

**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING**  
**(Goods and Services Tax)**  
**1<sup>st</sup> Floor, Commercial Taxes Complex, M.J. Road, Nampally,**  
**Hyderabad 500 001**

**AAAR.COM/12/2022**

**Dated: 20.02.2025**

**Order-in-Appeal No. AAAR/03/2025**

*(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act,  
2017)*

**PREAMBLE**

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the appellant within a period of six months from the date of the order. Provided that, no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
  - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for advance ruling;
  - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

\* \* \* \* \*

Subject: GST – Appeal filed by M/s Maddi Seetha Devi, Hyderabad, under Section 100 (1) of TGSST Act, 2017 against Advance Ruling TSAAR Order No.47/2022 dated 13.07.2022 passed by the Telangana State Authority for Advance Ruling - Order-in-Appeal passed – Regarding.

\* \* \* \* \*

1. The subject appeal has been filed under Section 100 (1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as “TGSST Act, 2017” or “the Act”, in short) by M/s. Maddi Seetha Devi, A-28, 2<sup>nd</sup> Floor, journalist Colony, Plot No: 70, Jubilee Hills, Hyderabad-500 033 (GSTIN: 36ADQPM2479L1ZS) (hereinafter referred in short as “M/s. Maddi Seetha” or “the appellant”), against the Order No.47/2022 dated 13.07.2022 (“impugned order”) passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) (“Advance Ruling Authority” / “AAR” / “lower Authority”).

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGSST 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 corresponding provision under the TGSST Act. Further, for the purposes of this Advance Ruling, the expression ‘GST Act’ would be a common reference to both CGST Act and TGSST Act.

### **Brief facts:**

3. Maddi Seetha Devi, is an individual (landowner) holding a parcel of land to the extent of 20 acres at Hyderabad and has entered in to Development Agreement with M/s PHL, a builder (developer-Promoter) and entrusted her land to M/s PHL by way of Joint Development Agreement (JDA) in the year 2016. As per agreement, M/s PHL will hand over 27% of the developed property ( includes 27% of car parking spaces, common areas along with 27 % of all other amenities and benefits) to the appellant. The appellant is also a registered tax payer.

4. The appellant sought for advance ruling on following specific issues:

i Whether transfer of land or transfer of 'development rights' to the developer by the landowner is to be considered as receipt of consideration by the developer as per Notification No.04/2018-CT (Rate) dt.25.01.2018 and as per the clarifications issued after introduction of GST and prior thereto towards the construction of flats in the residential complex to be taken up by the developer for the landowner?

ii. Whether the liability to pay GST or service tax as applicable arises on the developer immediately on receipt of development rights or immediately on conveyance of the flats to be constructed by way of an allotment letter?

5. Vide the impugned order, the Advance Ruling Authority had passed the following advance ruling on the questions raised by the appellant:

Sl No	Question raised	Advance Ruling
1	Whether transfer of land or transfer of 'development rights' to the developer by the landowner is to be considered as receipt of consideration by the developer as per Notification No.04/2018-CT (Rate) dt.25.01.2018 and as per the clarifications issued after introduction of GST and prior thereto towards the construction of flats in the residential complex to be taken up by the developer for the landowner?	Yes. Transfer of development rights by the landowner to the developer is consideration received by such developer for supply of construction service.
2	Whether the liability to pay GST or service tax as applicable arises on the developer immediately on receipt of development rights or immediately on conveyance of the flats to be constructed by way of an allotment letter?	The liability to pay GST by the developer- promoter shall arise at the time of transfer of possession or right in the constructed complex or constructed flats and not at the time of receipt of development rights

6. Aggrieved by the decision of Advance Ruling the appellant filed present appeal challenging the Ruling of Authority on the following grounds.

i. the learned lower authority had correctly analysed the legal position and held correctly that the transfer of development rights by the land owner to the developer is consideration received by such developer for supply of constructions service;

ii. however, the lower authority failed to express his view whether in such cases, as per the settled legal position elaborated in various circulars of CBIC and also as per the Point of Taxation Rules under existing law, the liability to pay tax arises on the builder-promoter prior to enactment of GST Act, 2017 or not;

iii. the learned authority failed to consider the point of taxation provisions which are explained in Section 13 of the CGST Act, 2017; the appellant further submitted that since no invoice was issued by the developer the service was deemed to have been provided by the developer to the appellant on 01.01.2016 i.e., date of entering into JDA and consideration was also received on the same date and accordingly tax liability has to be determined accordingly;

iv. while referring to provisions of Section 13 of CGST Act, 2017-Point of Taxation, submitted that the learned authority's decision that liability arises at the time of transfer of right in the constructed complex or constructed flats and not at the time of receipt of development rights is contrary to the section 13 of CGST Act, 2013 and hence not correct;

iv. in terms of clause (b) of Section 142 (11) of the CGST Act, 2017 clearly stipulates that notwithstanding anything contained in Section 13 of the CGST Act, 2017, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of Finance Act, 1994;

v. when GST itself is not leviable on the activity for which consideration was received prior to introduction of GST and service tax was required to be paid at the time of receipt of such consideration, the question of payment of GST at any point of construction does not arise;

vi. Even assuming that GST is liable to be paid at the point of taxation as held by the lower authority, the learned authority failed to give its opinion, considering the legal position settled in the case of Torrent Power Limited by Hon'ble High Court of Gujarat, that when the builder had paid GST on the entire cost of construction he incurred for construction of flats for his clients and for the landowner, then there is no need to pay further GST on the construction done for the land owner; and

vii. the appellant finally prayed that:

- a. To modify the impugned order dt: 13.07.2022 as being arbitrary by giving ruling on whether GST is applicable when consideration for the service was received prior to enactment of CGST Act, 2017 in the light of clause (b) of Section 142(11) of CGST Act, 2017; and
- b. Whether GST is required to be paid when the developer paid GST on the entire value of construction complex including the cost incurred for construction of flats to the landowner appellant.

#### **Whether the appeal is filed in time:**

7. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the appellant. The impugned Order dated 13.07.2022 was received by the appellant on 17.09.2022 as mentioned in their Appeal Form GST ARA-02. The appeal has been filed on 12.10.2022, which was received on 17.10.2022, i.e., within the prescribed time-limit.

#### **Personal Hearing:**

8. Personal Hearing was held on 17.02.2025. Shri Y S Reddy, appeared on behalf of the appellant. The Ld. Consultant reiterated the written submissions made in their appeal and requested to consider the same.

#### **Discussions and Findings:**

9. This Authority has carefully gone through the case records and submissions made by the appellant.

10. The issues raised before this Authority by the appellant in their prayer are summarised hereunder.

- a. whether GST is applicable when consideration for the service was received prior to enactment of CGST Act, 2017 in the light of clause (b) of Section 142(11) of GST Act, 2017;
- b. Whether GST is required to be paid when the developer has paid GST on the entire value of construction complex including the cost incurred for construction of flats to the landowner appellant.

11. As regards the first point, the appellant is of opinion that since the JDA was entered on 01.01.2016 i.e., before introduction of GST, TDR attracts service tax for transfer of land by the appellant to the builder for the purpose of construction ( para 14.3 of their appeal). It is observed that Advance Ruling Authority or Appellate Authority are constituted under the CGST/SGST Act, 2017 to provide clarification on matters under GST Act and Rules made thereunder. Section 97(2) of the Chapter XVII provides for spectrum of issues on which the advance ruling can be sought for under the Act. Neither the Advance Ruling Authority nor this Appellate Authority have any jurisdiction to decide on the taxability under Finance Act, 1994. Therefore, the attempt of the appellant to seek a ruling to the effect that, in the facts of this case, the supply of TDR attracted Service Tax cannot be countenanced.

12.1 In respect of the second issue viz., “Whether GST is required to be paid when the developer has paid GST on the entire value of construction complex including the cost incurred for construction of flats to the landowner appellant”, it is noted that the appellant has raised a query which is not posed before the Advance Ruling Authority. In terms of Section 101(1) of CGST Act, 2017, the Appellate Authority can, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to. Further, it is not open to the appellant to introduce new grounds in an appeal when admittedly these grounds were not raised before the original authority.

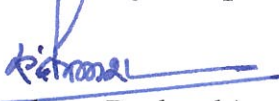
12.2 Hon’ble Supreme Court has in the case of Commissioner of Cust & C Ex, Goa vs Dempo Engineering Works Ltd {reported in 2015(319) E L T 359(SC)}, held that Tribunal cannot allow an appeal on new grounds when the same were neither raised in reply to the show cause notice nor were argued before the Adjudicating Authority.

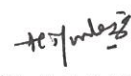
12.3 Thus, when a question is not raised before the Advance Ruling Authority, the Appellate Authority cannot entertain the same in appeal.

13. In view of the above, the following order is passed.

**ORDER**

**The appeal is dismissed and the impugned ruling of Advance Ruling Authority is upheld.**

  
(Sandeep Prakash)  
Principal Chief Commissioner  
Central Tax & Customs  
Hyderabad Zone

  
(S.A.M Rizvi)  
Commissioner  
Commercial Taxes  
Hyderabad

To:

M/s. Maddi Seetha Devi,  
A-28, 2<sup>nd</sup> Floor, Journalist Colony,  
Plot No: 70, Jubilee Hills,  
Hyderabad-500 033

Copy to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. The Principal Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.
3. The Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.