

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2022/53
(IN APPLICATION NO. Advance Ruling/SGST&CGST/202022/AR/43)

Dated: 30 / 12 / 2022

Name and address of the applicant	:	M/s. Universal Industrial Park, 106, Manda, Behind AB Rolling, Ta: Umargam, Dist Valsad- 396155
GSTIN/ User Id of the applicant	:	242200000533AR8 Un-registered
Date of application	:	29-08-2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a), (c), (e) and (g)
Date of Personal Hearing	:	21-10-22
Present for the applicant	:	Kaushik Nahar (CS)

Brief facts:

M/s. Universal Industrial Park (herein after referred to as the applicant) is a partnership firm and not registered with GST. The Applicant has purchased land located at Survey No.105 (Old Survey NO.38/P3)

2. The Applicant has submitted that it may sale the whole plot on as is where is basis or alternatively it will convert the land into plots of different sizes and then sale the individual plots. They intends to provide basic facilities such as road, boundaries etc.

3. The Applicant submits that the activity undertaken by them is sale of land and is exempt from GST as per Entry No.5 of Schedule III of CGST Act.

The activity of sale of land is neither supply of Goods nor supply of services. Hence the activity of sale of land is not covered under the definition of Supply as per Section 7 of the CGST Act, 2017.

4. The applicant has placed reliance on the 47th GST Council press release in which at point No.12 the following is clarified:

12. Sale of land after leveling, laying lawn of drainage lines etc. is sale of land and does not attract GST.

3. The applicant has submitted that CBIC in Point No. 14 of Circular No.177/09/2022-TRU dated 3rd August, 2022 has clarified as under :

14. Whether sale of land after levelling, laying down of drainage lines etc. is taxable under GST.



14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 Land may be sold either as it is or after some development such as levelling, 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.

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

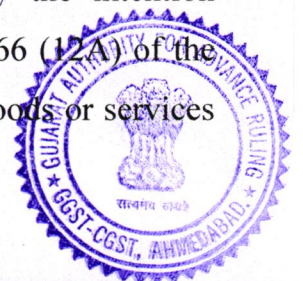
4. The applicant has referred the definition of composite supply as per Section 2(30) of the CGST Act, 2017 which reads as under:

"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;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

5. The applicant has submitted that the intention of them is sale of Land which is principal supply. Other activities such as compound, leveling, laying of drainage etc is naturally bundled with the principal supply i.e. Sale of Land. Hence on this argument also, the activity of the Applicant is sale of Land not covered under the definition of supply and therefore not liable to GST.

6. The applicant further submit that though some element of service in the form of basic facilities is involved in the activity, but that activity cannot be separated and the part of the whole activity cannot be made taxable. For the purpose of taxability the intention of the transaction as a whole should be taken into construction. Article 366 (12A) of the Constitution defines goods and services tax as involving only supply of goods or services



or both. Section 7 of the CGST Act, has made a clear distinction between stand alone supply of goods, stand alone supply of services and stand alone supply of goods or services or both.

The Supreme Court in Civil Appeal No. 1390 of 2022 in Union of India v/s Mohit Minerals Private Limited has held that there is no legal fiction or power to bifurcate the Composite Supply into Supply of Goods and Supply of Services and to levy GST. In this background the contract of Sale of Land / Plot cannot be bifurcated into Sale of Land / Plot and Supply of Services.

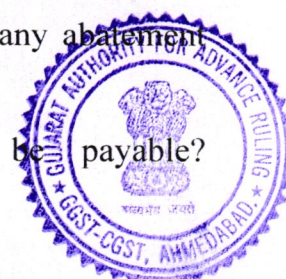
7. The applicant has placed reliance on the order of Advance Ruling issued by Authority for Advance Ruling, Goa in the matter of M/s Shantilal Real Estate Services wherein it has been held that Sale of Plots with value addition of roads, drainages and poles as per the conditions mandated by local bodies as pre conditions for giving NOC for Plot development does not amounts to supply liable to GST.

8. The applicant has placed his views on the questions raised in the present application is as under:

Sl. No.	Question	View of applicant
1.	Whether the applicant is liable to pay GST on the sale of Land / Industrial Plot?	No, it is not a supply as per Schedule III
2.	The activity is not liable to GST, what is the legal basis of non applicability?	Not applicable as not liable to GST
3.	If taxable it will be classified under which Service & what will be the Service Accounting Code?	Not applicable as not liable to GST
4.	What will be the value on which GST will be payable? Whether any abatement available	Not applicable as not liable to GST
5.	What will be the rate of tax on which GST will be payable?	Not applicable as not liable to GST
6.	Whether Input Tax Credit will be available or not?	Not applicable as not liable to GST

4. Question on which Advance Ruling sought:

- I. Whether the applicant is liable to pay GST on the sale of Land / Industrial Plot?
- II. If the activity is not liable to GST, what is the legal basis of non applicability?
- III. If taxable it will be classified under which Service & what will be the Service Accounting Code?
- IV. What will be the value on which GST will be payable? Whether any abatement available?
- V. What will be the rate of tax on which GST will be payable?



VI . Whether Input Tax Credit will be available or not?

Personal Hearing:

5. Personal hearing granted on Dt. 21-10-2022 was attended by Shri Kaushik Nahar (CS) and he reiterated the submission.

Revenue's Submission:

6. The Assistant Commissioner, CGST & C. Ex. Commissionerate, Surat vide letter dated 10-11-22 has submitted comments on the question on which Advance Ruling is sought and is as follows :

Sl. No.	Question	View of applicant
1.	Whether the applicant is liable to pay GST on the sale of Land / Industrial Plot?	<p>“In respect of sale of land” As per Schedule III of the CGST Act, the land sale is neither considered a sale of goods nor a supply of services. The land is an immovable property, the sale of which attracts only stamp duty. Thus, GST does not apply to the sale of land when it exclusively relates to the transfer of ownership of land.</p> <p>However, in respect of “Industrial plot”- if it includes other services such as an electricity line, water line, drainage line, land levelling, etc., like in the case of plotted developments, then GST will be applicable. This is because construction of plotted developments or similar structures would fall under the Schedule II Para 5 Clause (b) definition of the CGST Act, which is liable to GST, except where the entire consideration for the land is received receiving the completion certificate.</p>
2.	The activity is not liable to GST, what is the legal basis of non applicability?	In respect of transfer of ownership of land only, as per Schedule III of the CGST Act, the land sale is neither considered a sale of goods nor a supply of services. The land is an immovable property, the sale of which attracts only stamp duty. Thus, GST does not apply to the sale of land.
3.	If taxable it will be classified under which Service & what will be the Service Accounting Code?	Construction Services , 9954
4.	What will be the value on which GST will be payable? Whether any abatement available	As per section 15(1) of the CGST Act, 2017 the value of a supply of goods or services or both shall be the transaction value, which is the price



		actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. In view of the section, GST applicable on transaction value. No, abatement is available.
5.	What will be the rate of tax on which GST will be payable?	18%
6.	Whether Input Tax Credit will be available or not?	Input Tax Credit will not be available as per Section 17 (5) of the CGST Act, 2017 which states that ITC is not available on goods or services received by a taxable person for constructing an immovable property (other than Plant and Machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

FINDINGS:

7. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorised signatory, during the personal hearing proceedings on 20-10-22 before this authority. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

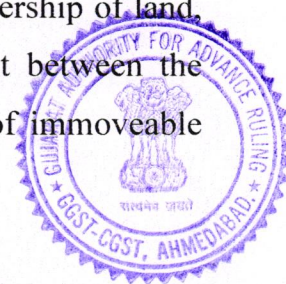
8. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a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

9. In this case, main issue is to be decided as to whether GST is applicable on the sale of whole plot as such or sale of the individual plot after carrying out some activity.

9.1 For the sake of understanding, the relevant provisions are reproduced herein below:

"5. Serial Number 5 to Schedule III of the CGST Act.—Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

11. From the above definition, it is clear that the 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 immovable property or earth. Here the substance of agreement between the parties is important. Where the nature of activity is that of ONLY sale of immovable property of plot, it is excluded from GST levy.



12. As per the applicant, he has purchase the land located at Survey No. 105 (old Survey No. 38/P3) is the owner of the land and may sale the whole plot as such or alternatively it will convert the land into plots of different sizes and then sale such individual plots. Applicant intends to provide basic facilities such as road, boundaries etc.

13. It has been observed from the submission that the applicant is in dilemma whether they will sale the whole land as purchased as such or will sale the individual plots of different sizes. The applicant is not sure about the proposed nature of activities to be undertaken by them. We find that to sale land as such i.e. barren land and to sale of individual plot with developed facilities are two distinct activities and attract different provisions of GST Act and Rules. The nature of taxability purely depends upon the type of activity proposed to be undertaken by the applicant.

14. We find that the applicant if intends to sale land as purchase as such without carrying out any activity, should have submitted documents like sale deed or agreement in support of such activity to decide the taxability on such activity in terms of the provisions of GST but applicant have not submitted any such documents in support of such activity.

15. The plotted development is a scheme which involves forming land into layout after obtaining necessary plan approval from the competent Authority of the area where the land is located, get all other permission required to take up, commence and complete what would be the layout, comprised of individual sites. We find that the applicant have not submitted any such documents by which it can be ascertain what types of activities have been permitted by the competent Authority to be carried out on the plot. The applicant has also failed to submit details of amenities to be provided in the plotted scheme and documents in support of it. The applicant also not disclosed/ submitted whether they proposed to construct any residential/ commercial construction on the plot or otherwise.

16. We find that the applicant have not submitted any details or documents with regard to the charges/amount to be collected of the land sold as such without any activity or the individual plot. To decide the valuation for taxability it is must to know whether the charges are collected on super built-up basis or on the actual measure of the plot. The super built-up area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis and charges in carpet area includes only measurement of plot.

17. Thus, in view of the above discussion we find that in absence of specific activities proposed to be carried out by the applicant and lack of sufficient documents, the application does not have any *locus standii*. Thus, we are not in position to pronounce the Ruling on the application filed by the applicant. Therefore, we hold that the application filed for Advance Ruling is not maintainable.



18. In light of the foregoing, we rule as under -

RULING

The application is not maintainable in view of the above discussion.

(MILIND KAVATKAR)
MEMBER (S)

(AMIT KUMAR MISHRA)
MEMBER (C)

Place: Ahmedabad

Date: 30.12.2022

