



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

Present:

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Taxes)
Sri Sahil Inamdar, I.R.S., Additional Commissioner (Central Taxes)

A.R.Com/07/2023

Date: 30.09.2023

TSAAR Order No.21/2023

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

1. M/s. Vaishnaoi Infratech And Developers Private Limited, 1st Floor, Plot.No.11 and 12, Amarsociety Kavuri Hills, Serilingampallymandal, Hyderabad, Telangana-500 023 (36AACCV3862G1Z8) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.

4. BRIEF FACTS OF THE CASE:

- 4.1 The applicant, Vaishnaoi Infratech and Developers Private Limited, is a company registered under The Companies Act, 1956 and is a registered taxpayer (hereinafter referred to as Applicant) engaged in the business of real estate development.
- 4.2 It is submitted that, the applicant is engaged in the business of development of plots by purchasing the land from land owners or/and taking the land from other land owners by entering into development agreement. Applicant has owned 10 acres of land at Mamidipally Village near Shamshabad Airport, Hyderabad and in addition to that, they have taken another 12 acres of land located besides their land from other land owners by entering the joint development agreement.
- 4.3 Based on the above facts, applicant requests Advance Ruling on following points, i. Whether sale of developed plots by applicant to various customers after development is taxable under the GST Acts or not.

- ii. Whether development of plots' service provided to the land owners is taxable under GST and if so under which Notification and under which entry?
- iii. Whether transfer of development rights by the land owner in consideration of land development services received is taxable or not under the provisions of the GST Acts? If taxable, whether the applicant is liable to pay GST under RCM basis on the development rights received from the land owners or whether the land owner is only liable to pay GST on such transfer of development rights. What is the applicable Notification and entry in the Notification?
- iv. If transfer of development rights and development of plot service are liable for GST, how to arrive at the value of supply of such services for payment of GST. How much value of land has to be deducted for levying tax?
- v. If Transfer of development rights are liable for GST, can developer claim ITC of the same while discharging the liability to pay tax on development services provided, if such rights are received from the registered land owners?
- vi. If tax is payable on TDRs on RCM basis and on development service, what is the time of payment and what is the applicable Notification?

4.4 Company Background:

M/s. Vaishnaoi Infratech And Developers Private Limited is a Private incorporated on 15 December 2006. It is classified as Non-govt company and is registered at Registrar of Companies, Hyderabad. It is involved in Building of complete constructions or parts thereof; civil engineering

5. QUESTIONS RAISED:

- i. Whether sale of developed plots by applicant to various customers after development is taxable under the GST Acts or not.
- ii. Whether development of plots' service provided to the land owners is taxable under GST and if so under which Notification and under which entry?
- iii. Whether transfer of development rights by the land owner in consideration of land development services received is taxable or not under the provisions of the GST Acts? If taxable, whether the applicant is liable to pay GST under RCM basis on the development rights received from the land owners or whether the land owner is only liable to pay GST on such transfer of development rights. What is the applicable.

6. PERSONAL HEARING:

The Authorized representatives of the unit namely Sri. M.Ramachandra Murthy, Advocate & AR attended the personal hearing held on 24.05.2023. The authorized representatives reiterated their averments in the application. Further, the Authorised Representative/Applicant M/s. Vaishnaoi Infratech And Developers Private Limited, reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. DISCUSSION & FINDINGS:

- a. The applicant in the annexure 1 to form GST ARA-01 has raised five questions at Para 3 of the statement of relevant facts the same are clarified as follows:

Question1: Whether sale of developed plots by applicant to various customers after development is taxable under the GST Acts or not?

Clarification:The applicant is engaged in the business of development and Sale of plots. These plots are developed on the land purchased by them or the land for which they have entered into a development agreement with the land owner.

The activity of sale of land is covered as item (5) of the Schedule III to the CGST Act. The Circular No. 177/09/2022 dt:03.08.2022 issued by Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit) at para-14.3 states that "Land may be sold either as it is or after some development such as leveling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land

and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST”.

Therefore the value of Land is not taxable either sold as undeveloped land or selling it after the land is developed.

- b. **Question2:** Whether development of plots’ service provided to the land owners is taxable under GST and if so under which Notification and under which entry?

Clarification: The above circular No. 177/09/2022 dt:03.08.2022 at para-14.4 enumerates as follows:

“However, it may be noted that any service provided for development of land, like leveling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services”.

Thus a tax payer is liable to pay tax on the supply of the aforementioned works contract service if such service is supplied to any recipient of these services viz.

- i. A Land owner with whom the tax payer has entered into a development agreement.
- ii. An owner of Land property other than tax payer.
- iii. A Land property in respect of which “contract of sale” is made by the tax payer under Sec 54 of the Transfer of property Act 1882 where in the purchaser has obtained an equitable interest in such land.

- c. The applicant is engaged in supply of service of works contracts on the above 3 accounts as seen from their submissions. “Works contract” is defined in the CGST Act in Sec 2 (119) i.e., ‘ “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract’.
- The supply of works contract service to customers as well as land owners, who have transferred the development rights to the applicant, is taxable at the rate of 9% CGST & 9% SGST as sub entry – xii of entry at serial no.3 with SAC 9954 of the notification 11/2017.

- d. **Question 3:** Whether transfer of development rights by the land owner in consideration of land development services received is taxable or not under the provisions of the GST Acts? If taxable, whether the applicant is liable to pay GST under RCM basis on the development rights received from the land owners or whether the land owner is only liable to pay GST on such transfer of development rights. What is the applicable Notification and entry in the Notification?

Clarification: Notification 12/2017 is amended vide notification 4/2019 dt: 29.03.2019 to inserted Sl.No.41A in the exemption for the purpose of exempting “Transfer Of Development Rights” for construction of **residential apartments**. This is an exemption given to a specific category of taxable persons i.e., developers of residential apartments only. It is a well settled law that different exemptions may be granted to different classes of persons. The Supreme Court in a catena of case law has held that legislature has wide powers of classification in case of taxation statutes. These judgments include Spencer’s Hotels (P) Ltd V State of West Bengal – (1991) 2 SCC 154, S Rice Mills V State of AP – AIR, 1964 SC 1781, Jain Bros V UOI 77 ITR 107 (1969) 3 SCC 311 AIR 1970 SC 778, Khandige Sham Bhat V AITO 1963 48 ITR 21 (SC), Associated Cement Co. V Government of AP 2006 AIR SCW 323, 1 SSC 597, SC 928, STC 342 Indian Charge Chrome 1999 AIR SCW 3498.

As the category of the works contracts under taken by the applicant, who develops plots by leveling or altering land are not included in the above notification 04/2019, **this exemption is not applicable** to the transactions made by them.

Further the Notification 13/2017 was amended vide Notification 5/2019 dt:29.03.2019 to include services supplied by way of “transfer of development rights” **by** any person **to** a promoter for construction of a project; and thus this supply attracts liability on reverse charge.

The term **project** is defined in the notification as a Real estate project or a residential real estate project as defined under Sec 2 (zn) of the Real-estate (regulation and development) Act 2016.

In Sec 2 (zn) of the Real estate Act 2016 :**"real estate project"** means
"the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, **or the development of land into plots** or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto";

The term **promoter** is defined to have same meaning as assigned to it in Sec 2 (zk) of the Real-estate (regulation and development) Act 2016:

In Sec 2 (zk) of the Real estate Act 2016 : **"Promoter"** means,—

"(i) ...

(ii) a person who **develops land into a project, whether or not the person also constructs structures on any of the plots**, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon";

.....

Thus the Transfer of Development Rights by the land owner to the applicant is taxable under the CGST & SGST Acts at the hands of the recipient promoter, i.e., the applicant, of these rights. The rate of tax is 9% on CGST & SGST respectively as residuary entry as mentioned in circular no.164/20/2021 dt: 06.10.2021 at Para no. 9.3.2. The applicant can claim input tax credit of the same while discharging the liability to pay tax on development services provided by him.

- e. **Question 4:** If transfer of development rights and development of plot service are liable for GST, how to arrive at the value of supply of such services for payment of GST. How much value of land has to deducted for levying tax?

Clarification: Where the value of works contract is separately specified w.r.t development undertaken on land by way of altering the immovable property, such amount shall be the value of supply exigible to tax as determined under Sec 15 of the CGST Act. However if the value of the works contract is not separately specified then Rule 30 of the CGST Rules read with Sec 15 of the CGST Act shall be applied for arriving at value of supply of such services.

- f. **Question 5:** If Transfer of development rights are liable for GST, can developer claim ITC of the same while discharging the liability to pay tax on development services provided, if such rights are received from the registered land owners?

Clarification: Yes. Please see response to the question 3 above.

- g. **Question 6:** If tax is payable on TDRs on RCM basis and on development service, what is the time of payment and what is the applicable Notification?

Clarification: Notification 4/2018 dt: 25.01.2018 has notified time of supply of development rights and construction service w.r.t. constructed complex, building or civil structure, however, there is no reference to development of plots in the notification. Therefore the time of supply in the case of the applicant is discerned from the CGST Act as follows:

i. Time of supply Transfer of Development Rights which are recognized as service under notification no. 13/2017 as amended by notification no. 5/2018, is determined under Sec 13 (3) (b) of the CGST Act read with Sec 31 (3) (f) or (g). Thus time of supply is the date immediately following 60 days from the date of issue of invoice or voucher or any other document in lieu thereof by the supplier.

ii. Development Services are given in continuity over a period of time, therefore they are "Continuous Supply of Services" hence the time of supply of development services is determined by Sec 13 read with Sec 31 (5). Therefore the time of supply will be due date of payment by the recipient or when due date is not ascertainable then the actual date on which payment is received and when such payment is linked to the completion of an event then the time of supply will be date of completion of that event.

8. In view of the foregoing, we rule as follows:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
i. Whether sale of developed plots by applicant to various customers after development is taxable under the GST Acts or not.	No, as discussed in Para 7 (a).
ii. Whether development of plots' service provided to the land owners is taxable under GST and if so under which Notification and under which entry?	Yes. The Service is Taxable As discussed above at Para -7 (b) & 7 (c), under sub entry – xii of entry at serial no.3 with SAC 9954 of the notification 11/2017.
iii. Whether transfer of development rights by the land owner in consideration of land development services received is taxable or not under the provisions of the GST Acts? If taxable, whether the applicant is liable to pay GST under RCM basis on the development rights received from the land owners or whether the land owner is only liable to pay GST on such transfer of development rights. What is the applicable rate.	Yes. The Promoter is liable to pay CGST & SGST at the rate of 9% each on Reverse charge basis on transfer of development rights under entry 5B of the notification 13/2017 as amended by notification 5/2019 on 29.03.2019 as discussed above at Para 7 (d). The applicable rate is 9% CGST & SGST respectively.


(S.V. KASI VISWESWARA RAO)
(ADDL. COMMISSIONER (STATE TAXES))


(SAHIL INAMDAR)
(ADDL. COMMISSIONER (CENTRAL TAXES))

[under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]

To
M/s. Vaishnaoi Infratech And
Developers Private Limited,
1st Floor, Plot.No.11 and 12,
AmarSociety Kavuri Hills,
Serilingampallymandal,
Hyderabad, Telangana-500 023

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Hyderabad Commissionerate, 2nd Floor, GST Bhavan, Basheerbagh, Hyderabad, Telangana - 500004.

Copy to:

3. The Assistant Commissioner (ST) Madhapur –IV Circle.