



The Applicant being a non-resident Indian, holding an OCI card and residing at California, United States of America (USA), owns an immovable property at Bangalore, India and rented the same to the tenants (1) Whether the Applicant is liable to be registered in Karnataka under KGST/CGST Act 2017? HELD the GPA holder is the supplier of service and is liable to be registered in Karnataka under KGST/CGST Act 2017 (2) Whether applicant is required to pay tax on renting of commercial building ? HELD is required to pay tax on supply of Renting of Immovable Property service of the commercial building.

Advance Ruling No. KAR ADRG 17/2023, Dated 13th April, 2023

THE AUTHORITY FOR ADVANCE RULINGS

IN KARNATAKA

GOODS AND SERVICES TAX

VANIJYA THERIGE KARYALAYA, KALIDASA ROAD

GANDHINAGAR, BENGALURU - 560 009

Present:

1. Dr. M.P.Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. Kiran Reddy T

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. NAGABHUSHANA NARAYANA, (through Prabhavathi, GPA Holder) # 18, Shree Hari Nilaya, 1st Cross, Amarajyothi Nagar, Bengaluru - 560 040.
2.	GSTIN or User ID	292300000599ARE
3.	Date of filing of Form GST ARA-01	27-01-2023
4.	Represented by	Sri. Rajesh Kumar T R, C A & Authorised Representative
5.	Jurisdictional Authority -Centre	—Not Applicable—
6.	Jurisdictional Authority -State	—Not Applicable—.
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 through debit from Electronic Cash Ledger vide reference No. DC2901230359533 dated 21.01.2023.

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND

UNDER SECTION 98(4) OF THE KGST ACT, 2017

Sri. Nagabhushana Narayana through Smt G Prabhavathi, GPA holder (herein after referred to as 'Applicant'), # 18, Shree Hari Nilaya, 1st Cross, Amarajyothi Nagar, Bengaluru - 560 040, an un-registered person, having User ID 292300000599ARE, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee

of Rs.5,000/- each under the CGST Act, KGST Act.

2. The Applicant being a non-resident Indian, holding an OCI card and residing at California, United States of America (USA), owns an immovable property at Bangalore, India and rented the same to the tenants.

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:^^

a. Whether the Applicant is liable to be registered in Karnataka under KGST/CGST Act 2017?

b. Whether applicant is required to pay tax on renting of commercial building ?~

4. Admissibility of the Application :

The applicant claimed that the questions on which advance rulings have been sought are with regard to "Determination of the liability to pay tax on any goods or services or both" and "Whether applicant is required to be registered, which are covered under Sections 97(2)(e) and (f) respectively of the CGST Act 2017 and hence the instant application is admissible.

5. BRIEF FACTS OF THE CASE:

The applicant furnishes the following facts relevant to the issue that he is a non-resident Indian, residing at California, USA; owns an immovable property in Bangalore, India and rented the said commercial property to the tenants and is in receipt of rental income.

6. Applicant's Interpretation of Law:

The applicant furnished their interpretation of law, which is as under:

6.1 The Applicant is a non-resident Indian, holding an OCI card, residing at California, USA and thus is ordinarily resident outside India and believes that he is not liable to be registered in India and also not liable for payment of any GST in India under the CGST Act 2017.

6.2 The applicant, quoting Section 22 which deals with persons liable for registration, Section 24 which deals with compulsory registration in certain cases, Section 2(71) which defines the "location of the supplier of service", Section 2(85) which defines the "place of business", Section 2(50) which defines fixed establishment of the CGST Act 2017 submits that he does not have any of the places that are included under "place of business", in India; he doesn't have any fixed establishment in India and thus clause (d) is the relevant one to the location of supplier of services is i.e. "usual place of residence" and therefore the location of supplier of service is outside India.

6.3 Further, the concept of "place of supply", defined under Section 12 and 13 of the IGST Act 2017 is to determine the nature of supply and thus is different from the place from where the supply is affected. (Otherwise of which there would not have been the concept of inter-state supply).

6.4 The applicant contends that the services can be construed as import of services as defined under Section 2(11) of the IGST Act 2017, which reads as under:

(11) "Import of services" means the supply of any services, where^

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of services is in India~

In the facts of the applicant, the conditions of import of services are fulfilled and thus the services would be considered as inter-state supply in terms of Section 7(4) of the IGST Act 2017, in which case, as per Section 24(i) of the CGST Act 2017, the person making inter-state supplies are required to be registered.

6.5 The applicant, quoting the Notification No. 10/2017-IGST dated 28.06.2017, contends that the liability to pay tax in case of import of services is stated to be the receiver of service in terms of Sl.No. 1 of the said Notification. Accordingly, the applicant understands that the liability to pay tax on the service supplied by him, if any, is on the service receiver and thus he is not liable to pay tax on the rental income, received from commercial property.

6.6 Further, though Section 24 mandates registration, Notification No.5/2017-Central Tax (Rate) dated 19.06.2017 exempts the applicant from registration since he is only engaged in making supply of services. The total tax is liable to be paid on reverse charge basis by the recipient of the service.

6.7 The applicant, in view of the foregoing, concludingly contends that he is located outside India and the place of supply is in India, where the tax, if any, payable has to be paid by the recipient of service and thus he is not liable to be registered in India and is not liable for payment of GST in India.

PERSONAL HEARING PROCEEDINGS HELD ON 21.02.2023

7. Sri. Rajesh Kumar T R, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The applicant, a non-resident Indian, residing at California, USA, owns a commercial property in Bengaluru and rented the said premises from which is in receipt of rental income. In this regard, the applicant contended that he is the owner and supplier / provider of Renting of Immovable Property Service; the location of the supplier is outside India as he resides outside India and also he doesn't have any fixed establishment in India; the service being provided by him becomes import of service as it satisfies the requirement; the responsibility to pay tax is on the service recipient under reverse charge mechanism and thus he is neither liable for registration under GST nor liable to pay the tax. The applicant's contention is on the grounds that he is the supplier of service being the owner of the said commercial property.

11. We observed on examination of the facts that the applicant has given General Power of Attorney ("GPA" to his mother Smt. Prabhavathi, Nagarabhavi, Bengaluru quoting the reason that he is working outside India and thus unable to take care of the said commercial property owned by him. It is observed from para 1 of the said GPA that the applicant has nominated / appointed the attorney to induct tenant, to create tenancy and to execute necessary deeds or documents either registering before the Jurisdictional sub-registrar and to receive all profits, rents, lease advance money, advance security deposit amount from the existing tenant and also from the prospective tenant and to take care all necessary action regarding tenancy of the said scheduled property. Further para 2 of the said GPA provides that the attorney is also empowered to approach all the Jurisdictional /statutory authorities such as BDA, BBMP, BESCO, BWSSB, METRO to remit taxes either wealth or any other taxes remittable to the concerned authorities; to protect and safe guard the said commercial property and also to sign all the required applications, forms and any other papers on behalf of the applicant.

12. Para 14 of the said GPA further provides that the attorney is also empowered to pay all taxes, duties, levies, charges, cesses etc., payable in respect of the said property to the BBMP or any other authority from time to time. Para 18 of the GPA provides that the attorney is empowered to approach any Department and to make necessary application, representation, declarations and requisitions in order to safeguard the overall interest of the scheduled property. The attorney has been granted full powers to safeguard the scheduled property but shall have no power either to mortgage or sell or

alienate the scheduled property.

13. A General Power of Attorney is governed by provisions of Powers of Attorney Act, 1882 . It is an instrument empowering the specified person to act for and in the name of the person executing it. It is a legal document whereby one person authorises another to act on his/her behalf. The person authorising is referred to as the 'principal' and the person being authorised under the power of attorney is called an 'agent'. A general power of attorney, as is evident by its name, is not drafted for a specific purpose and the agent can act on behalf of the principal on varied matters. The acts of an agent acting on the behest of a general power of attorney, bind the principal. The power of attorney is frequently used in the event of a principal's illness or disability, or when the principal can't be present to sign necessary legal documents for financial transactions. It is a document that lists the authorization/power given to the third party. It generally includes the following clauses: ^

- (i) Material particulars (personal information) of the principal and the agent i.e. the parties,
- (ii) The various purposes for which the agent is authorised to act on behalf of the agent, and
- (iii) A list of 2 witnesses who shall affirm the contents of the general power of attorney.~

14. In the instant case, vide GPA registered on 22.05.2022, Shri Nagabhushana Narayana, a non-resident Indian, who is the absolute owner of the scheduled property, due to reasons of being working out of country, has appointed his mother Smt Prabhavathi, resident of Bengaluru, to manage the property including induction of tenants, creating tenancy and to execute necessary deeds or documents either registering before the jurisdictional sub-registrar and to receive all profits, rents, lease advance money, advance security deposit amount from the existing tenant and also from the prospective tenant and to take care all necessary action regarding tenancy of the said scheduled property, except for to mortgage or sell or alienate the scheduled property. In pursuance of the provisions of GPA, Smt Prabhavathi has created tenancy and inducted various tenants by way of leasing out the scheduled property for commercial purposes.

15. From the said facts, it is evident that though Shri Nagabhushana Narayana, is the absolute owner of property, the act of leasing of immoveable property was taken up by Smt Prabhavathi as a GPA holder of the said property. Also the incomes from the property, including the rent are received and retained by the GPA holder. The activity of leasing or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services in terms of entry 2(b) of Schedule II to Section 7 of CGST Act, 2017. Further in terms of Section 2(105) of CGST Act, 2017 'supplier' in relation to any goods or services or both, shall mean the person supplying the said

goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. Thus from the said provisions, Smt.Prabhavathi, the GPA holder is the supplier of service of leasing of the building for commercial purposes.

16. Since Smt Prabhavathi is a resident of Bengaluru, Karnataka and a supplier of taxable service, is liable to take registration under Section 22(1) of the CGST Act, 2017 which reads as

"22. Persons liable for registration.-

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:..'

17 In the instant case, since the supply of service is directly in relation to immoveable property, in terms of Section 12(3) of IGST Act, 2017, the place of supply of service shall be the location of the said immoveable property i.e., in Bangalore, Karnataka. Since the place of supply and location of supplier are both in Karnataka the said supply amounts to intra-state supply in terms of section 8(2) of IGST Act, 2017 and the taxable person, i.e Smt.Prabhavathi is liable to pay CGST and KG ST of 9% each on the taxable value in terms of entry no 16(iii) (SAC heading 9972) of Notification No. 11/2017 dated 28.06.2017, as amended.

18. In view of the foregoing, we pass the following

RULING

a. Smt Prabhavathi, the GPA holder is the supplier of service and is liable to be registered in Karnataka under KGST/CGST Act 2017.

b. Smt Prabhavathi, the GPA holder is required to pay tax on supply of Renting of Immovable Property service of the commercial building.

(Dr. M.P.Ravi Prasad)

Member

Place: Bengaluru

Date: 13-04-2023

(Kiran Reddy T)

Member