



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING  
CT Complex, M.J Road, Nampally, Hyderabad-500001.  
(Constituted under Section 96(1) of TGST Act, 2017)**

**Present:**

**Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)**

**Sri S.V. Kasi Visweswar Rao, Additional Commissioner (State Tax)**

**A.R.Com/01/2021**

**Date.30-09-2021**

**TSAAR Order No.16/2021**

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,2017.]**

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- 1.** M/s. TIF Integrated Industrial Parks PVT Ltd, IDA Cherlapally, Hyderabad ('applicant' for short) - 500051, (GSTIN No. 36AAGCT2558M1ZU) have filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules, seeking Advance Ruling seeking clarification.
- 2.** At the outset, it is made clear that the provisions of both the CGST Act and the TGST 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 TGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
- 3.** It is observed that the applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.
- 4. Brief facts of the case:**
  1. TIF Integrated Industrial Parks Pvt. Ltd., (TIFIIP P Ltd., 'applicant' for short), i.e., the applicant has stated that it is a company formed by industrialists as required by the Telangana State Industrial Infrastructure Corporation Limited (TSIIC) as a special purpose vehicle (SPV) representing the member industrialists with an objective of providing industrial infrastructure by development of land acquired by TSIIC. It is informed by the applicant that TSIIC issued final allotment letter conforming allotment of 377 acres of land for a cost of Rs.55.11 Cr. on Vijayawada Highway to setup an Industrial Corridor

on 16-05-2018. A sale agreement was executed between applicant and TSIIC on 23-06-2018. It is informed by the applicant that a sale deed will be executed with TSIIC upon completion of development of internal infrastructure. Similarly the applicant is authorized in turn to sell to individual industrialists after each of his allottee commences commercial operation by executing individual sale deeds.

2. They seek to ascertain whether their activity is within the purview of GST and whether it qualifies the supply under Section 7 of the CGST/SGST Acts.

## **5. Questions raised:**

1. Whether in the facts and circumstances the activity of disposal of developed plots of land to allottee members of the applicant from and out of the land received from the TSIIC for specified purpose of industrial development is outside the purview of GST by virtue of the said activity failing under Entry 5 of Schedule III of Central Goods & Service Tax Act, 2017 and corresponding provisions under Telangana Goods & Service Tax Act, 2017 as amended (hereinafter referred to as GST Act).
2. Whether in the facts and circumstances the activity of infrastructure development (ID) of land received from the TSIIC for specified purpose of industrial development and undertaken on behalf of allottee members (allottee(s) or the member(s)) does not qualify as a "supply" under Section 7 of the Central Goods & Service Tax Act, 2017 & corresponding provision under Telangana Goods & Service Tax Act, 2017 as amended and hence will remain outside the purview of the GST Act?

## **6. Personal Hearing:**

The Authorised representatives of the unit namely Sri Irshad Mohammed, Charter Accountant & authorized representative attended the personal hearing held on 09-07-2021. The authorized representatives reiterated their averments in the application submitted and contended as follows:

1. That the applicant is a private limited company composing of beneficiary members who are industrialists. The company is allotted land by TSIIC for development for consideration. The company develops the land and allocates the plots among its members after collecting charges for development. The title in the land is transferred from TSIIC to the applicant at a later date on completion of infrastructure development. Further, the applicant will transfer the title in the development plots only after commencement of commercial production by the members.
2. The applicant has submitted written arguments along with agreement for sale deed of land between zonal manager, TSIIC and himself and also a sample agreement for sale deed of land between himself and one manufacturing unit M/s. Beaver Tracks Pvt. Ltd.
3. That the applicant is desirous to ascertain from the AAR the following:
  - a. Whether the transaction of sale of developed plot between himself and his member falls within the ambit of GST.
  - b. Whether the infrastructure development undertaken by the applicant qualifies as supply under GST.

## 7. Discussions & Findings:

The applicant have sample documentary evidence in form of sale agreement between itself as buyer and TSIIC as seller and then between itself as seller and an industrialist as buyer. The contention of the applicant regarding the nature of their business is as follows:

- a) TSIIC transfers the possession of the acquired land by way of a sale agreement to the applicant for development of the land in order to allot it to various industrialists under the condition that the sale deed would be executed only after such development is completed (clause 4(e) of the agreement of sale at page-4).
- b) The applicant would develop the land according to the requirement and directions of the TSIIC and enter into agreement with the individual industrialists for sale of land on his part. The sale deed by the applicant will be executed in favour of the individual industrialists on construction of factory shed and implementation of the project.

The discussion & conclusions are made from the (2) copies of agreement for sale of land between the TSICC ltd and the applicant; & the applicant and M/s. Beaver tracks pvt ltd.

As seen from the above there will be (2) sale deeds one between TSIIC and the applicant and the second between the applicant and the individual industrialist. The peculiar circumstances obtaining from these (2) transactions are due to the larger objective for development of industrial parks in pursuance of the industrial policy of the State.

The TSIIC ltd executes an agreement for sale of land with the applicant and collects the full consideration for the cost of land but sets condition to execute the sale deed to transfer the title only after the applicant completes infrastructure development in the land.

Similarly the applicant executes an agreement for sale of land with the individual industrialists by collecting the consideration for cost of plot but sets conditions to execute the sale deed for transfer of title only if such industry commences construction of factory within (6) months of handing over possession and complete the implementation of industry (project) i.e., construction of factory and erection of machinery within (2) years from date of transfer of possession. There is no agreement with the individual industrialist for development of infrastructure in the land.

By the constitution 101<sup>st</sup> Amendment Act, 2016 Clause 26A was introduced in the Article 366 to define Services. This clause defines Services as anything other than goods. Concomitantly following this definition of the constitution the CGST Act, 2017 defines services as anything other than goods. Therefore, supply of all immovable property including supply of land has to be treated as supply of services for the purpose of CGST/SGST Acts.

However, sub-section 2 of section 7 creates a deeming fiction to exclude certain activities from taxation even though they are goods or services as per the definition in the CGST/SGST Acts. Accordingly, activities or transactions relating to any goods or services finding a mention in schedule III to the CGST act are treated as neither supply of goods nor supply of services.

The paragraph 5 of Schedule III includes the sale of land as exempt from levy of GST subject to clause (b) of paragraph 5 of schedule II.

Paragraph 5 of Schedule II deals with levy of tax on immovable property involving the construction of a complex or a building or any civil structure intended for sale. Therefore the exclusive sale of land is exempt from GST except when sold along with a constructed complex or a building or a civil structure.

Further the Clause b of Paragraph 6 of Schedule II deems the composite supply of works contract as supply of services. The service of works contract is defined in Clause (119) of Section 2 of CGST Act as follows:

“Works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in execution of such contract.

The value of such supply of service i.e., the transaction value which is paid or payable should be discernable according to Sec 15 of the CGST Act, 2017. And where the supply of service is for a consideration not wholly in money it shall be determined as per chapter IV of the CGST Rules, 2017.

Therefore the activity undertaken by the applicant for construction of the immovable property would qualify to be a “works contract” if

- i. It is executed in pursuance of a contract or agreement; and
- ii. There is a transfer of property in goods in execution of works contract from the contractor to the contractee; and
- iii. There is a consideration paid by the contractee to the contractor.

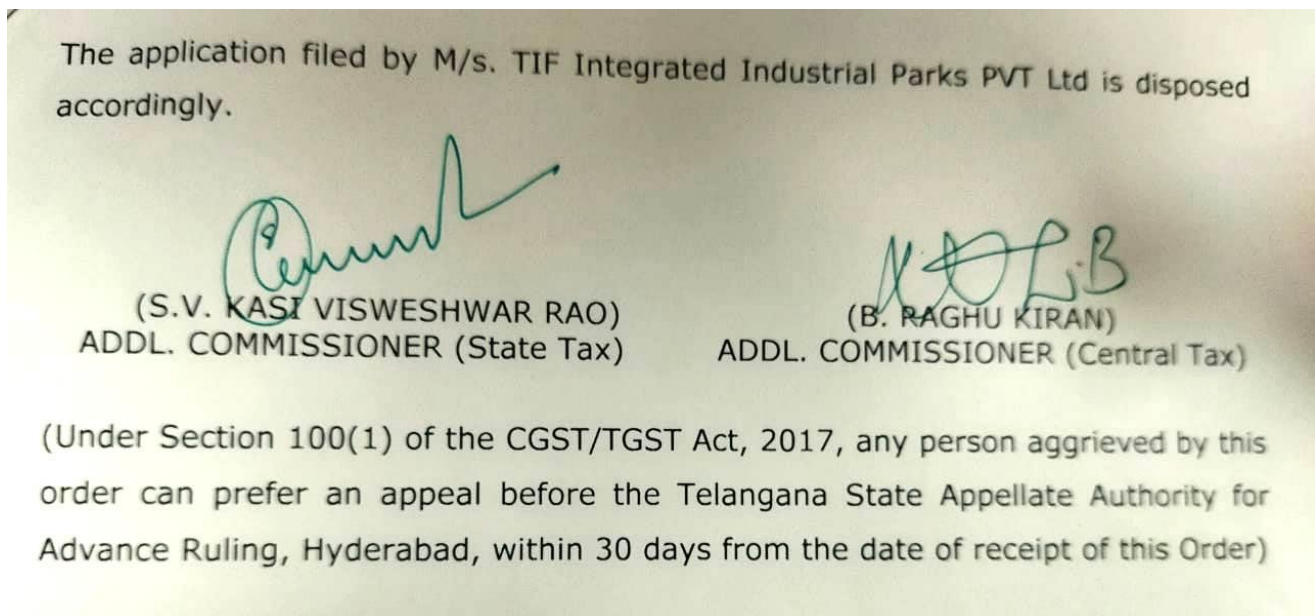
The perusal of the contract entered by the applicant with the TSIIC Ltd clearly indicates that the property in land will be transferred to the applicant only when the applicant completes the development of infrastructure of schedule land. However, this clause in the agreement appears to have been made to meet the larger objective enumerated in industrial policy of the State. Though there is a contract for development of the land the other (2) conditions enumerated above are not fulfilled i.e., transfer of property in goods from the applicant to the TSIIC Ltd and payment of consideration by TSIIC Ltd to the applicant.

The examination of the agreement between the applicant and one individual allottee M/s. Beaver tracks pvt ltd reveals that the applicant has taken up development of infrastructure as per the conditions of allotment set by TSIIC. And that M/s. Beaver tracks pvt ltd will get the title of the land only on commencement of industrial production. There is no clause in the agreement by which the applicant is obliged to develop the land for the industrialist like M/s. Beaver tracks pvt ltd. This obligation is only with TSIIC Ltd. Thus even in the contract with individual industrialist like M/s. Beaver tracks pvt ltd the above (3) conditions for making such a supply as supply of works contract are not fulfilled.

Further the applicant also indicates that it may take up certain infrastructure development after the title to land is transferred to M/s. Beaver tracks pvt ltd by way of sale deed. It is also indicated that consideration will be recovered for executing such works. Such development works executed after the sale deed is registered will necessarily amounts to works contract and the consideration received for the same will be liable to tax under CGST Act, 2017.

## 8. The ruling is given as below:

1. If the applicant sells the land after developing by way of erecting a civil structure or a building or a complex then such supply is liable to tax under CGST/SGST Acts. However if land is sold without any development involving any civil structure or building or complex such supply falls under paragraph 5 of schedule III to Section 7(2) of CGST Act, 2017 and hence is exempt from tax.
2. If the applicant executes works contracts involving transfer of property in goods for a consideration under an agreement of contract such consideration will be liable to tax. However if these elements are missing in execution of a construction it shall not be liable to tax.



To  
M/s. TIF Integrated Industrial  
Parks PVT Ltd  
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CMR Complex, Sector-3, Phase-2,  
IDA Cherlapally, Hyderabad,  
Pin Code -500051.

Copy submitted to :

1. The Commissioner (State Tax) for information
2. The Chief Commissioner (Central Tax), Basheerbagh, Hyderabad.

Copy to all the Joint Commissioners (State Tax), in the State.