

GUJARAT AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.



ADVANCE RULING NO. GUJ/GAAR/R/2023/ 34  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/16)

Date: - 03.11.2023

Name and address of the applicant	:	The Surat Textile Market Cooperative Shops & Warehouses Society Ltd, Surat Textile Market, Ring Road, Surat, Gujarat – 395 002.
GSTIN of the applicant	:	24AAAFAT5555K1Z5
Date of application	:	08.05.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b)(c)(d)
Date of Personal Hearing	:	29.08.2023
Present for the applicant	:	Abhishek Soni (CA)

**Brief facts:**

M/s The Surat Textile Market Cooperative Shops & Warehouses Society Ltd, Surat Textile Market, Ring Road, Surat, Gujarat – 395 002 [for short – ‘applicant’] is cooperative society, formed for the purpose of maintenance & service of the Surat Textile Market. Their GST registration number is 24AACCT5245K1Z9.

2. The applicants primarily takes care of the day to day maintenance activity of the premises such as security, common lightings, common toilet, cleaning, other repairs, parking and maintenance etc. of the Surat Textile Market. Surat Textile Market, comprises of more than 1000 shops of various sizes & each shop owner is a shareholder of the applicant.

3. Surat Textile Market is built on 24,435 sq. mtr. of land, leased by the Surat Municipal Corporation [for short – ‘SMC’]. The said lease expired in the year 2018. SMC has now come up with a lease proposal to renew it for a further period of 99 years. The consideration to be paid for renewal of the lease is as under *viz*



a) Lease renewal [24,435sq mtr x Re 1 x 99 years]	24,19,065/-
b) Premium on lease renewal [24,435 sq mtr x Rs. 52,250]	1,27,67,28,750/-

The aforementioned amount is to be paid in 5 instalments, annually.

4. The applicant, being a non-profit association, with the primary activity as listed *supra*, lacks such huge funds & therefore the payment which has to be made will have to be recovered from the owners of the shops in the Surat Textile Market, who are also shareholders of the applicant.

5. In view of the foregoing, the applicant has sought advance ruling on the below mentioned questions *viz*

(i) Do we have to pay tax under Reverse Charge Mechanism u/s 9(3) or 9(4) for lease renewal amount payable to SMC ?

(ii) Do we have to pay tax under Reverse Charge Mechanism u/s 9(3) or 9(4) for premium on lease renewal amount payable to SMC ?

(iii) Will collection made from shareholders/shop owners for making payment of lease and lease premium amounts be considered as supply and GST under forward charge is applicable on the same?

(iv) What will be the effect of circular no. 101/20/2019-GST dated 30.4.2019 on the transaction? Will it exempt the applicant from payment of tax under Reverse Charge Mechanism?

(v) If answer to question no. (iii) is in affirmative, then will applicant's shareholder/shop owners who are reimbursing the lease and lease premium amount get ITC of the GST charged by the applicant?

6. Personal hearing was held on 29.8.2023 wherein Shri Abhishek Soni, CA, appeared and reiterated the facts as stated in the application.

### **Discussion and findings**

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions and additional submission made by the Applicant in their application for advance ruling as well as the



submissions made during the course of personal hearings. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of questions on which the advance ruling is sought.

9. Before moving further, it would be prudent to reproduce the relevant provision in vogue for the sake of ease of reference viz.

**Section 7. Scope of supply.-**

*(1) For the purposes of this Act, the expression - "supply" includes-*

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

*<sup>1</sup>{(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*

**Explanation** *-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]*

*(b) import of services for a consideration whether or not in the course or furtherance of business; <sup>2</sup>{and]*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration; <sup>3</sup>{\*\*\*\*}*

*(d) <sup>4</sup>{\*\*\*\*}.*

*\*Enforced w.e.f. 1st July 2017.*

*1. Inserted w.e.f. 01st July, 2017 by s. 108 of The Finance Act, 2021 (No. 13 of 2021) - Brought into force on 01st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021.*

10. Multiple issues have been raised by the applicant. The **first issue** on which ruling is sought is whether the applicant is liable to pay tax under Reverse Charge Mechanism [RCM] u/s 9(3) or 9(4) on lease renewal, payable to SMC. Section 9(3) of the CGST Act, 2017 empowers the Government to issue notification, on the recommendations of the GST Council, specifying categories of supply of goods or services or both wherein tax shall be paid on RCM basis by the recipient,. Section 9(4), *ibid*, on the other hand, empowers Government to issue a notification to specify a class of registered persons who shall in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay tax on RCM basis. In this connection, we find that notification No. 13/2017-CT (Rate) has been issued viz



**[Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017]**

**Payment of CGST on specified services on Reverse Charge basis**

*In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-*

**TABLE**

<i>Sl. No.</i>	<i>Category of Supply of Services</i>	<i>Supplier of service</i>	<i>Recipient of Service</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
5	<p><i>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</i></p> <p><i>(1) renting of immovable property, and</i></p> <p><i>(2) services specified below-</i></p> <p><i>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or</i></p>	<p><i>Central Government, State Government, Union territory or local authority</i></p>	<p><i>Any business entity located in the taxable territory.</i></p>

**[Notification No. 5/2022-C.T. (Rate), dated 13-7-2022]**

**Reverse Charge Mechanism (RCM) on service by way of renting of residential dwelling to a registered person — Amendment to Notification No. 13/2017-C.T. (Rate)**

*In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 13/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 692(E), dated the 28th June, 2017, namely :-*

*In the said notification, in the Table, -*

*(2) against serial number 5, in column (2), in the sub-clause (2), in item (i), the words “by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority” shall be omitted;*

11. Further, serial No. 2, to Schedule II to the CGST Act, 2017, states as follows viz

**SCHEDULE II.**  
[ See section 7 ]

**ACTIVITIES <sup>1</sup> [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

**2. Land and Building**

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease 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.

12. Hence, lease of land is to be treated as a supply of services chargeable to GST. In terms of Sr. No. 5 of notification No. 13/2017-CT(Rate) dated 28.6.2017, as amended, the applicant, [who as a recipient falls within the ambit of a 'business entity', in terms of the definition of business as per 2(17), *ibid*], becomes liable to discharge GST under RCM in terms of section 9(3) of the CGST Act, 2017 in respect of the services supplied by SMC, [a **local authority** in terms of Section 2(69), *ibid*].

13. The second issue on which the ruling is sought is whether they are liable to pay GST under Reverse Charge Mechanism u/s 9(3) or 9(4) for premium on lease renewal amount payable to SMC. A related question [fourth issue] that has been raised is whether circular No. 101/20/2019-GST dtd 30.4.2019 grants them exemption from payment of GST. The relevant extract of notification No. 12/2017-CT (Rate) dated 28.6.2017, amending not. No. 32/2017-CT (Rate) dated 13.10.2017 and circular dated 30.4.2019, is reproduced below for ease of reference *viz*

➤ **Notification No. 12/2017-CT (Rate) dated 28.6.2017**

**TABLE.**

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
41	Heading 9972	One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.	Nil	Nil



➤ [Notification No. 32/2017-C.T. (Rate), dated 13-10-2017]

e) in serial number 41, for the entry in column (3), the following entry shall be substituted namely :-

“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent, or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.”;

➤ Circular No. 101/20/2019-GST, dated 30-4-2019

**Subject :GST exemption on the upfront amount payable in installments for long-term lease of plots, under Notification No. 12/2017-Central Tax (R) S. No. 41, dated 28-6-2017 - Regarding.**

Representations have been received by the Board seeking clarification regarding admissibility of GST exemption on the upfront amount which is determined upfront but is paid or payable in instalments for long term (thirty years, or more) lease of industrial plots or plots for development of financial infrastructure under Notification 12/2017-Central Tax (R) S. No. 41, dated 28-6-2017.

2. The matter has been examined. The entry at S. No. 41 of Notification 12/2017-Central Tax (R), dated 28-6-2017 reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
41	Heading 9972	“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent, or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.”	NIL	NIL

3. It is hereby clarified that GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long-term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017-Central Tax (R), dated 28-6-2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront.

4. Difficulty if any, in implementation of this Circular may be brought to notice of the Board.

14. The term ‘Lease’ is not defined under GST Act. However, Section 105 of the Transfer of Property Act, 1882, states as follows:



**105. Lease defined.**—*A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*

A conjoint reading shows that in terms of Schedule II of GST Act, 2017, reproduced *supra*, the activity i.e. lease of plot and payment of one time lease premium/salami/premium on lease renewal and annual premium paid by the applicant is a 'supply' and is covered under Section 7(1) of CGST Act, 2017.

15. The appellant however feels that the upfront concession fee received against the lease made for more than 30 years is exempted from the payment of GST under the provisions of entry No. 41 of Not. No. 12/2017-CT(Rate), date 28-6-2017 as amended by Not. No. 32/2017-CT(Rate), dated 13-10-2017. However, we find that the benefit of the exemption is to be granted only when all the conditions of the said notification are met. The text of entry No. 41, as amended, reproduced *supra*, clearly show, that for availing the benefit of the notification, the following criterion must be met, viz

(a) the service provider should be State Government Industrial Development Corporation or Undertakings or any other entity having 50% or more ownership of Central Government, State Government, union territory'.

(b) The lease shall be for a period of 30 years or more; in the present matter the lease is made for 99 years.

(c) The long term lease shall be in respect of industrial plots or plots for development of infrastructure for financial business, located in any industrial or financial business area.

16. In this case the service provider is not State Government Industrial Development Corporation or Undertakings or any other entity having 50% or more ownership of Central Government, State Government, Union Territory' but a local authority i.e. Surat Municipal Corporation. Further, the said Notification or GST Act, 2017, does not define the 'industrial or financial business area'. Therefore, we refer to the definition of 'industrial or financial business area' from Gujarat Industrial Development Act, 1962, per section 2(g) of the Gujarat Industrial Development Act, 1962. 'Industrial Area' means - "any area declared to be an industrial area by the State



*Government by Notification in the Official Gazette, which is to be developed and where industries are to be accommodated*". Thus, for considering any area as industrial or financial business area, it is necessary that the area must be declared as industrial or financial business area by the state government by notification. In the instant matter, we find that no such Notification declaring the area consisting of Surat Municipal Corporation proposed to be leased out to the applicant, as industrial/financial business area, is on record. Therefore, the area cannot be treated as industrial or financial business area in absence of any evidence in support. Thus, the benefits of Sr. no. 41 of not. No. 12/2017-CT(Rate), as amended is not available to the applicant.

17. Even otherwise, the Constitution Bench of the Hon'ble Supreme Court in the case of Dilip Kumar and Company [2018 (361) ELT 577 (SC)], held as follows:

*52. To sum up, we answer the reference holding as under -*

*(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

*(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*

*(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.*

18. We also find that the Hon'ble High Court of Bombay in WP No. 12194/2017 [reported at 2018(12)GSTL. 232(Bom.)] in the case of Builders Association of Navi Mumbai, held that lease premium amount is a consideration against supply of service and is subject to Goods and Services Tax. The relevant portion of the said order is reproduced as follows:

*"21. We are, therefore, of the clear view that the demand for payment of GST is in accordance with law. The said demand cannot be said to be vitiated by any error of law apparent on the face of the record. In these circumstances, we do not find any merit in the writ petition. It is accordingly dismissed. Rule is discharged. There would be no order as to costs."*

The appeal filed against the aforementioned judgement before the Hon'ble Supreme Court vide Special Leave to Appeal (C) No. 23068/2018, has been dismissed vide order dated 9.11.2022.





19. In view of the above discussion, we rule that the One-time premium/salami/premium on lease renewal and annual lease premium paid by the applicant to the AUDA for leasing of Surat Textile Market is covered under supply of service in terms of Section 7(1) of CGST Act, 2017. Accordingly, the said One-time premium/salami/ premium on lease renewal and annual lease premium paid by the applicant to Surat Municipal Corporation are taxable under GST in terms of the Notification No. 11/2017-CT (Rate) dated 28.06.2017.

20. Moving on to the question as to whether the applicant is liable to pay GST under RCM under Section 9(3) of CGST Act, 2017, we find that in Further, in terms of Sr. No. 5 of notification No. 13/2017-CT(Rate) dated 28.6.2017, as amended, the applicant, [who as a recipient falls within the ambit of a 'business entity', in terms of the definition of business as per 2(17), *ibid*], becomes liable to discharge GST under RCM in terms of section 9(3) of the CGST Act, 2017 in respect of the services supplied by SMC, [a **local authority** in terms of Section 2(69), *ibid*]. This view stands substantiated in terms of the Advance Ruling no. GUJ/GAAR/R/64/2020 dated 17.9.2020 in the case of M/s Jinmagal Corporation.

21. The next question posed before us is whether collection made from shareholders/shop owners for making payment of lease and lease premium amounts be considered as supply and whether GST under forward charge is applicable on it. The applicant in the facts of the case, has briefly explained its constitution, mentioning that they are a cooperative society formed primarily for the purpose of maintenance and service of Surat's most reputed and iconic textile market 'The Surat Textile Market'; that there are more than 1000 shops of various sizes in their premises & each shop owner is a shareholder of their society & that they are registered with the department. Quickly, moving on to Section 7(1)(aa), of the CGST Act, we find that the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration falls within the ambit of 'supply'. Thereafter, an explanation further clarifies that notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court or tribunal



or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

22. Thus, in view of the foregoing, we hold that the collection made from shareholders/shop owners, who are members of the cooperative society, by the applicant, for making payment of lease and lease premium, is a supply under section 7 of the CGST Act, 2017 and would be leviable to GST under forward charge.

23. A corollary question, is next posed as to whether the collection made from shareholders/shop owners by the applicant if held leviable to GST, then can the applicant's shareholder/shop owners who are reimbursing the lease and premium on lease renewal be eligible for ITC of the GST charged by the applicant.

24. As is evident, the applicant is seeking a ruling primarily on whether his members/shareholders, who are distinct persons, can avail ITC since they would be reimbursing the lease and lease premium amount paid by the applicant.

25. A conjoint reading of the sections 95(a) and (c), 97 and 103 of the CGST Act, 2017, depicts that advance ruling means a decision by the AAR to an applicant on matters or on questions specified under 97(2) *ibid* in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; that an applicant, means any person registered or desirous of obtaining registration under this Act; that such an applicant, may make an application in the prescribed form with appropriate fee, stating the question on which the said ruling is sought. The questions on which the ruling is sought is however, restricted to the 7[seven] issues listed in section 97(2), *ibid*. Further, in terms of section 103, such a ruling shall be binding only on the applicant and on the concerned officer or the jurisdictional officer, in respect of the applicant.

26. We find that [a] the applicant before us is not the person who intends to avail the ITC and [b] that the ruling is sought on behalf of their



members and shareholders who are distinct persons. This being the factual matrix, we find that the applicant before us has no locus standi in seeking a ruling in the facts of the present case on this question to be precise.

27. In the light of the above, we rule as under:

### RULING

(i) The applicant is liable to pay GST under Reverse Charge Mechanism in terms of section 9(3) of the CGST Act, 2017, for lease renewal amount payable to SMC.

(ii) The applicant is liable to pay GST under Reverse Charge Mechanism in terms of section 9(3) of the CGST Act, 2017, for premium on lease renewal amount payable to SMC.

(iii) The applicant is liable to pay GST under forward charge in respect of collection made from shareholders/shop owners, for making payment of lease and lease premium.

(iv) The applicant is not entitled for exemption under Sr. No. 41 of notification No. 12/2017-CT (Rate) dated 28.6.2017, as amended and clarification issued vide circular no. 101/20/2019-GST dated 30.4.2019.

(v) No ruling is passed in respect of question (v) in terms of section 98(2) of the CGST Act, 2017 read with sections 95(a), (c), and 103 of the CGST Act, 2017.



(RIDDHESH RAVAL)  
MEMBER (SGST)



(AMIT KUMAR MISHRA)  
MEMBER (CGST)

Place: Ahmedabad

Date: 03.11.2023

