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;*

In the instant case, therefore, the crucial aspect which decides the tax liability is the date of **completion certificate** or **first occupation**, whichever is earlier, issued by a competent authority.



7.5 The applicant filed the instant application in relation to the construction of "Bindu Galaxy", a commercial complex, within the jurisdiction of the **Bruhat Bengaluru Mahanagara Palike** which is the corporation of Bengaluru City, Karnataka.

The extract of the Karnataka State local Law (Bengaluru Mahanagara Palike Building Bye-Laws 2003) is as under:

*" 5.6 Occupancy Certificate*

*5.6.1 (a) Every person shall before the expiry of five years from the date of issue of licence shall complete the construction or reconstruction of a building for which the licence was obtained and within one month after the completion of the erection of a building shall send intimation to the Commissioner in writing of such completion accompanied by a certificate in Schedule VIII certified by a Registered Architect / Engineer / Supervisor and shall apply for permission to occupy the building. The Authority shall decide after due physical inspection of the building (including whether the owner had obtained commencement certificate as per section 300 of the Karnataka Municipal Corporations Act, 1976 and compliance regarding production of all required documents including clearance from the Fire Service Department in the case of high rise buildings at the time of submitting application) and intimate the applicant within thirty days of receipt of the intimation whether the application for occupancy certificate is accepted or rejected. In case, the application is accepted, the occupancy certificate shall be issued in the form given in Schedule IX provided the building is in accordance with the sanctioned plan.*

*(b) Physical inspection means the Authority shall find out whether the building has been constructed in all respects as per the sanctioned plan and requirement of building byelaws, and includes inspections by the Fire Service Department wherever necessary.*

7.6 The complete extract of Bye-law 5.6 brings out that once the builder feels that the construction of the building is over, the builder shall first obtain a certificate from a registered architect/engineer to that effect and shall apply to the BBMP for permission to occupy the building. The Bye-law does not stop here. It further provides that the authority shall conduct physical inspection of the building for various compliances and thereafter



only the certificate to occupy the building shall be issued. This brings out the following essential elements :

- a. The mere submission of a certificate from a registered architect / engineer does not certify the building to be complete. It is incumbent upon the competent authority to inspect the building and their certification alone can assign the building the character of a structure complete in all respects. The law provides the submission of the certificate from the registered architect / engineer as a supportive document in the nature of a pre-inspection by a qualified entity. The final authority, however, rests with the BBMP. Therefore the certificate is only of the nature of a supportive document and the law does not recognize it as the document which is enough as the competent authority is mandated to necessarily inspect and then certify whether the building is fit for occupation.
- b. Clause (b) of Bye-law 5.6 provides a further insight into why the Bye-law 5.6 mandates an inspection and it also brings out the character of the certificate that is finally issued. Clause (b) provides that during inspection of the building, the authority will examine in detail the compliance of all the building bye-laws and the sanctioned plan. The sanctioned plan and building bye-laws are guidelines which take into account the habitat fitness of the buildings. In other words these building bye-laws, once complied with in totality ensure that the building is complete in all respects and is ready to be occupied. This brings us to a point where we see that the terms 'Occupancy Certificate' and 'Completion Certificate' become congruous to each other and the terms 'Occupancy' and 'Completion' only remain a matter of pedagogical difference. An Occupancy Certificate, thus issued, means that the building has complied with all the required bye-laws and is complete in all respects in so far as its construction is concerned and can be occupied. So a certificate, by whatever name called, certifying that the building fit to be occupied is essentially declaring that the building construction has reached a stage where all bye laws and features of sanctioned plan have been accomplished or completion has taken place. Therefore, we are of the opinion that an occupancy certificate is in the nature of completion certificate because unless the construction is complete it can not be occupied.
- c. The contention of the applicant, in para 8, Annexure 2 of the application that the law does not provide issuance of any completion certificate is thus ill founded and not correct. Therefore the Authority



is of the opinion that the Occupancy Certificate is akin to Completion Certificate and is a must.

7.7 The Applicant has submitted affidavits from two buyers to the effect that they had occupied the building in September 2017 itself and the Occupancy Certificate is yet to be obtained. In this regard we find that bye-law 5.7 is relevant. The said bye-law is reproduced below:

**5.7 Occupancy or letting of the new buildings** - No person shall occupy or allow any other person to occupy any new building or part of a new building for any purpose whatsoever until occupancy certificate to such buildings or part thereof has been granted by an officer authorised to give such certificate if in his opinion in every respect the building is completed according to the sanctioned plans and fit for the use for which it is erected. The Authority may in exceptional cases (after recording reasons) allow partial occupancy for different floors of a building .

The bye-law clearly provides that the building or any part of the building, can't be occupied unless occupancy certificate has been granted. In other words, the building or part thereof can be occupied only after its completion and the necessary Occupancy Certificate is obtained from BBMP, the competent authority. Therefore, the fact that the building is occupied ( apparently in violation of law ) does not mean its complete.

7.8 It is thus clear that the occupancy certificate, which is a legal requirement, would act like a completion certificate and hence the date of such occupancy certificate would be deemed to be the date of completion. Therefore the chartered engineer's certificate can't be a substitute for **Completion Certificate / Occupation Certificate**, required by the CGST Act'2017. Hence the Chartered Engineer's certificate has no relevance to the question.

In view of the above, the date of Occupancy Certificate issued by the Bruhat Bengaluru Mahanagara Palike, competent authority in the instant case, shall be considered as the date of completion of the property and if the entire amount of consideration has been received after such date of completion, then that would not be treated as a taxable service. If any part of the consideration is received before such date, then the transaction would be treated as a supply of service as per clause 5 of schedule II to the GST Act and attracts the levy of GST.



7.9 The next issue before us to decide is what constitutes "first occupation". The word "first occupation" is not defined anywhere in the Act. The Bengaluru Mahanagara Palike Building Bye-Laws 2003, under clause 5.7, stipulates that nobody can occupy the building or portion of the building until the Occupancy Certificate is obtained from the competent authority. Therefore the question / situation of occupying the building / part of the building before obtaining the occupancy certificate does not arise and hence the date of first occupation can only be after the date of occupancy certificate. Thus the relevant date, in the instant case, would be the date of occupancy certificate or the first occupancy, which can only be after the date of occupancy certificate, whichever is earlier.

8 Entry No.5 of Schedule II of CGST Act'2017, specifies that the "Completion certificate" (Occupancy Certificate) is mandatory. Further the word "**wherever required**", clearly stipulates that the said certificate is essentially required to be obtained, if the competent authority issues such certificate in the name of "Completion Certificate" or "Occupancy Certificate". Explanation to the said entry clarifies that in case of non requirement of the said certificate by the competent authority then any of the following certificates need to be considered.

- i. *an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*
- ii. *a chartered engineer registered with the Institution of Engineers (India); or*
- iii. *a licensed surveyor of the respective local body of the city or town or village or development or planning authority;"*

In the instant case the competent authority i.e.B.B.M.P., Bengaluru issues the completion certificate in the name of "Occupancy Certificate" and hence the date of occupancy certificate need to be considered.

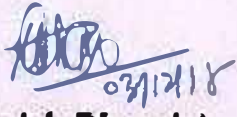
In view of the above, the date of **first occupation** is irrelevant to the instant case & hence can't be considered at all as the completion certificate ("Occupancy Certificate"), is required to be obtained mandatorily by the applicant from the competent authority i.e BBMP, Bengaluru, Karnataka.



9. In view of the foregoing, we rule as follows

**R U L I N G**

1. The date of Occupancy Certificate issued by the competent authority, i.e. Bruhat Bengaluru Mahanagara Palike should be treated as the date of completion of the construction.
2. If any part of the consideration is received before such date of completion, then the transaction would be considered as the supply of services in terms of entry 5 of Schedule II to the GST Acts, and liable for GST.
3. If the entire consideration is received after the date of completion, then the transaction would not be liable to GST.



**(Harish Dharnia)**  
**Member**



**(Dr. Ravi Prasad M.P.)**  
**Member**

Place : Bengaluru,

Date : 03.12.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone,  
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Mangalore Commissionerate, Mangalore

The Asst. Commissioner, LVO-260, Mangalore

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