

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :advance.ruling@mptax.mp.gov.in****Phone : 0731- 2437315****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Shri Manoj Kumar Choubey
Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

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|--------------------------------------|---|
| GSTIN Number. If any/User-id | 23AAALG0750FIZQ |
| Name and address of the applicant | M/S GWALIOR DEVELOPMENT AUTHORITY 1, RAVI NAGAR, GWALIOR MADHYA PRADESH(474002) |
| Point on which advance ruling sought | b. Applicability of a notification issued under the provisions of this Act ; e. Determination of the liability to pay tax on any goods or services or both ; |
| Present on behalf of applicant | CA Arvind Gaur |
| Case Number |02../2021 |
| Order dated | 06/08/2021 |
| Order Number | 09/2021 |

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017
and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. M/s GWALIOR DEVELOPMENT AUTHORITY (hereinafter referred to as the Applicant) is the company that provides residential land on lease is located at Ravinagar in the Gwalior district of the state of Madhya Pradesh (474002). The Applicant is having a GST registration with GSTIN 23AAALG0750FIZQ.



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2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE –

3.1. Gwalior Development Authority is the company that provides residential land on lease is located at Ravinagar in the Gwalior district of the state of Madhya Pradesh (474002).

4. QUESTION RAISED BEFORE THE AUTHORITY –

4.1. We are providing residential land on lease basis for which we are charging or receiving lease premium whether GST is leviable or not?

4.2. Please also clarify whether GST is leviable on the maintenance charges and lease rent received on such residential land.

5. **DEPARTMENT'S VIEW POINT**– The Asst. Commissioner, Commercial Tax, Gwalior Circle-1 Madhya Pradesh has submitted his view by letter no. 350 Dated 16-06-2021 on the questions raised by the applicant as follows –

उक्त संदर्भित पत्र एवं पत्र के संलग्न भारत सरकार की अधिसूचना क्रमांक 12/2017 सेन्ट्रल टैक्स रेट, नई दिल्ली दिनांक 28 जून 2017 का अवलोकन किया गया। पाया गया की उक्त अधिसूचना के Heading Group or Service code 9954/9963/9972 के अनुसार GST Rate of Tax –Nil दर्शाया गया है। जबकि प्राधिकरण के द्वारा हितग्राहियों से आवासीय/व्यवसायिक भूखण्ड/भवन पर विभिन्न कार्यो/ निर्माण कार्यो हेतु शुल्क प्राप्त किया जाकर जी.एस.टी. वसूल किया जाना विधि अनुकूल है। क्योंकि प्राधिकरण के द्वारा हितग्राहियों से जो राशि प्राप्त की जाती है, उसके अंतर्गत विभिन्न कार्य/निर्माण कार्य किये जाते है।

साथ ही साथ प्राधिकरण के द्वारा स्वयं कोई निर्माण कार्य नहीं कराया जाता है। उनके द्वारा निर्माण स्थल/भूमि पर निर्माण कार्य संबंधी निविदा जारी की जाती है। निविदा की शर्तों के अधीन ऐसे संविदाकार/उप-संविदाकार जो निर्माण कार्य एवं विकास कार्य किये जाने हेतु पात्र है, को उक्त ठेका कार्य प्रदाय किया जाता है। उपरोक्तानुसार आवासीय/व्यवसायिक भूखण्ड/भवन पर निम्न कार्य/निर्माण कार्य संपादित किये जाते है। विवरण निम्नानुसार है :-



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“ External Development Works”

- Includes roads and road system landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other works which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

“ Internal Development Works”

- Means Roads, Footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal ,water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans.

यह की अधिसूचना क्रमांक 04/2019 दिनांक 01.04.2019 से आवासीय/व्यवसायिक भूखण्ड/भवन पर GST Rate of Tax -18% निधारित की गई है। विवरण निम्नानुसार है :-

“ Value of Supply (“ Development Rights)

- Value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter. 18%

“ Computation of GST on Development Rights

- Land Owner share of Units – Launch Price (JD Date)- 18% or
- Carpet Area of LO share- Launch price per unit of Carpet Area- 18%

यहां यह भी उल्लेखित है, कि वर्तमान परिप्रेक्ष्य में कार्यालय ग्वालियर विकास प्राधिकरण के द्वारा आवासीय/व्यवसायिक भूखण्ड भवन पर विभिन्न कार्यों/निर्माण कार्यों हेतु शुल्क प्राप्त किया जाकर 18 प्रतिशत की दर से जी.एस.टी. वसूल किया जा रहा है।

अतः निवेदन है मेरे मतानुसार उपरोक्त आदेशों के आधार पर एवं ग्वालियर विकास प्राधिकरण, ग्वालियर के द्वारा आवासीय/व्यवसायिक भूखण्ड/भवन पर विभिन्न कार्यों/निर्माण कार्यों पर वसूल किये जा रहे जी.एस.टी. राशि को दृष्टिगत रखते हुये 18 प्रतिशत की दर से वस्तु एवं सेवाकर प्रस्तावित है।

6. RECORD OF PERSONAL HEARING -

6.1. Mr. Arvind Gaur, Chartered Accountant and the jurisdictional officer (SGST) appeared for personal hearing through virtual hearing. Mr. Arvind reiterated the submissions already made in the application, and attached additional submissions as follows:



6.2. Applicant states that as per notification no. 12/2017 and relevant provisions of GST Act amount received as lease premium lease rent and maintenance charges in connection with residential land are exempted and no GST is leviable on it.

7. **DISCUSSIONS AND FINDINGS** – We went through the argument presented by the Applicant and department's view.

The arguments and assertions made by the applicant along with supporting case laws and documents in support of such claims are examined and the following are noted:

7.1 **GST on Lease of land:**

7.1.1 The definition of supply in the GST Act is an inclusive definition and specifically includes the term "Lease". Further, Entry No. 2 of Schedule II states that Lease of land and building is in the nature of a supply of service. Again, the definition of "outward supply" includes the term "Lease". For the sake of brevity, the provision is not being reproduced here. From the above provisions, it is clear that giving a property on lease is unambiguously a supply.

7.1.2 Section 105 of the Transfer of Property Act, 1882, defines lease, lessor, lessee, premium and rent. The provision is reproduced hereunder for ease of reference:

"105. Lease defined

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, **the price is called the premium**, and the money, share, service or other thing to be so rendered is called the rent."

The important facts that the provision states, which are germane to the discussion at hand, are –

- A lease of immoveable property is a transfer of a right to enjoy such property;
- The consideration may be in the form of premium or rent or both;
- Price is called the Premium;



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- The money, share, service or other thing to be so rendered is called the rent.

7.1.3 A combined reading of the provisions of the GST Act and the Transfer of Property Act shows that granting lease of an immovable property is the transfer of a right for a consideration, which may be in the form of a Premium or Rent or both and that such granting of right in the nature of lease is a supply of service.

7.1.4 It has been argued that since land has been defined to include benefits arising out of land and right to lease is a benefit arising out of land consequently is land itself, leasing of Land is not taxable, for sale of land is out of the purview of GST Act. In this regard, it may be noted that the definitions of land including the benefits that arise out of land are found in Acts which have been enacted to achieve a specific purpose. For example,

“Section 3(a) of Land Acquisition Act, 1894

The expression ‘land’ includes **benefits that arise out of land** and things attached to earth or permanently fastened to anything attached to the earth”

“Section 3(4) of Bombay Land Revenue Code, 1879

‘land’ includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory”

However, under the General Clause Act, 1897, states as under in this regard:

Section 3(26) ‘Immovable property’ shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth”

Thus, benefits to arise out of land shall be “Immovable Property” but not land as per the General Clause Act, 1897.

7.1.5 Supreme Court in the case of **Kaliaperumal vs Rajagopal and anr** (AIR 2009 SC 2122) has observed that ‘Sale’ is defined as a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left with the transferor.

In the case of a Lease however the transfer of rights are not total or absolute. Thus, in light of the above ruling of the Apex Court, Lease cannot be equated with Sale, even if the lease is in perpetuity.



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7.1.6 It may be also be argued that one-time lease premium is different and distinct from lease rent and that it is not a periodical payment, but a one time.

In this regard, it has to be noted that the nature of the transaction does not depend on the nature of the consideration. Even if the consideration is in the form of a one-time payment by way of premium, the supply shall remain to be that of a Lease and shall not become a Sale.

7.1.7 Again, it may be argued that if the intention of the legislation was to charge GST on this one-time lease premium, then, appropriate provisions would have been inserted.

In this regard, it may be noted that upfront concession fee received against the *lease* made for more than 30 years is exempted from the payment of GST under the provisions of entry No. 41 of Notification No. 12/2017-Central Tax (Rate), date 28-6-2017 as amended by Notification No. 32/2017-Central Tax (Rate), dated 13-10-2017, only when all the conditions of the Notification are met.

It is therefore clear that the legislature in its infinite wisdom has treated the Lease of land to be taxable. Since the premium on lease of land is treated to be taxable, conditional exemption has been granted by way of Entry No. 41 supra.

7.1.8 The Honorable Bombay High Court had the occasion to consider the taxability of one time premium on lease of land under the GST Laws in the matter of Builders Association Of Navi Mumbai, Neelsidhi Realities Versus Union Of India Through The Secretary, Ministry Of Finance, The Commissioner Of Goods And Service Tax, Thane & Others, reported in 2018 (4) TMI 461 - BOMBAY HIGH COURT and ruled in favour of the Revenue.

7.2 GST on lease of residential land:

7.2.1 In the Application for the Advance Ruling, the applicant has failed to state its interpretation of the applicable law and facts of the case which has led the Applicant to believe that GST on lease of residential plot of land is exempt. The applicant has made a cryptic statement that some of



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the customers of the applicant have requested that GST may not be collected on the premium for lease of land.

7.2.2 In the given facts of the case, even though the applicant has not stated the provision of law or the Entry No. of Notification No. 12/2017 – Central Tax (Rate), which has led the applicant or the applicant's customers to believe that GST is not payable on the lease of residential land. We believe that it shall be injustice if the question remains unanswered because of the short comings in the application. Therefore, in the interest of justice, we are proceeding on premise that the applicant is seeking relief under Entry No. 12 of the Notification.

7.2.3 It is well accepted that in the case of ambiguity in a provision of law, the interpretation shall be liberal. However, in the case of an exemption notification, the interpretation shall be strict. In this case, the entry grants exemption to Services by way of renting of residential dwelling for use as residence. It does not refer to land whether as part of the residential dwelling or otherwise. There are many instances, where the legislature, where it intends a separate dispensation for land or specific treatment of land uses the phrase "building and land appurtenant thereto". No such phrase has been found in Entry No. 12. In the case of a single unit built on a parcel of land, the land is part of the building and in the case of multiple residential units on a parcel of land, there is share of undivided land that is part of each flat. The land is part and parcel of the building and is not separately let out. However, in case of lease of land, on which construction of a building is permitted, it is always the lease of the land that is renewed. The building constructed is not considered while decided on the renewal of the lease. Thus, in the case of residential building constructed by the lessee on leased land, it is always the lease of the land that is renewed. The building does not attain the character of a leasehold property.

7.2.4 Since the entry grants the exemption to a leased / rented residential dwelling, the benefit is therefore restricted to a residential building which has been let out and does not extend to a parcel of land which has been taken on lease for construction of a residential dwelling on the said land.



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8. Ruling

8.1. In respect to Question 1, we are of view that the GST is leviable on residential land provided on the lease basis.

8.2. In respect to Question 2, we are of view that the GST is leviable on maintenance charges and lease rent received by the applicant on such residential land.

8.3. The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

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(Manoj Kumar Choubey)
(Member)

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(Virendra Kumar Jain)
(Member)

Copy to:- 02/2021/A.A.R/R-28/18

INDORE dated 06/08/2021

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore, Gwalior, Bhopal
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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