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| GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009. |  |
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ADVANCE RULING NO. GUJ/GAAR/R/33/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/10)

Date: 02.07.2020

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| Name and address of the applicant | : | M/s Karma Buildcon, FP-67, Karma Lifestyle, Nr. Rajeshwar Gold Flats, Harni, Vadodara |
| GSTIN/ User Id of the applicant | : | 24AAQFK 7744K1ZQ |
| Date of application | : | 07.02.2019 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | a) Classification of goods and/or services or both. c) Determination of time and value of Supply of goods or service or both; e) Determination of the liability to pay tax on any goods or services or both: |
| Date of Personal Hearing | : | 11.06.2020 (through Video Conferencing) |
| Present for the applicant | : | Shri Jigna V. Shah |

M/s. Karma Buildcon, FP-67, Karma Lifestyle, Nr. Rajeshwar Gold Flats, Harni, Vadodara having a GSTIN : 24AAQFK 7744K1ZQ, filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. The applicant submitted that they are engaged in the business of construction. For the purpose of the business they buy land and develop residential/ commercial property on that land. For the purpose they engaged Architects, consultants, structural engineers to prepare plan for the development of residential/commercial property. Further submitted that prescribed approval from various authorities are procured to develop residential/commercial property on such land.

3. The applicant further submitted that on the basis of such plan and approvals they enter into the agreement with prospective buyers for such residential /commercial property. The agreements entered into are for inclusive

of land or undivided share of land basis. The applicant constructs such residential / commercial property by engaging labour machinery for the purpose and transfers such property to the buyers.

4. The applicant further submitted that cost of land that is being transferred to the buyers on inclusive of land or undivided share of land basis need to be allowed to be deducted as a whole and not as provided in Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 as one third (33.33%) of the value, because in applicant's case the cost of Land is distinctly determinable and is more than one third (33.33%) of the consideration value of sale of property.

5. Accordingly, the applicant sought the Advance Ruling on the following questions:

1. *What will be the value of supply for the transaction of sale of residential/ commercial property with undivided rights of land?*

2. *In the case of construction of residential/commercial complex, the builder charges an amount which is inclusive of land or undivided share of land. As per Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 the land value is deemed to be one third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount. But in applicant's case the value of Land is clearly ascertainable. In that case actual cost of Land can be deducted for the for the purpose of arriving at the taxable value of supply?*

Taxation under GST Regime:

6.1 The applicant submitted that when the amount of land to be deducted is not ascertainable, in such case a prescribed ratio/percentage is applied to determine the amount to be deducted. For example under the erstwhile Value Added Tax regime when amount of labour is not ascertainable for works contract transaction for deduction as per Rule 18(A)(A) of the Gujarat Value Added Tax Rules, 2006 below mentioned provision was made :

“Deduction of Charges towards labour, service etc.:

- (1) The value of the goods at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract shall be determined by deducting the

amounts paid by way of price for sub-contract made with a registered dealer, if any , pertaining to the said work contract.

(2) A registered dealer who claims any deduction referred to in sub-clause (c) of clause (30) of section 2 , shall-

(a) Maintain true and correct records for such deductions;

(b) Prove to the satisfaction of the Commissioner that he has actually paid the amount in the year in which he claims such deduction; and

(c) Furnish true and correct evidences for claiming such deduction at the time of assessment or when asked to furnish in any proceedings.

Provided that where the amount of charges towards labour, service and other like charges are not ascertainable or the account maintained by the contractor are not sufficiently clear or intelligible, a lump sum deduction shall be admissible in accordance with the percentage mentioned in the Table below and the sale price of the goods at the time of the transfer of property shall be determined accordingly.”

6.2 The applicant submitted that intention behind allowing the deduction of value of land in the transaction involving construction and immovable property on which sale of GST is not to be levied. The deemed value as prescribed in the Notification No. 11/2017-CT (Rate) and 08/2017-IT (Rate) both dated 28.06.2017 can be applied when the value of land is not ascertainable. But in the applicant's case said value of land is very much ascertainable, therefore that being value of land-an immovable property need to be allowed to be deducted as a whole amount.

6.3 The applicant further submitted that value of land cannot be same at all places. It varies from place to place and even at different location in same city/town. In view of that, a uniform deduction for land @33% as prescribed by the notification is contrary to the ground realities. More so, when in applicant's case cost of land is distinctly ascertainable and much more than 33% of the total value to be realized of the constructed residential/commercial property, actual amount of land need to be allowed to be deducted.

6.4 The applicant further submitted that even otherwise, if actual cost of land is allowed to be deducted, assessee shall get encouragement to disclose actual cost of land, that will eventually led towards white economy that is more transparent and compliant of law.

Personal Hearing

7. Personal hearing in the matter was held on 11-06-2020. Shri Jigna V. Shah, Practitioner appeared on behalf of the applicant and re-iterated the submission made in the Application.

Discussion and Finding

8. We have considered the submissions made by the Applicant in their application for advance ruling. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

9. The applicant has stated that they are engaged in the business of construction. For the purpose of the business, they buy land and develop residential/ commercial property on that land. For the purpose, they engaged Architects, consultants, structural engineers to prepare plan for the development of residential/commercial property; that on the basis of such plan and approvals, they enter into the agreement with prospective buyers for such residential /commercial property; the agreements entered into are for inclusive of land or undivided share of land basis. They construct such residential / commercial property by engaging labour machinery for the purpose and transfer such property to the buyers.

10. The applicant's contention is that cost of land that is being transferred to the buyers on inclusive of land or undivided share of land basis need to be allowed to be deducted as a whole and not as provided in Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 as one third (33.33%) of the value, because in applicant's case the cost of Land is distinctly determinable and is more than one third (33.33%) of the consideration value of sale of property. The applicant in their support has referred Rule 18(A)(A) of the erstwhile Gujarat Value Added Tax Rules, 2006, wherein it is provided that if at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract shall be determined by deducting the amounts paid by way of price for sub-contract made with a registered dealer, if any, pertaining to the said work contract.

11. The applicant has further contented that in their case, actual value of land is ascertainable and value of land varies from place to place and even at different location in same city/town, a uniform deduction for land @33% as prescribed by the notification is contrary to the ground realities. More so, when in their case, cost of land is distinctly ascertainable and much more than 33% of the total value to be realized of the constructed residential/commercial property, actual amount of land need to be allowed to be deducted.

12. We find that the applicant's above grounds of contention, as stated in aforesaid para to allow the deduction of actual value of land from the transaction value instead of deduction, as defined in the Notification No. 11/2017-CT (Rate) dated 28.06.2017, is not tenable and beyond the purview of legality. In para 2 of the Not. No. 11/2017-Ct (Rate) dated 2017, as amended by Not. No. 01/2018-CT (Rate), the value of land or undivided share of land required to be deducted from the total amount charged for the subject supply has been clearly provided. The relevant Paragraph 2 of the Notification No. 11/2017-CT (Rate) dated 28.06.2017, is read as under:

2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. - For the purposes of paragraph 2, "total amount" means the sum total of, -
(a) consideration charged for aforesaid service; and
(b) amount charged for transfer of land or undivided share of land, as the case may be.

13. The said Paragraph 2 of Notification No. 11/2017-CT (Rate) was amended vide Not. No.1/2018-C.T. (Rate), dated 25-1-2018. The amended Paragraph 2 is reproduced as under:

(ii) for paragraph 2, the following shall be substituted, namely :-

"2. In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land

or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. - For the purposes of this paragraph, "total amount" means the sum total of, -

- (a) consideration charged for aforesaid service; and*
- (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease."*

14. In para 2 of Notification No. 11/2017-CT (Rate) dated 28.06.2017, as amended vide Notification No. 1/2018-C.T. (Rate), dated 25-1-2018, there is deemed provisions that the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. Accordingly, the applicant contention to allow the deduction of actual value of land from the sale value on the grounds that their land value is ascertainable and other grounds is not legal in terms of para 2 of Not. No. 11/2017-CT (Rate) dated 28.06.2017 as amended vide Notification No. 1/2018-C.T. (Rate), dated 25-1-2018. Further, the reliance of Rule 18(A) (A) of the erstwhile Gujarat Value Added Tax Rules, 2006 is not warranted in the instant case since the Value Added Tax Act is no more in existence. The Value Added Tax Act does not have any legal value in determination of GST liability since the value of supply is to be arrived in terms of the provisions of the GST Act. In view of the aforesaid, we rule that applicant is required to deduct one third value of land or undivided shares from the total value charged for the subject supply in terms of Para 2 of 11/2017-CT (Rate) dated 28.06.2017, as amended vide Not. No. 1/2018-C.T. (Rate), dated 25-1-2018.

15. In view of the forgoing we rule as follows:

RULING

Question 1. What will be the value of supply for the transaction of sale of residential/ commercial property with undivided rights of land?

Answer : The value to be arrived in terms of deeming provision of Para 2 of Notification no. 11/2017-CT (Rate) dated 28.06.2017, as amended by Not. No. 1/2018-C.T. (Rate), dated 25-1-2018.

Question 2. In the case of construction of residential/commercial complex, the builder charges an amount which is inclusive of land or undivided share of land. As per Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 the land value is deemed to be one

third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount. But in applicant's case the value of Land is clearly ascertainable. In that case actual cost of Land can be deducted for the for the purpose of arriving at the taxable value of supply?

Answer : Negative.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 02.07.2020.