



**RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING**  
**GOODS AND SERVICES TAX**  
**NCR BUILDING, STATUE CIRCLE, C-SCHEME, JAIPUR (RAJASTHAN)-302005**  
**Email: aaaripr@gmail.com**

Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017

**Before the Bench of**

- (1) Sh. Satish Kumar Agrawal, Member (Central Tax) and  
 (2) Sh. Ravi Jain, Member (State Tax)

**ORDER NO. RAJ/AAAR/06/2021-22 DATED .02.2022**

Name and address of the Appellant	M/s Shri Vinayak Buildcon, 7, E-Class, Pratap Nagar, Udaipur (Rajasthan)
GSTIN/ UID of the appellant	08ACMFS6195A1ZU
Issues under Appeal	Whether the services provided by the applicant falls under the exemption entry at S. No. 10 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 and eligible from payment of GST?
Date of Personal Hearing	28.12.2021
Present for the appellant	1. Sh. Lokesh Menaria, Advocate and Authorised Representative. 2. Sh. Arvind Kumar Shukla, Advocate and Authorised Representative.
Details of Appeal	Appeal No. RAJ/AAAR/APP/06/2021-22 against Advance Ruling No. RAJ/AAR/2021-22/24 dated 01.10.2021

**Introductory**

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the similar provisions under the Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as the 'RGST Act'**) by M/s Shri Vinayak Buildcon, 7, E-Class, Pratap Nagar, Udaipur (Rajasthan) (**hereinafter also referred to as the 'appellant'**) against the Advance Ruling pronounced by the Rajasthan Authority for Advance Ruling in GST vide Order No. RAJ/AAR/2021-22/24 dated 01.10.2021. The Appellant herein has submitted the instant appeal in this office in hard copy on 28.10.2021 after payment of fee





amounting to Rs.10,000/- against CGST and Rs.10,000/- against SGST vide CIN SBIN21100800333322 dated 28.10.2021.

**BRIEF FACTS:**

3. As narrated by the appellant in the application seeking advance ruling as also in the instant appeal, the appellant, M/s Shri Vinayak Buildcon, 7, E-Class, Pratap Nagar, Udaipur (Rajasthan), having registration under GST with GSTIN 08ACMFS6195A1ZU, is engaged in the supply of services of construction of residential houses on pure labour basis to M/s Sanwaliya Build Creation LLP (hereinafter also referred to as "Builder") who is engaged in construction of houses under the Affordable Housing Scheme under the Chief Minister's Awaas Yojana-2015 of the Government of Rajasthan which has been framed to achieve the objective of "Affordable Housing for All" under the Pradhan Mantri Awaas Yojana (PMAY) of the Government of India.

4. As stated by the appellant herein, the builder, M/s Sanwaliya Build Creation LLP has been allotted a plot of land by the Urban Improvement Trust (UIT), Udaipur vide letter dated 30.07.2018 for construction of Residential Buildings thereon under the Affordable Housing Scheme under Chief Minister's Awas Yojana-2015 as narrated hereinabove. The builder has entered into a contract with the appellant herein vide agreement dated 13.12.2019 requiring the appellant to provide services to the builder by way of performing the labour work portion of the said main work mainly related to the civil work and development of such residential houses. The scope of work which has been sublet to the instant appellant on pure labour services basis relates to construction, excavation, levelling, dressing, earth filling, soiling, reinforcement, RCC work, brick masonry, plaster work, flooring, toilet tiles, stone/marble chookhat, gutai, MS railing, outside painting, fixing of doors and windows, fixing of railing on staircase, electrical fittings, sanitary fitting and drainage etc. It has further been stated by the appellant that no supply of material or goods is involved in the scope of work that has been assigned on sub-letting basis by the builder to the instant appellant.

5. The appellant has further submitted that initially the agreement entered into by them with the builder was valid till March 2021 only but due to the pandemic situation resulting in lockdown imposed throughout the country, the project work could not be completed within the stipulated period of time. Hence, the Rajasthan Real Estate Regulatory Authority, Jaipur (RERA) issued a certificate for extension of registration period of the project due to Force Majeure and accordingly, the Builder has granted extension of contract upto 16<sup>th</sup> October 2022 to the appellant herein. It is their further submission that after getting extension from the builder, the appellant again started their work as per the agreement and the said work is still





going on and the appellant is still providing services till the completion of work which is supposed to be completed by October, 2022.

**Application seeking Advance Ruling**

6. It is stated by the appellant in the instant appeal that it was their understanding of the law that the services of labour work of construction of residential houses under Chief Minister's Awas Yojana 2015 framed to achieve the objective of "Affordable Housing for All" under Pradhan Mantri Awas Yojana of the Government of India is exempted from GST by virtue of Sl. No. 10 of Notification No. 12/2017-CT® dated 28.06.2017 and accordingly, during the continuation of the work, the appellant moved an application seeking Advance Ruling from the Rajasthan Authority for Advance Ruling on the question which is reproduced below:

*"Whether the services provided by the applicant falls under the exemption entry at Sl. No 10 of the Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017 and eligible for exemption from payment of GST".*

7. According to the appellant, the appellant is compelled to deposit GST despite falling in the exempted category and, therefore, the above mentioned application seeking advance ruling was filed but the Rajasthan Authority for Advance Ruling has, vide order dated 01.10.2021, rejected the application on the basis of wrong finding and interpretation of facts and held that supply of goods or services undertaken by the appellant is prior to the date of filing, hence, application is not maintainable.

**Appeal against the Advance Ruling: Grounds**

8. While submitting the instant appeal, the appellant has mainly submitted the following grounds of appeal:-

(i) That the learned Authority for Advance Ruling (AAR) has rejected the application seeking advance ruling on the basis of wrong findings and interpretation of facts.

(ii) That the AAR has wrongly assessed that the supply of goods or services undertaken by appellant is prior to the date of filing, hence, application is not maintainable. However, as per the appellant the supply of services are being undertaken and the appellant is still providing its services as per the above agreement and hence, the AAR has wrongly rejected the application for advance ruling filed by the appellant.

(iii) That the AAR has erred in holding that the supply of services is completed therefore advance ruling application is not maintainable. However, the appellant was granted extension till October, 2022 and services are being undertaken, hence, the order passed by the AAR is liable to be set aside.





(iv) That the AAR has himself referred to section 95 of the CGST Act, 2017 where the definition of advance ruling is given and it is clearly mentioned in sub-section 2 of **Section 95** that:-

*"2. Such matters or questions could be in relation to supply of goods and/or supply of services being undertaken or proposed to be undertaken by the applicant. Being undertaken refers to supply which is underway."*

Therefore, it is clear that the AAR has wrongly interpreted that services of appellant has already been undertaken and rejected the application despite the fact that the appellant has apprised the learned AAR during the course of hearing that the services are being undertaken.

(v) That the appellant has put the abovementioned query for advance ruling as the appellant considers that the services of labour work of construction of residential houses under Chief Minister's Awas Yojana-2015 framed to achieve the objective of "Affordable Housing for All" under Pradhan Mantri Awas Yojana of Government of India contracted to them by the builder is a supply of service as per Section 7 of the CGST Act, 2017 and is further leviable to GST under Section 9 of the CGST Act, 2017 but exemption provided under Sl. No. 10 of Notification No. 12/2017-CT(R) dated 28.06.2017 is available to them as the services provided by the appellant in the present case under consideration is by way of pure labour contract of construction of new residential houses which are being constructed under aforesaid scheme.

(vi) That in an identical case of M/s Sevak Ram Sahu of Jaipur, Advance Ruling reported at 2020 (33) G.S.T.L. 437 (AAR-GST-Raj.), the appellant was a sub-contractor supplying pure labour services for Chunai and Plaster work for construction of residential houses under affordable housing scheme under Pradhan Mantri Awas Yojana to main contractor executing the project under agreement with the Government of Rajasthan. In the said case it was held that pure labour contract services supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works is exempted under Entry 10 of Notification No. 12/2017-C.T. (Rate). Further, the said exemption is not person-centric but project-centric. Accordingly, sub-contractor is eligible for exemption for supplying aforesaid services for aforesaid project which is an original work. The ratio of the above case law applies equally in the present case as well.

### **Prayer in Appeal**

9. While submitting that the order dated 01.10.2021 passed by the AAR is liable to be set aside as the AAR was wrong in holding that advance ruling cannot be given because the service has already been undertaken, and praying that the order passed by the AAR may be stayed during the pendency of the instant appeal as the appellant is still paying GST despite falling under exempted services, which is extra burden upon the appellant, prayer in the instant appeal as made by the appellant





reads as follows:-

*"The Rajasthan Appellate Authority for Advance Ruling in Goods and Service Tax may be pleased to set aside the impugned advance ruling No. RAJ/AAT/2021-22/24 dated 01.10.2021 passed by the Rajasthan Authority for Advance Ruling in Goods and Service Tax."*

**Personal Hearing:**

10. Personal hearing in the instant appeal was conducted through virtual mode on 28.12.2021 which was attended by S/shri Arvind Kumar Shukla, Advocate and Lokesh Menaria, Advocate & Authorized Representative of the appellant. During the course of personal hearing, they have reiterated the submissions already made in the grounds of appeal.

**Discussion and Findings:**

11. We have carefully gone through the appeal filed by the appellant, the order passed by the AAR on the application seeking advance ruling in the matter, written as well as oral submissions made by the appellant in the appeal or through the authorized representative(s) during the course of personal hearing held on 28.12.2021 and also perused the documents submitted by the appellant which form part of the appeal papers.

12. At the cost of repetition, we deem it appropriate to mention that it is the submission of the appellant that they are engaged in supply of services on pure labour basis, involving no supply of goods, for construction of residential houses which are being built by a builder on a plot of land allotted to the builder for construction flats under the Affordable Housing Scheme of the Government of Rajasthan under Chief Minister's Awas Yojana 2015 framed to achieve the objective of "Affordable Housing for All" under Pradhan Mantri Awas Yojana of the Government of India. The application seeking advance ruling as filed by the appellant on 06.07.2021 with the AAR contained the question as to whether the services of construction as provided by the applicant by way of pure labour contract to the builder of flats under the said scheme of the Government were eligible for exemption in terms of entry Sl. No. 10 of Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017.

13.1. Before proceeding further to consider the prayer made by the appellant we consider it necessary to examine the reasoning given in the order passed by the AAR. We observe that the order dated 01.10.2021 passed by the AAR on the application dated 06.07.2021 filed by the appellant seeking advance ruling in the matter, after reproducing in Para- 7 the definition of "Advance Ruling" as provided under Section 95 (a) of the CGST Act, 2017, gives the reasoning in Paragraph 8 as follows:-





*"From the definition it is very clear that the scope of the advance ruling for the Authority for Advance Ruling is limited to the transactions being undertaken or proposed to be undertaken. In the instant case, as already narrated, the application seeking advance ruling was filed on 06.07.2021 before the AAR with respect to supplies undertaken for the period from 01.04.2019 to 31.03.2021. Hence, the case is out of the purview of the advance ruling."*

13.2. We further observe that in view of the reasoning reproduced above, the AAR has passed the order dated 01.10.2021 in the following manner:-

*"As the question posed by the appellant is related to supplies undertaken by them prior to the date of filing of the application for advance ruling, no ruling can be given on the questions. Hence, the subject application for advance ruling made by the applicant is not maintainable and rejected under the provisions of the GST Act, 2017."*

13.3. On a careful consideration of the reasoning given by the AAR in the order dated 01.10.2021 and the submissions made by the appellant in the appeal, especially in the grounds of appeal, we observe that the application seeking advance ruling in the matter has been rejected on the ground of non-maintainability under the relevant provisions of law whereas the appellant submits that the grounds taken to hold the application to be non-maintainable are contrary to the factual position of the case which was also brought to the notice of the AAR specifically during the course of personal hearing in the matter of the application seeking advance ruling. In view of the contentions as above, the first question that falls for our consideration concerns examination of the factual position based on the relevant documents produced by the appellant. The manner in which the factual position was analysed by the AAR to reach the conclusion as aforesaid can be subjected to scrutiny in terms of the legal position once the factual position becomes crystal clear.

14.1. From perusal of the appeal, we observe that the submissions of the appellant by way of grounds of appeal revolve around the provisions of Section 95 of the CGST Act, 2017 containing definition of "Advance Ruling" which has also been considered by the AAR to come to a conclusion in the impugned order dated 01.10.2021 which is under challenge in these proceedings. We, therefore, deem it appropriate to reproduce the said provisions as follows:-

**[Section 95. Definitions of Advance Ruling:-**

In this Chapter, unless the context otherwise requires,-

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;]

14.2. We observe that the definition of advance ruling, when seen in the context of the issue involved in the instant appeal, provides that questions seeking an





advance ruling can relate to either supply of goods or supply of services or both by the applicant. In the instant case, the question concerns supply of services only by the applicant (appellant herein). However, as per the definition, the supply of goods or supply of services or both is qualified by two phrases viz. "being undertaken" or "proposed to be undertaken" by the applicant. The above phrases will be analysed a little later after examination of the factual position of the case based on the submissions of the appellant is completed.

15.1. Admittedly, the application seeking advance ruling in the matter was filed by the applicant (appellant herein) on 06.07.2021 before the AAR and the same was rejected by the AAR vide order dated 01.10.2021 holding that the application is not maintainable as the same relates to supply of services undertaken prior to the date of filing of application. It is the contention of the appellant that the appellant is still providing the services as per the agreement in question and the AAR was apprised of this fact during the course of personal hearing.

15.2. In view of the contentions which have been made we observe that the facts need to be examined from the relevant documents which form part of the file of the instant appeal as well as the application filed before the AAR. From examination of the relevant documents, we observe that:-

(i) The award of work to the appellant by the builder has been documented in an 'agreement' which has been entered into on 13.12.2019 by the builder, M/s Sanwaliya Buildcreation LLP as first party with the appellant, M/s Shri Vinayak Buildcon as second party on a stamp paper of Rs.500/- and duly notarized. Duration/ tenure of the contract agreement as mentioned in Para-1 thereof is for a period of 24 months starting from 01.04.2019 and ending on 31.03.2021. A special note given in the agreement states that all conditions of the said agreement were decided on 01.04.2019 and the construction work started on site. Hence, it can be concluded that supply of services under the agreement commenced from 01.04.2019 itself and the agreement was effective upto 31.03.2021 only.

(ii) The statement of facts attached to the application seeking advance ruling refers to the agreement entered into by the builder with the appellant but the date of entering into the agreement or the period of currency of the agreement has not been mentioned in the statement of facts.

(iii) The record of personal hearing held on 27.09.2021 which also bears the signature of the Authorised Representative of the appellant does not contain anything to indicate that any submission was made to the effect that the services are still being undertaken.

(iv) The paper book of the appeal refers to the following documents which have been enclosed with the appeal:- (a) Copy of certificate for extension of registration at pages 23 to 27; (b) copy of extension letter at page 28.





(v) Copy of application filed before the AAR has been enclosed to the appeal at pages 29 to 56 as mentioned in the paper book as well.

16. It will be at a little later stage that we will go into the question as to what constitutes 'supplies being undertaken'. For this purpose we will also have to examine as to whether currency of an agreement as on the date of filing application seeking advance ruling constitutes 'supplies being undertaken' as provided under Section 95(a) ibid even if a large portion of the period of currency of the agreement has already elapsed. However, without going into these questions at this stage, we are examining the factual position with regard to currency of the period of the agreement in question which has been submitted to and taken into consideration by the AAR.

17.1. From perusal of the copies of certificates of extension of registration which have been attached to the appeal at pages 23 to 27, we observe that the same are a bunch of three documents, one of them being a letter dated 29.09.2021 from the appellant addressed to the AAR with reference to the personal hearing held on 27.09.2021 submitting that the subject work under the said contract is still continuing and the period of completion of the said work stands extended upto 16.10.2022. Copy of document showing such extension is stated to have been attached as Annexure-1. From perusal of Annexure-1 it reveals that the same consists of two separate documents which are certificates of extension of registration issued by Rajasthan Real Estate Regulatory Authority, Jaipur (RERA) in respect of the group housing project of the instant builder in Debari and Kamlod Villages of Girwa Tehsil in Udaipur District. While the first certificate dated 06.08.2020 extends the validity of registration of the project by a period of 12 months commencing from 17.04.2021 and valid upto 16.04.2022, the second certificate dated 03.09.2021 extends the validity of the registration of the project by a period of 6 more months commencing from 17.04.2022 and valid upto 16.10.2022.

17.2. We further observe that the another document attached to the appeal is an undated letter of extension of contractor agreement signed by M/s Sanwaliya Buildcreation LLP which states that the duration of the contract with M/s Shri Vinayak Buildcon which was for a period of 24 months from 01.04.2019 to 31.03.2021 will now remain upto October 2022 as the builder has got extension from RERA upto 16<sup>th</sup> October 2022. The instant letter does not bear any date, neither in the opening or closing portion nor on the signature portion. Hence, the other documents relevant to the instant document have to be seen in order to ascertain the date of coming into existence of the instant document.





17.3. We observe that the two extension certificates issued by the RERA on 06.08.2020 and 03.09.2021 extend the period of the project by 12 months upto 16.04.2022 and 6 months upto 16.10.2022 respectively. The letter of extension of contract agreement as issued by the builder mentions the date of extension of the project as 16.10.2022 only (relatable to certificate dated 03.09.2021) and not as 16.04.2022 (relatable to certificate dated 06.08.2020). Since the extension of registration of the project upto 16.10.2022 was granted by RERA vide extension certificate dated 03.09.2021 only it can be inferred that the letter in question as issued by the builder was signed not before 03.09.2021 as mention of extension upto 16.10.2022 could have been made only after issuance of the RERA's certificate dated 03.09.2021 only. However, the application seeking advance ruling in the instant case was filed on 06.07.2021 before the AAR, the date on which the extension letter was not in existence. We, therefore, come to the conclusion that the extension of contract agreement as claimed to have been given by the builder to the appellant was not in existence on the date of filing of the application seeking advance ruling in the matter.

17.4. In this regard we further observe that the appellant has claimed that the extension of contract agreement was brought to the notice of the AAR during personal hearing but the record of personal hearing dated 27.09.2021 does not find mention of such a fact despite the fact that the record is also signed by the Authorised Representative of the appellant. Further, the appellant has made no submissions in the appeal as regards the letter dated 29.09.2021 which is addressed to the AAR and which contains the said two extension certificates issued by RERA as its annexures. One may try to suppose that the appellant claims that the said letter has been sent to the AAR for communicating the extension of contract agreement but strangely enough, there is no claim in the appeal to the effect that the said letter was ever communicated to the AAR rather the appeal is completely silent in this regard. It is also a fact that copy of the said letter dated 29.09.2021 as attached to the appeal does not bear any acknowledgement of receipt recorded by the addressee thereon. Hence, it is not possible to infer that the said letter was ever communicated to the addressee. Be that as it may, since the appellant has mentioned nothing in the appeal as to what is the purpose of attaching the said letter to the appeal nor have the appellant claimed that they have communicated the said letter dated 29.09.2021 to the AAR before passing of the order dated 01.10.2021, we refrain from commenting further on the said letter as the same has not been made part of what has been stated in the appeal or the grounds of appeal. In any case the issue as to whether the said letter dated 29.09.2021 could have made any difference insofar as the maintainability of the application seeking advance ruling is concerned, will be discussed in later part of our findings.





17.5. We also observe that in the paper book of the appeal, it has been mentioned that copy of the application filed before the AAR is placed at pages 29 to 56. On going through the said pages we find that the application contained in 22 pages in all (including its paper book) as per the paper book of the application itself is placed at pages from 29 to 50 only whereas the remaining pages from 51 to 56 are again comprised of the letter dated 29.09.2021 addressed to the AAR with the two extension certificates dated 06.08.2020 and 03.09.2021 issued by RERA and a letter of extension of the contract agreement as issued by the builder which have already been discussed hereinabove. Admittedly, the letter addressed to the AAR is dated 29.09.2021 while the application seeking advance ruling was filed on 06.07.2021. Further, as discussed above, the letter of extension of contract agreement issued by the builder could not have come into existence before 03.09.2021. Thus, we find that these documents were never a part of the application papers and by attaching these documents with the appeal papers and mentioning in the paper book that a copy of the application filed before the AAR is placed at pages 29 to 56 an attempt has been made to create an impression as if the extension certificates issued by the RERA and the extension of contract agreement as issued by the builder were and had always been a part and parcel of the application papers. However, from what has been concluded hereinabove we find that as per the records placed before us by the appellant these documents were definitely not part of the application filed before AAR and it is only while filing the appeal that the same have been shown as having been attached to the application filed before the AAR.

18. After having observed that the extension certificates issued by the RERA had not been submitted to the AAR with the application seeking advance ruling and the letter from the builder showing extension of contract agreement was not in existence at the time of filing application seeking advance ruling, we now proceed to decide the point as to whether the supply of services by the appellant in the instant case is covered by either of the phrases "being undertaken" or "proposed to be undertaken" by the applicant and whether the application filed by the appellant before the AAR was maintainable in terms of the provisions of Section 95(a) of the CGST Act, 2017.

18.1. We observe that advance ruling in GST law, as the term itself would indicate, is a decision provided in advance by the prescribed authority on such matters which concern the tax liability of the applicant with respect to supply of goods or services or both. As provided in Section 103 of the CGST Act, 2017, the advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section 2 of section 97 for advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant. Since the broad objective of the advance ruling





mechanism is to provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant, an advance ruling brings certainty in determining the tax liability and transparency with respect to any issue which may have the potential of causing a tax dispute in future, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as the department. As per sub-section 2 of section 97 of the CGST Act, 2017, the question on which the advance ruling is sought under this Act, includes matters concerning applicability of a notification issued under the provisions of this Act. In the instant case, the appellant had sought advance ruling in respect of applicability of exemption in terms of Sl. No. 10 of Notification No. 12/2017-CT(R), dated 28.06.2017 to the contract agreement, the appellant has entered into with the builder for the period from 01.04.2019 to 31.03.2021, whereunder the appellant was required to provide services by way of labour work of construction of residential houses under the affordable housing for all scheme on the plot of land allotted to the builder vide allotment letter dated 30.07.2018.

18.2. Section 95 of the CGST Act, 2017, in clause (a), clearly defines advance ruling as a decision on the specified matters or questions in relation to supply of services being undertaken or proposed to be undertaken by the applicant. We find that while supply of services 'proposed to be undertaken' is clearly a matter of supply which will be undertaken in future and which, at present, is at proposal stage only, supply of services 'being undertaken' is a matter of supply in the present which has moved beyond the stage of proposal towards the execution stage. But in any case, the phrase 'being undertaken' does not cover in its ambit anything which has been completed or which has become the thing of the past as clause (a) does not use the word 'undertaken' singly. This is the only interpretation of the phrase 'being undertaken' that is commensurate with the intrinsic meaning of the word 'advance' in 'advance ruling' which simply denotes that an applicant can obtain a ruling in advance from the specified authority.

18.3. Adverting to the facts of the instant appeal, we observe that the supply of services by the appellant to the builder in the instant case commenced from 01.04.2019. The agreement dated 13.12.2019, duly notarised and signed by both the builder and the instant appellant being the supplier of service to the builder, specifically mentions that supply of services under the agreement by way of construction at the site started on 01.04.2019. The agreement further provides that the duration of the contract for completion of the said project by the second party i.e. the appellant herein, under the agreement shall be for a period of 24 months i.e. from 01.04.2019 to 31.03.2021. We find that the appellant did not file any application seeking advance ruling on the question of applicability of exemption in terms of Notification No. 12/2017-CT(R), dated 28.06.2017 to the services proposed to be provided by him to the builder, either before or at the time of





commencement of the supply of service on 01.04.2019. Thereafter also no application seeking advance ruling was filed by them even on the date of signing the written agreement on 13.12.2019 or during the entire period of currency of the agreement which finally came to an end on 31.03.2021 while the appellant continued to provide services under the agreement. We also find that while making a prayer for a stay during pendency of the appeal, it has been stated that the appellant is still paying GST despite falling under exempted services. This submission of the appellant in itself is a testimony to the fact that the appellant was supplying the services and paying tax in accordance with the legal provisions and the question of availability of exemption did not come to their mind during the entire period of the agreement and even after end of the agreement period on 31.03.2021. In fact, the application seeking advance ruling was submitted on 06.07.2021 only.

18.4. In view of what has been discussed above, we are of the view that an application seeking advance ruling as defined under clause (a) of section 95 of the CGST Act, 2017 on any question as provided under sub-section (2) of section 97 of the CGST Act, 2017 could have been made in relation to the supply of services either proposed to be undertaken or being undertaken by the appellant but in any case the definition of advance ruling does not permit making of an application in relation to the supply of services already undertaken for a long period of two years in pursuance of an agreement which had expired long before the making of the application seeking advance ruling. While holding so, we are conscious of the fact that the phrase 'being undertaken' does not prohibit commencement of supply of service under an agreement before filing of an application seeking advance ruling on the question of applicability of exemption notification to the supply of services but in our view stretching the meaning of the phrase 'being undertaken' to such an extent where the point of filing the application seeking advance ruling would fall well beyond the entire period of the supply of services under the agreement would not only be against the spirit of advance ruling itself but also frustrate the very objective of seeking an advance ruling.

18.5. In view of the findings given above, the questions involving claim of extension of the two years contract agreement for supply of service for further period of one and a half years, creation of such an extension document at a stage far later than the date of filing application seeking





advance ruling and non-existence of evidence showing submission of such an extension letter to the AAR lose their relevance and, therefore, the same need no further examination.

19. We, therefore, hold that the order dated 01.10.2021 passed by the AAR rejecting the application seeking advance ruling by holding that *the subject application for advance ruling made by the applicant is not maintainable as the question posed by the appellant is related to supplies undertaken by them prior to the date of filing of the application for advance ruling warrants no interference and therefore, the order dated 01.10.2021 passed by the AAR refusing to pronounce any advance ruling on the question posed by the appellant is hereby upheld. Further, since we are upholding the order passed by the AAR rejecting the application on account of non-maintainability, the question of examination of the matter on merits does not logically arise and, therefore, no advance ruling under the provisions of the CGST Act, 2017 can be given on the question posed by the appellant.*

20. *The appeal filed by the appellant is accordingly rejected and disposed off in the above terms.*

(Satish Kumar Agrawal)  
Member (Central Tax)

(Ravi Jain)  
Member (State Tax)

**BY SPEED POST**

M/s Shri Vinayak Buildcon,  
7, E-Class, Pratap Nagar,  
Udaipur (Rajasthan)  
PIN-313001

F. No. IV (16)06/AAAR/RAJ/2021-22/

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Date. 28.02.2022

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, KarBhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur.
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, KarBhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. The Deputy /Assistant Commissioner, CGST Division-A, 4<sup>th</sup> floor, LIC Building, Reti Stand Circle, Sub-city Centre, Central Area, Udaipur, Rajasthan
6. Guard File.



SUPERINTENDENT (AAAR)