

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/58/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/26)

Date: 30.07.2020

Name and address of the applicant	:	M/s. Fastrack Deal Comm Pvt. Ltd., No. 1314/1, Vill Rajpur, Ta Kadi, Mehsana, Gujarat.
GSTIN/ User Id of the applicant	:	24AAACF9937C1ZR
Date of application	:	25.04.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or result in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	09.07.2020 (through Video Conferencing)
Present for the applicant	:	Shri Dishant Khattar

M/s. Fastrack Deal Comm Pvt. Ltd., No. 1314/1, Vill Rajpur, Ta Kadi, Mehsana, Gujarat, is a company having GSTIN: 24AAACF9937C1ZR, 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 has submitted that they want to sell factory land to Mr. B for Rs.1 crore. Mr. B showing acceptance to the sale agreement, gives advance money amounting to Rs. 20 lakhs which is 20% of the total sale amount. Now for some reasons Mr. B could not complete the transaction upon which Fastrack forfeits amount of Rs. 20 lakhs.

3. Accordingly, an applicant sought advance ruling on the following question :

1. Whether the amount forfeited by Fastrack will attract GST?
2. Who will be considered as Service Receiver and Service Provider?

3. When sale of land is not treated as supply as per Schedule III of GST Act, 2017, whether forfeiture of advance pertaining to sale of land will be treated as supply and accordingly attract GST?

Applicant's Interpretation of Law/Taxation under GST Regime

4. The applicant submitted that Schedule III to the CGST Act 2017 pertains to "ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES". Para 5 of Schedule III states that,

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Further, submitted that Schedule II of CGST Act, 2017 pertains to "ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES". Clause (b) of para 5 of Schedule II states that,

5. Supply of services

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

5. The applicant submitted that as per Schedule II and Schedule III of CGST Act, 2017 sale of land will be a non- GST supply as it is clearly stated in the Schedule III of CGST Act, 2017. Since sale of land is not treated as supply the amount of advance forfeited for sale of land will also not be considered as supply, leading to no liability to pay GST.

Personal Hearing

6. The authorized representative of the company appeared and reiterated the submission already made in the application filed with the Authority of Advance Ruling. We members of the Advance Ruling have requested to submit the copy of agreement held between applicant and Mr. B (customer).

Findings and Discussion

7. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by authorized signatory, during the personal hearing proceedings on 09-07-2020 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. 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.

8. We have gone through the facts of the case. The main issue is here to decide whether the amount forfeited on account of breach of agreement of sale of land is liable to GST or not.

9. The applicant contention is that the amount of Rs. 20 lacs forfeited is on account of sale of land and as per Schedule III of CGST Act, 2017, sale of land is an activity or transaction, which is treated as, neither supply of goods nor service. Therefore, they have claimed that such transaction is not liable to GST.

10. The applicant aforesaid contention is not tenable because he is of the view that the forfeited amount received by him is on account of sale of land. However, it is clear from his own submissions that he has not received the said amount on account of sale of land but received the same on account of non-fulfillment of conditions of agreement of purchase of factory land by the customer. The applicant has submitted the copy of agreement/contract, which is in Gujarati language and relevant para has been translated in English for sake of understanding. In the said para of contract, it is mentioned, *“if purchaser fails to give remaining amount on or before 31/12/2019 along with 18% interest per annum, then amount paid by the customer to the applicant would be treated as forfeited”*. In view of the said terms and condition of contract, it can be stated that Mr. B i.e. customer has agreed that in case he fails to give full payment as per the dates mentioned in the contract, the amount paid to the applicant would be forfeited by him. Now, it is clearly seen that aforesaid transaction/ activity of forfeiture nowhere involves sale of land. Applicant has received money not on account of sale of land but on account of non fulfillment of conditions as stipulated in the agreement by the prospective customer. Hence the said income of Rs. 20 lacs of the applicant is not due to sale of factory land but it is due to breach of condition of contract by Mr. B. It can be termed as a consideration to the applicant for “refraining or tolerating or doing an act” of Mr. B to not complete the transaction, which Mr. B (customer) had agreed in terms of contractual obligations.

11. Section 7 of the CGST Act, 2017 states, as under:

Section 7(1) for the purposes of this Act, the expression “supply” includes:-

- (a) 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;*
- (b) import of services for a consideration whether or not in the course or furtherance of business;*

- (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

12. Sub Clause (e) of The Clause (5) of Schedule-II states, as under:

- (e) *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;*

This clause can be divided into following 3 sub-clauses:

- (a) Agreeing to the obligation to refrain from an act,
- (b) Agreeing to the obligation to tolerate an act or a situation,
- (c) Agreeing to the obligation to do an act.

13. It is clear from above that the words 'agreeing to the obligation' appearing in clause (e) applies to all the 3 activities. As per the contract, the provider of service here agrees to refrain or tolerate or to do an act. There is specific agreement by the provider to carry out obligation specified in the contract. In case obligation/condition of the contract is not fulfilled by the recipient, then such act is squarely covered under clause 5(e) of Schedule-II. Therefore, this activity constitutes supply in terms of Section 7(1) of CGST Act, 2017 and accordingly is taxable.

14. As per Section 7(1) of the CGST Act, 2017, activities referred to in Schedule II are covered under the scope of supply of goods and service. **Clause 5(e) to Schedule II to CGST Act 2017**, declares that '***agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act***' shall be treated as supply of service. The amount, which was received from Mr. B and forfeited by the applicant, was a part of the terms and condition of an agreement held between the applicant and Mr. B (customer). This means that while entering into the agreement, Mr. B was well aware about the terms and condition of the contract that in absence of breach of agreement or non-fulfillment of terms and condition of payment as per the contract, the amount given as an advance would become forfeited by the applicant being settlement of exit of the contract. In other words, Mr. B (customer) has understood and accepted the condition that in the contingency of his inability to fulfill the transaction, applicant can exercise the option of forfeiting the amount received as an advance to agree to the obligation of letting him go, which Mr. B is bound to do as it is part of the terms and conditions of contract already agreed to and settled between them. Thus, the appellant has refrained from taking subsequent action/ tolerated an act of the Mr. B (customer), for which consideration has been received by hm. The purpose of payment of amount is an act of tolerance in the sense that when there is breach of the contract, the appellant is put to certain hardships, which he tolerates in return of the payment received as advance being forfeited. Therefore, the impugned

transaction is also a 'supply' under the provisions of the CGST Act and therefore taxable. In our view, therefore, this transaction of the applicant agreeing to the obligation of refrain or tolerate or to do an act (exiting from the contract) on the part of Mr. B (customer), for payment of a sum, will be covered under Clause 5(e) to Schedule II to CGST Act 2017, as a declared service.

15. In view of the above, we hold that the GST is leviable on the amount forfeited by the applicant in terms of clause 5(e) of Schedule II to CGST Act 2017.

16. In view of the aforesaid discussion, we rule as under:

Ruling

Question1. Whether the amount forfeited by Fastrack will attract GST?

Answer: Affirmative in view of the above discussion.

Question2. Who will be considered as Service Receiver and Service Provider?

Answer: The applicant is the service provider and Mr. B (customer) is the service receiver.

Question3. When sale of land is not treated as supply as per Schedule III of GST Act, 2017, whether forfeiture of advance pertaining to sale of land will be treated as supply and accordingly attract GST?

Answer: The amount forfeited/ received by applicant is covered under supply of service as per clause 5(e) of Schedule II of CGST Act, 2017 and therefore, liable to GST.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.07.2020.