

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, VibhutiKhand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 40 /2023/

DATED 05/12/2023

PRESENT:

1. **Shri Amit Kumar**
Joint Commissioner, Central Goods and Service Tax
Commissionerate, LucknowMember (Central Tax)
2. **Shri Harilal Prajapati**
Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name and address of the Applicant	M/s Fena Private Limited , Site-C, B-17-B-19, UPSIDC Industrial Area, Surajpur Gautam Buddha Nagar, Uttar Pradesh, 201306
2.	GSTIN or User ID	09AAACS0326G1ZP
3.	Date of filing of Form GST ARA-01	06.09.2023 (received on 13.09.2023)
4.	Represented by	Mr. Anurag Mishra and Mr. Y.S. Tomar
5.	Jurisdictional Authority-Centre	Range-Range 8, Division-Division II Noida, Gautambudha Nagar, Commissionerate-Gautambudha Nagar
6.	Jurisdictional Authority-State	Sector-Sector-2 Gautambudha Nagar, Range-Gautambudha Nagar(B), Zone- Gautambudha Nagar, Uttar Pradesh
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes SBIN23090900033289

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98 (4) OF THE UPGST ACT, 2017**

M/s Fena Private Limited , having registered office Site-C, B-17-B-19, UPSIDC Industrial Area, Surajpur Gautam Buddha Nagar, Uttar Pradesh, 201306 (hereinafter referred as "the applicant") having 09AAACS0326G1ZP, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form for Advance Ruling), discharging the fee of Rs. 5,000/- each under the CGST Act and the UPGST Act.

2. The applicant is a company registered under the Companies Act, 1956 having its office at New Delhi. The applicant's case is that it is engaged in the business of manufacturing and selling various consumer non-durables including detergent cakes & powder, cleaning preparation, etc.
3. The applicant has sought advance ruling in respect of the following questions:

1. Whether the transfer of leasehold rights in respect of Noida Authority allotted land from applicant to M/s S.K. Food Equipments Pvt. Ltd. would fall within the ambit of supply as defined under Section 7?
2. Whether the GST is payable on the transfer of leasehold rights in respect of the consideration of Rs.6,60,00,000/-to be received by them from M/s S.K. Food Equipments Pvt. Ltd. for the land allotted by Noida Authority?
3. Eligibility of input tax credit in the hands of M/s S.K. Food Equipments Pvt. Ltd On the transfer mentioned in question No 1 above.
4. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act 2017. Further, as per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.
5. Statement of relevant facts having a bearing on the question(s) raised
 1. The applicant Fena Limited is a company registered under the Companies Act, 1956 having its office at New Delhi. The applicant's case is that it is engaged in the business of manufacturing and selling various consumer non-durables including detergent cakes & powder, cleaning preparation, etc.
 2. That there was an **agreement to sell** executed between applicant and M/s S.K. FOOD EQUIPMENTS PVT. LTD. on 09.11.2022 at Noida with total sale consideration of Rs. 6,60,00,000/- only in which regard the sale agreement was signed and notarized on 10 November, 2022.
 3. That the applicant has leasehold land from the Noida Development Authority for establishing industrial unit for manufacture of washing soap according to the building regulations and directions framed under the UP Act,6 of 1976 and building plans approved by lesser on dated 29thJanuary 1981.
 4. That applicant was allotted and holding lease of 880 sqm land in the Noida Development Authority Industrial Area and the Original Lease was entered into for a period of 99 years and the lease was entered into the vide lease deed dated 29.01.1981.
 5. That M/s S.K. Food Equipment's PVT. LTD. approached them to transfer the allotted land for setting up a manufacturing unit plant and the agreement to sell has been entered into between the both the parties on **09.11.2022 for transfer of lease hold rights for the remaining period of lease from applicant to M/s S.K. FOOD EQUIPMENTS, subject to the approval of Noida Authority.**
 6. That the applicant has also approval letter from Noida Authority wherein Nodia Authority has permitted **transfer of balance period of leasehold rights to M/s S.K. FOOD EQUIPMENTS** to the intended purpose of setting up manufacturing unit of food processing plant with the condition that the processing fees to be paid by M/s S.K. FOOD EQUIPMENTS and modified deed to be executed.
 7. That the Noida Authority who owns the land has leased the allotted land to the applicant for the period of 99 years and applicant, by virtue of lease condition, can transfer the leasehold rights to any other person with the approval of Noida Authority.
 8. That supply word defined is quoted below

"Supply" is defined under section 7 of the GST Law: Section 7(1) contains an inclusive list of what constitutes a supply, while section 7(2) has listed out what does not constitute supply. Further, section 7(2) begins with a non obstante clause, thus overriding the provisions of section 7(1). Hence, except the activities listed in Schedule III and those notified in terms of section 7(2)(b), all other activities amount to supply. 7.2 "Sale of land" is covered under Schedule III of CGST Act, 2017 and is excluded from GST levy on account of being neither supply of services nor supply of goods. Serial No. 5 to the Schedule III of CGST Act is as under:- "5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. "

9. The basic question in the instant case is whether the sale of plot after carrying out certain development activities or providing different amenities is **sale of land or supply of something other than land**. The term "Land" has not been defined under the GST Law and therefore, in absence of any definition in a statute, the meaning has to be construed in most relevant and popular sense. Land is generally qualified by its use or nature like agricultural, urban, rural, industrial, commercial, residential etc but in all cases it remains land. The end result of any activity of development of land does not change it from being land. In general trade parlance, developed land is nothing but a land and is also known as a land.

10. That as per Schedule II of CGST Act, 2017, following activity is considered as Service:

Land and Building (a) any lease, tenancy, easement, licence to occupy land is a supply of services;

According to Section 7(2) (a) of CGST Act 2017, as per Schedule III of CGST Act, 2017, following will not considered as supply:

5.Sale of land, subject to clause (b) of paragraph 5 of Schedule II ,sale of building.

Sale of land would be treated neither as supply of goods nor as supply of services. Sale of land and completed building is not a supply as per Schedule III of the CGST Act 2017.

11. That Exemption Notification: Notification no. 12/2017-Central Tax (rate) dated 28th June 2017 is the mega exemption notification for services which provides for the list of all exempt supplies.

Entry 41 – "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."

12. That this exemption is applicable only when upfront amount is received by State industrial corporations / undertakings. In case original buyer transfer the right to other person, this exemption notification is not applicable. Sale of Leasehold land is considered as sale of immovable property or benefit arising of land? As per the Registration Act 1880 "immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries,

fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass As per the General Clauses Act 1897 "Immovable property' shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth".

13. That leasehold rights is a benefit conferred upon a person to enjoy the occupancy and possession over the land for the lease period. Therefore, leasehold rights amount to a benefit arising of land. Since benefit arising of land is considered as an immovable property, leasehold rights can also be classifiable as immovable property. Assignment of leasehold rights amounts to transfer of an immovable property As per Section 3(a) of Land Acquisition Act, 1894 The expression 'land' includes benefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth" As per Section 3(4) of Bombay Land Revenue Code, 1879 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory"
14. That the above definitions clearly provide that **land would include benefits arising of land.** If the leasehold rights are treated as land itself, no tax would be applicable on its assignment same would.
15. Long term lease can be considered as Sale of Land? Whether long term lease can be treated to be equivalent to sale of land has been the question which the courts have examined long before GST was envisaged. The answer to this question may not be available from the GST law directly. Therefore, this question is being analysed from judgements under the erstwhile regime apart from GST also.
16. That in the case of RIICO Ltd. v. Commissioner of C. Ex. [2017] (New Delhi – CESTAT), the following was held:

"Admittedly, substantial part of the demand against the appellant in various proceedings, relate to their Service Tax liability on lump-sum premium amount, received by them from the allottees on allotment of land on long term basis. In view of the introduction of new Section 104 in the Finance Act, 1994 the appellant's liability on such consideration no longer exists. The one-time payment received for grant of long term lease of 30 years or more of industrial plot, is not liable to Service Tax for all the periods covered in the present proceedings.

However, we hold that the appellants are liable to pay Service Tax in respect of such one-time amounts received in respect of lease granted for less than 30 years. The appellants are liable to Service Tax on the activity of leasing of land, for use in the furtherance of commerce or business, from 1-7-2010. However, considerations received as lump-sum upfront payment in respect of lease of land for a period of 30 years and above shall not be liable to such tax;"
17. That the input tax credit on GST paid on sale of leasehold land:

In case transferor charge GST on sale of leasehold land, it is important to know whether transferee can get input tax credit for such GST amount paid to transferor. Section 17(5) of the CGST Act, 2017 and SGST Act,2017 provides the list of input services

on which input credit is not available. (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. Now there are multiple type of transactions which we need to analyse the credit eligibility:

1. Leasehold right transferred & transferee has used that land for new construction for setting up manufacturing plant?

2. Land & building transferred & additional construction carried out on existing construction for setting up manufacturing plant?

6. The applicant has submitted their interpretation of law as under-

Land and Building (a) any lease, tenancy, easement, licence to occupy land is a supply of services;

Sale of Land (Schedule III) Section 7(2)(a) of the CGST Act 2017 provides that certain activities or transactions provided in Schedule III would be treated neither as supply of goods nor as supply of services i.e. not a supply altogether. As per Schedule III of CGST Act, 2017, following will not considered as supply:

5. Sale of land, subject to clause (b) of paragraph 5 of Schedule II ,

sale of building. Sale of land would be treated neither as supply of goods nor as supply of services. Sale of freehold land and completed building is not a supply as per Schedule III of the CGST Act 2017.

That Exemption Notification: Notification no. 12/2017-Central Tax (rate) dated 28th June 2017 is the mega exemption notification for services which provides for the list of all exempt supplies.

Entry 41 – "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."

"Supply" is defined under section 7 of the GST Law:. Section 7(1) contains an inclusive list of what constitutes a supply, while section 7(2) has listed out what does not constitute supply. Further, section 7(2) begins with a non obstante clause, thus overriding the provisions of section 7(1). Hence, except the activities listed in Schedule III and those notified in terms of section 7(2)(b), all other activities amount to supply. 7.2 "Sale of land" is covered under Schedule III of CGST Act, 2017 and is excluded from GST levy on account of being neither supply of services nor supply of goods. Serial No. 5 to the Schedule III of CGST Act is as under:- "5. Sale of land and, subject to clause (b) of paragraph 5 of Schedue II, sale of building. "

7. The application for advance ruling was forwarded to the Central Jurisdictional GST Officer vide letter dated 19.09.2023 to offer their comments/views/verification report on the matter. But no comments has been received.

8. The applicant was granted personal hearings on 27.10.2023 which was attended by Mr. Anurag Mishra and Mr. Y.S. Tomar Authorized Representatives during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

9. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

10. We have gone through the submissions made by the applicant and have examined the same. The applicant in the present application has sought advance ruling on following question/clarification-

1. Whether the transfer of leasehold rights in respect of Noida Authority allotted land from applicant to M/s S.K. Food EQUIPMENTS Pvt. Ltd. would fall within the ambit of supply as defined under Section 7?
2. Whether the GST is payable on the transfer of leasehold rights in respect of the consideration of Rs.6,60,00,000/-to be received by them from M/s S.K. Food EQUIPMENTS Pvt. Ltd. for the land allotted by Noida Authority?
3. Eligibility of input tax credit in the hands of M/S S. K. Food Equipment's PVT LTD. On the transfer mentioned in question No 1 above.

11. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

- (1) *Admissibility of input tax credit of tax paid or deemed to have been paid.*
- (2) *Determination of the liability to pay tax on any goods or services or both.*

At the outset, we do not admit question no.03 related to "*Admissibility of input tax credit of tax paid or deemed to have been paid*", as it is related to recipient of the service. The issue raised in the application, as question no. 1 and 2 related to "*Determination of the liability to pay tax on any goods or services or both*" is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application (regarding question no. 1 and 2) for consideration on merits.

12. The applicant is a company registered under the Companies Act, 1956 having its office at New Delhi. The applicant's case is that it is engaged in the business of manufacturing and selling various consumer non-durables including detergent cakes & powder, cleaning preparation, etc.

13. The applicant had signed a Deed for lease of land with Noida Authority for 99 years and subsequently has entered into an agreement with M/s S.K. Food Equipments Pvt. Ltd for transfer of leaseholds rights for the remaining period.

13.1 Section 3(26) of the General Clauses Act, 1897 defines "immovable property" as to include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to

anything attached to the earth. Applicability of the General Clauses Act, 1897 in the context of a Special Act like the CGST Act, 2017, however, is limited to areas where no express provisions are made under the said Special Act.

13.2 Scope of supply under section 7 (1) of the GST Act includes all forms of supply of goods and services, including a sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made. Section 7 (1A) read with Schedule II under the GST Act provides which of such supplies shall be treated as supply of goods or services. **Paragraph 2 of Schedule II provides that with respect to transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, letting out of a building including a commercial, industrial or residential complex for business or commerce is the supply of services.**

In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but as the supply of service for the purpose of the GST Act. The Deed, therefore, confers upon the applicant no better title to the Demised Premises (the premises whose lease hold right is to be transferred including land and structure) to other than a service contract of lease. The applicant can, therefore, transfer to the assignee (M/s S.K. Food Equipments Pvt. Ltd) only its right to receive the service of the lease for the remaining period after obtaining prior approval of the lessor (Noida Authority)

13.3 In the instant case, the applicant had entered into lease deed with Noida Authority for 99 years. Subsequently, the applicant has entered into agreement with M/s S.K. Food Equipments Pvt. Ltd and has transferred the lease rights with the approval of Noida Authority. The moment the lease right has been transferred from the applicant to M/s S.K. Food Equipments Pvt. Ltd, the party has provided service of transferring the leasehold rights and thus action of the applicant is very well covered under Paragraph 2 of Schedule II of CGST Act 2017.

13.4 It is evident from the above discussion that the applicant, apart from the conditional possession of the Demised Premises enjoys no title or ownership, which is central to sale of any immovable property within the meaning of section 54 of the Transfer of Property Act, 1882. The applicant's interest in the benefits arising out of the Demised Premises is limited to **sub-leasing in terms of the Deed**, and he is capable of transferring the benefits only to that extent. The assignment, therefore, does not amount to **transfer of any benefit other than leasehold rights in terms of the Deed for the unexpired period of the lease and is no transfer of any immovable property in the context of the GST Act.**

13.5 The applicant's reference to the case laws where joint development right is treated as the sale of an immovable property needs to be distinguished. None of those cases is decided in the context of the GST Act, where the provisions of **paragraph 2 of Schedule II carve out certain benefits arising out of the land from the realm of immovable property and treat them as 'service' for the purpose of the GST Act.** The reference to the above case laws is, therefore, not relevant.

13.6 The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed stands extinguished. Neither does it create fresh benefit from land other than the leasehold right. It is like a compensation for **agreeing to do the transfer of the applicant's rights in favour of the assignee.** It is a service classifiable under Other miscellaneous service (SAC 999792) and taxable @ 18% under SI No. 35 of Notification No. 11/2017 CT (Rate) dated 28/06/2017.

14. In view of the above discussions, we, both the members unanimously rule as under;

RULING

1. Whether the transfer of leasehold rights in respect of Noida Authority allotted land from applicant to M/s S.K. Food Equipments Pvt. Ltd. would fall within the ambit of supply as defined under Section 7?

Answer: Yes.

2. Whether the GST is payable on the transfer of leasehold rights in respect of the consideration of Rs.6,60,00,000/-to be received by them from M/s S.K. Food Equipments Pvt. Ltd. for the land allotted by Noida Authority?

Answer: Yes.

3. Eligibility of input tax credit in the hands of M/S S. K. Food Equipment's PVT LTD. On the transfer mentioned in question No 1 above.

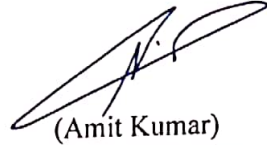
Answer: Comment cannot be offered as it is related to recipient of service.

15. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Harilal Prajapati)

Member of Authority for Advance Ruling



(Amit Kumar)

Member of Authority for Advance Ruling

To,

M/s Fena Private Limited ,
Site-C, B-17-B-19, UPSIDC Industrial Area,
Surajpur Gautam Buddha Nagar, Uttar Pradesh, 201306.

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & Central Excise, G.B. Nagar, 3rd Floor, Wegmans Business park, K.P.-III, Greater Noida-201306.
4. The Deputy/Assistant Commissioner, CGST & Central Excise Division-Division II Gautam Budh Nagar, , G.B. Nagar, 3rd Floor, Wegmans Business park, K.P.-III, Greater Noida-201306.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, ~~ZONE-Noida, G.B.N.~~, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.