KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SHRI. M.S.SRIKAR, MEMBER

ORDER NO.KAR/AAAR-19//2020-21 **DATE:04-05-2020**

Sl. No	Name and address of the appellant	M/s Maarq Spaces Private Limited, Unit No. 414, Prestige Center Point, Cunnhingham Road, Bengaluru – 560 052
1	GSTIN or User ID	29AAGCC1998Q1ZO
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 119/2019 Dated 30th Sept 2019
3	Date of filing appeal	01-01-2020
4	Represented by	Shri. Sanjay M. Dhariwal, Chartered Accountant.
5	Jurisdictional Authority- Centre	Commissioner of Central Tax, Bangalore North Commissionerate.
6	Jurisdictional Authority- State	LGSTO 25A, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CIN No HDFC20012900086038dated 09.01.2020 for Rs 20,000/-

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Maarq Spaces Private Limited, Unit No. 414, Prestige Center Point, Cunnhingham Road, Bengaluru – 560 052 (herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 119/2019 dated 30th Sept 2019.

Brief Facts of the case:

3. The Appellant is a Private Limited Company engaged in the business of property development. The Appellant has entered into a Joint Development Agreement (JDA) on 08/11/2017 with Land Owners for development of land into residential layout along with specifications and amenities. Cost of development shall be borne by Appellant. The consideration was agreed on revenue sharing basis in the ratio of 75% [for Land Owners] and 25% [for Developer / Appellant]. Pursuant to the JDA, the Appellant entered into an agreement with customers for sale of developed plots of land for consideration.

4. In this connection the Appellant sought an advance ruling in respect of the following question:

a) *Whether the activity of development and sale of land attracts tax under GST?*

b) *If the answer to the above question is yes, for the purpose of taxable value, whether provision of Rule 31 can be made applicable in ascertaining the value of land and supply of service?*

5. The Karnataka Authority for Advance Ruling vide ruling No KAR ADRG NO 119/2019 dated 30-09-2019 held as follows:

The activities as envisaged in the agreement between the Appellant and the Land Owners amount to supply of service and is liable to be taxed under GST.

Rule 31 applies in t he instant case and the value of the supply equals to the total amount received by the Applicant, which is equal to 25% of the market value of each plot.

6. Aggrieved by the above ruling, the appellant has filed this appeal on the following grounds.

6.1. The Appellant submitted that, there is nothing in JDA which give rise to the contention that, Appellant had agreed to supply service to the Land Owners; that in terms of Section 9 of GST Law, GST is levied on the supply of goods or services or both. The term 'Supply' is defined elaborately in Section 7 of the Act to include all forms of supply goods or services or both, such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a **consideration** by a **person** in the course or furtherance of business; that in order to constitute there should be person who supplies goods or service and there should be person who receives such goods or service; that a reading of the definition of 'supplier' and 'recipient' as given in Section 2(105) and 2(93 respectively) of the CGST Act, reveals that the contract for supply of goods or service or both should specify the intention of parties having agreed sell goods or provide service for consideration; that in the case of Appellant, the parties had never agreed for supply of goods or service between them, rather it is agreed to contribute mutually in the form of land and development work by each other and share the revenues out of sale of developed plots to the prospective customers.

6.2. The Appellant submitted that the law recognizes the **"recipient" as** the person who is liable to pay consideration; that there is no such clause / term in the JDA, which fixes the responsibility on Land Owners to pay the consideration to the Appellant for development of land; that it is agreed by the Appellant that, irrespective of sale of plots of not, Appellant should complete the development work within the specified time; that, JDA is also silent about the consequences of unsold plots, as to whether Land Owners are liable to pay any consideration to the Appellant or not. Therefore, in the absences of consideration flowing from Land Owners, it cannot be construed that, Appellant had agreed to execute work to the Land Owners for consideration. The Appellant drew attention towards **Circular No. 109/03/2009, Dated: 23/02/2009 i**ssued under the erstwhile Service Tax Law wherein it was clarified that,

"Another type of arrangement is where the contract between the theatre owner and the distributor is on revenue sharing basis i.e., a fixed and pre-determined portion i.e., percentage of revenue earned from selling the tickets goes to the theater owner and the balance goes to the distributor. In this case, the two contracting parties act on principal-to-

principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax".

They submitted that the principle laid down in the above clarification is squarely applicable to their case.

6.3. The Appellant further submitted that, in the case of sale of developed plots, the principal supply is land and development activity is incidental to the main principal supply, therefore sale of land does not attract tax under GST; that, sale of land is excluded from the scope of **"supply",** under Entry No. 5 of III Schedule; that applying the provisions of 'composite supply' and 'principal supply' as defined in Sections 2(30) and 2(91) of the CGST Act, to their case, they submitted that, the predominant activity is sale of land and development activity is incidental to the sale of land. Moreover, the development activity is naturally bundled with sale of land. In other words, it is integrally connected with sale of land, and therefore, sale of **Developed Plot** is nothing but sale of land, which falls under Entry 5 of III Schedule to the Act, and therefore does not attract tax under GST.

6.4. The Appellant further submitted that, as per sub-section (5) Section 32 of Karnataka Urban Development Authorities Act, 1987, a person who forms lay-outs is required to transfer the ownership of the roads, drains, water supply mains, parks and open spaces, civic amenity areas to the authority, permanently without claiming any compensation thereof; that in order to comply with the above provisions, Appellant had executed a relinquishing deed on 21/04/2018 & Rectification deed dated 24/05/2018 in favour of Chikkaballapur Urban Development Authority. They argued that, where law requires the Appellant to transfer the ownership on the developmental works such as roads, drains, water supply mains, parks and open spaces, civic amenity areas, Appellant has no right in entering into an agreement for supply of service but can only enter into an agreement for sale of land. The Appellant relied on the decision of the Hon'ble Karnataka Appellate Tribunal in the case of **Continental Builders and Developers Bangalore Vs State of Karnataka, 2009 (67) Kar.L. J 359 (Tri) (FB)** wherein the court examined the issue whether development of plots and sale, is works contract or not under Karnataka Sales Tax Act, 1957. They submitted that the Tribunal had held that, *"Civic amenities work done by land developer, subsequent to transfer of same to the local authority, there is no transfer of property in goods to the site purchasers either collectively or individually."* They submitted that the ratio of the above decision is squarely

applicable to the supply of service under GST and therefore the consideration received for the sale of land does not attract GST.

6.5. The Appellant further submitted that the ruling by the lower Authority that the Appellant has no title, right or interest in the property and thereby does not become owner of the property to claim as sale of land, is not acceptable under law. They submitted that the words owner & ownership are neither defined under GST Law nor under Transfer of Property Act; that in the absence of such definitions, it is an accepted rule that, it has to be understood in its popular and commercial sense with reference to the context in which it occurs; that Owner is the person who owns property. On the other hand, Ownership is the state of fact of exclusive right and control over the property, which may be in object land or any other property; that ownership involves multiple rights such as right to enjoy, right to use, right to dispose etc; that Ownership is of different kinds. There are absolute and limited, sole ownership, co-ownership, vested ownership, contingent ownership, corporeal, incorporeal; that in the Appellant's case, since the Appellant has right in the project to the extent of 25% of total revenue, which is obtained / derived from JDA, it can be considered that Appellant has ownership right in the property. In support of the above submissions, Appellant rely on the Hon'ble Supreme Court decision in the case of **SUNIL Vs CIT AIR 1986 SC 368**, wherein it was held that, "in its general sense, the expression transfer of property connotes the passing of rights in the property from one person to another. In one case there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in property. In a third case, there may be reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. To the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. Therefore, when a partner brings in his personal asset into the capital of the partnership firm as his contribution to its capital, he reduces his exclusive rights in the asset to shared rights in it with other partners of the firm and to that extent there is transfer of property".

6.6. Based on the above submissions, Appellant contends that the reasoning given by the lower Authority that, the Appellant has no right or interest in the property is not acceptable under law. Any right or interest in the immovable property is considered to be an immovable

property therefore the Appellant share of revenue shall be treated as sale of immovable property and does not attract tax under GST Law.

6.7. The Appellant also applied for condonation of delay of 21 days in filing this appeal. They submitted that the impugned order was received by them on 20-11-2019 and the appeal should have been filed on or before 20-12-2019. However, the Director who was looking after taxation matters and the Consultant were busy with filing of annual GST returns and annual accounts under Company law and hence the filing of the appeal was delayed by 21 days. They requested for condonation of the delay which was on account of bonafide reasons.

PERSONAL HEARING:

7. The Appellants were called for a personal hearing on 24thFebruary 2020 and were represented by Shri. Sanjay M. Dhariwal, Chartered Accountant who reiterated the submissions made in the grounds of appeal. He emphasized the fact that the Appellant was engaged solely in development of land and there was no construction activity involved; that what is sold to the buyers is plotted land and by virtue of entry 5 to Schedule III, sale of land was not a supply and hence not liable to GST. He also relied on the case of Continental Builders and Developers, Bangalore vs State of Karnataka (2009 (67) Kar L.J. 359 (tri) (FB)) and Sunil vs CIT AIR 1986 SC 368 in support of their case.

DISCUSSIONS AND FINDINGS

8. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as at the time of personal hearing.

9. We find that the Appellant has sought for condonation of delay of 21 days in filing the present appeal. The impugned order of the lower Authority dated 30.09.2019 was received by the Appellant on 20.11.2019. In terms of Section 100(2) of the CGST Act, every appeal to this Authority should be filed within a period of 30 days from the date on which the Advance Ruling order is communicated to the aggrieved party. The proviso to Section 100(2) empowers this Authority to condone the delay in filing the appeal by another period of 30 days. In this case, the due date for filing the appeal was 20-12-2019 but the Appellant has filed the appeal on the 1st January 2020 after a delay of 21 days from the due date for filing

appeal. The Appellant has stated that the delay had occurred since the Director in charge of taxation matters and the Consultant were busy with filing of annual GST returns and annual accounts under Company law. Considering the submissions made by the Appellant, the delay in filing the appeal is hereby condoned in exercise of the power vested in terms of the proviso to Section 100(2) of the CGST Act.

10. The issue to be decided in this appeal is whether the activity of development and sale of land by the Appellant is a liable to tax under GST. The liability to GST arises when there is a supply of either goods or services or both. According to section 7 of CGST Act, 2017, the expression "supply" includes 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, and includes activities specified in Schedule II to the CGST Act, 2017. However, as per entry 5 of Schedule III, the activity of sale of land has been treated as neither a supply of goods nor a supply of service. It is the contention of the Appellant that they are primarily engaged in the sale of land which has been developed by them and the development activity is incidental to the sale of land and hence they are not liable to GST in terms of the Schedule III of the CGST Act. However, a transaction shall be out of GST net only if the activity is exclusively dealing with transfer of title or transfer of ownership of land, which is immoveable property. If the transaction of sale of land is coupled with another activity such as infrastructure works, then this exclusion will not apply. Hence, the substance of the agreement between the parties is important.

11. To understand the nature of the Appellant's activity, we have gone through the Joint Development Agreement dated 8th November 2017. As per the said JDA, it is seen that the landowner is the absolute owner of the scheduled property. The Appellant is a company engaged in the business of real estate development and construction in the city of Bangalore. The landowner approached the Appellant-Developer and offered the property for joint development given the Appellant's expertise in residential plotted developments. Accordingly, based on the representations made by the landowner, the Appellant has agreed to develop the project on the property. The JDA authorised the Appellant-Developer to develop the scheduled property into a residential layout. For this purpose, the Appellant as Developer was given the right to survey the property using its own resources, fence the property and install a security mechanism to secure the property, level the land, lay roads, drains, pathways, etc which are required for the commencement of the development. The

Appellant incurs the expenditure for the development of the property. The Appellant prepares the necessary plans/drawings/designs for the residential layout with the help of architects and other professionals. The plans drawn up by the Appellant-Developer will be submitted by the landowner to the Government Authorities for obtaining the necessary sanctions / permissions. The Appellant-developer shall develop the project according to the sanctioned plan. The Appellant engages engineers, contractors, other professionals and workmen to execute the development work. All costs of execution of the project subsequent to receipt of the sanctioned plan including the cost of fees payable to the architects, contractors, staff, workmen, etc shall be borne and paid for by the Appellant-Developer. All cost incurred by the Appellant-Developer including the GST, stamp duty, registration fee, any other taxes shall be recoverable by the Appellant-Developer from the purchasers of the plots in the project. The Appellant-Developer is required to complete the project within a period of 18 months from the date of receipt of the sanctioned plan. The Appellant-Developer shall be responsible for the maintenance of the property and the project till the project completion. The landowner has authorised the Appellant-Developer to sell the sites in the project and share the revenue out of the sale proceeds in the agreed upon revenue sharing ration. The Appellant-Developer is entitled to erect sign board on the property advertising the sale and disposal of plots in the project and to publish advertisements in the media seeking prospective purchasers. The revenue accruing from the sale of the plots comprised in the project (RP revenue) shall be shared between the landowner and the Appellant-Developer in the ratio of 75% of the RP revenue to the landowner and 25% of the RP revenue to the Appellant-Developer. The RP revenue will be deposited into a common escrow account and the agent operating the escrow account will be given standing instructions to distribute the RP revenue in accordance with the above ratio.

12. The JDA clearly indicates that the primary purpose of the agreement with the Appellant is for the Appellant to develop the land. The agreement acknowledges that the expertise of the Appellant in development of land is the reason the landowners approached the Appellant for the JDA. The consideration for the development of the land is in the form of the revenue earned from the sale of the land. The instant JDA is based on a revenue sharing model and the revenue accruing from the sale of the plotted land is divided between the landowner and the developer in the agreed ratio of 75:25. It is therefore, manifest that the transaction between the landowner and the Appellant-Developer is not a sale of land simplicitor but coupled with obligations for development of the land and provision of

infrastructure/amenities. There is an element of service rendered by the Appellant in the form of plotted development of the land which is the dominant activity of the agreement.

13. The Appellant has argued that the transaction in terms of the JDA is a composite supply where the principal supply being the sale of land is outside the purview of GST in terms of entry 5 of Schedule III of the Act. When we examine the provision of what constitutes a 'composite supply' as defined in Section 2(30) of the CGST Act, we find that composite supply means a supply made by a taxable person to a recipient

- consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- which are naturally bundled
- and supplied in conjunction with each other
- in the ordinary course of business, one of which is a principal supply.

The definition of composite supply must be read with the definition of taxable supply and exempt supply. Sub-section (108) of section 2 defines a taxable supply as under:

> *"taxable supply " means a supply of goods or services or both which is leviable to tax under this Act;"*

Sub-section (47) of section 2 defines an exempt supply as under:

> *"exempt supply " means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;"*

In the instant case there are two activities involved, viz: development of land and sale of plots. The transaction relating to the sale of land is not a supply of either goods or service under GST (entry 5 of Schedule III of the CGST Act refers). This activity of sale of land cannot be considered as an 'exempt supply' for the reason that the activity is not at all a supply and hence the question exempting it under Section 11 of the Act does not arise. On the other hand, the activity of development of land is a supply in terms of Section 7 of the CGST Act. A combination of two activities one of which is not a supply under GST cannot

be said to be a composite supply. We therefore, disagree with this contention of the Appellant.

14. The Appellant has also put forth the argument that under the Karnataka Urban Development Authorities Act, 1987, they are required to permanently transfer the ownership of the roads, drains, water supply mains, parks and open spaces, civic amenity areas to the Urban Development Authority and where the law requires them to transfer the ownership of the developmental works, the Appellant has no right in entering into agreement for supply of service but can only enter into agreement for sale of land. In terms of Section 32 of the Karnataka Urban Development Authorities Act, any new layout can be formed only after getting the sanction from the Urban Development Authority. The person desirous of forming a layout has to send an application to the Urban Development Authority along with the plans. The said Authority will sanction the formation of the layout on payment of a fee by the applicant and provided the applicant agrees to transfer the ownership the roads, drains, water supply mains, parks and open spaces, civic amenity areas laid out by him to the Authority, permanently without claiming any compensation therefore. We find that para 4.2. of the JDA mandates that the landowner shall submit the finalised plans to the relevant governmental authorities to procure the sanctioned plan. The landowner shall obtain all required licences, sanctions, consents, permissions, no-objections and such other orders as are required to procure the Sanctioned Plan. Further, in case the Appellant-Developer intends to modify the plans, the landowner shall obtain the required modifications to the sanctioned plan. The Appellant-Developer shall develop the project on the property subject to the obtaining of the sanctioned plan by the owners. Therefore, it is evident that the onus is on the landowner to comply with the provisions of Section 32 of the Karnataka Urban Development Authorities Act. It is the owner of the schedule property who agrees to transfer the ownership of the roads, drains, water supply mains, parks and open spaces, civic amenity areas to the Urban Development Authority. The Appellant-Developer has no role to play in obtaining the sanctions and in transfer of ownership. Therefore, this argument of the Appellant does not hold good.

15. The Appellant has also contended that there is no supply of any service by him to the landowners; that the JDA has been executed with a mutual agreement by both the parties to jointly develop the land and share the revenues out of the sale of land. In real estate transactions involving plotted development, one party owns the land and another party has

the expertise to develop the land. The two parties come together with the common intention of developing the land and sharing the revenue accruing for the sale of the developed plots in the land. However, the landowners give the rights of using the land to the developer in exchange for which, the developer gives the service of developing the land of the owners. While the Joint Development agreement is entered into for the two parties to jointly reap the benefits of the sale of the land to customers, there is a clear rendering of a service by the developer to the landowner in developing the land which belongs to the landowner. Therefore, we hold that the activity of developing the land is a supply of service by the Appellant.

16. We therefore, do not interfere with the findings of the lower Authority on the question of taxability of the activity of development and sale of land and also the finding on the question relating to the value of supply.

17. In view of the above discussion, we pass the following order.

ORDER

We uphold the order NO.KAR ADRG 119/2019 dated 30/09/2019 passed by the Advance Ruling Authority and the appeal filed by the appellant M/s.Maarq Spaces Private Limited, Unit No. 414, Prestige Centre Point, Cunnhingham Road, Bengaluru – 560 052, stands dismissed on all accounts.

4.5.20.

(D.P.NAGENDRAKUMAR)
Member
Karnataka Appellate Authority
for Advance Ruling

(M.S. SRIKAR) 4.5.2020
Member
Karnataka Appellate Authority
for Advance Ruling

To,

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
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