

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.**  
**(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**  
**BEFORE THE BENCH OF**

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)  
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD270720003258C	
GSTIN Number, if any/ User-id	27AAACF2982K1ZD	
Legal Name of Applicant	M/s. FOREST DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED	
Registered Address/Address provided while obtaining user id	FDCM BHAVAN, AMBAZARI LAYOUT, HINGNA ROAD, NAGPUR- 440036	
Details of application	GST-ARA, Application No. 18 Dated 04.09.2020	
Concerned officer	DIVISION-HINGNA NEW, Range-II, Butibori, Commissionerate NAGPUR I	
<b>Nature of activity(s) (proposed/present) in respect of which advance ruling sought</b>		
A	Category	Service Provision
B	Description (in brief)	<p>FDCM Ltd is Maharashtra State Government undertaking, primarily engaged in plantation and harvesting of trees, predominantly Teak. Land was given to FDCM under lease by Maharashtra State Forest and Revenue Department and FDCM Ltd does not own the land. The leased land is now being diverted towards a minor irrigation project under the Maharashtra State Irrigation Department. FDCM Ltd is being compensated by the user agency and a No Objection Certificate will be issued for usage of land subject to payment of compensation determined by FDCM Ltd on the date of transfer.</p> <p>A ruling is sought on the taxation aspect of said transaction, wherein the service of easement, license to occupy land (by issuing NOC) is being provided by FDCM Ltd for which the Kolsapada Minor Irrigation Project under the Irrigation Department of Maharashtra will compensate FDCM Ltd.</p>
Issue/s on which advance ruling required		<ul style="list-style-type: none"> <li>➤ Classification of goods and/or services or both</li> <li>➤ Applicability of a notification issued under the provisions of this Act</li> <li>➤ Determination of the liability to pay tax on any goods or services or both</li> </ul>
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 18/2020-21/B-31

Mumbai, dt. 15.03.2022

**PROCEEDINGS**

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST

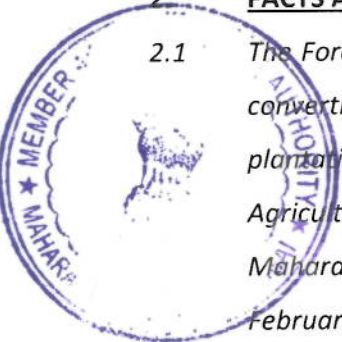
Act and MGST Act" respectively] by M/s. **FOREST DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED**, the applicant, seeking an advance ruling in respect of the following questions.

1. **Whether the transfer of land, held under lease by FDCM, towards Kolsapada Minor Irrigation Project is supply of service?**
2. **Whether exemption under Entry No 3. Of Notification No. 12/2017 Central Tax (Rate), dated 28.06.2017 will be applicable on the amount of compensation received by FDCM against transfer of land held under lease for Kolsapada Minor Irrigation Project?**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

## **2. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:**

- 2.1 *The Forest Development Board was established by the Government of Maharashtra in 1969 for converting large blocks of low value mixed forests into valuable stands by undertaking teak plantations on a large scale. On the recommendations of the National Commission on Agriculture regarding raising of manmade forests, "Forest Development Corporation of Maharashtra Limited" (FDCM Ltd) was incorporated under the Companies Act, 1956 on 16th February 1974 as a wholly owned Company of State Government of Maharashtra. To achieve the above purpose, land was leased to FDCM Ltd by the Maharashtra State Forest and Revenue Department subject to terms and conditions. FDCM Ltd has used the leased land to undertake plantation and harvesting activities, predominantly of teak. FDCM has been collecting and appropriately paying GST on sale of teak and other woods regularly.*
- 2.2 *From time to time, the land allocated under lease to FDCM Ltd has been diverted/ transferred to Revenue and Forest Department for various Government Projects. FDCM Ltd receives compensation from the user agencies of land (Government Departments, Government owned Companies) such as NHAI, Maharashtra State Electricity Transmission Company, MMRDA, Irrigation Department for the easement, license to occupy land. The amount of compensation determined by FDCM Ltd, is as per Circular No PLN:66A/Part 2/3362 issued by Managing Director FDCM, DE :02-11-2006. The Kolsapada Minor Irrigation Project, located in Thane District, was*





initiated by Executive Engineer; Raigad Irrigation for Minor Irrigation Scheme. The Project is administratively approved by Government of Maharashtra, Water Resource Department vide resolution No MIS-2007/78/Ch. NO,46/2007Kharland Dt 18-06-2008 and required diversion of 139,473. Ha land which was partial under the Forest and Revenue Department of Maharashtra and partially under FDCM Ltd.

- 2.3 A letter dated 29-05-14 from Deputy Conservator of Forest, Thane to Divisional Manager FDCM Ltd, Thane, intimated that an area of 93.076 Hectare was to be diverted for Kolsapada Minor Irrigation project which was given under lease by the Forest and Revenue Department of Maharashtra to FDCM Ltd. The letter also asked FDCM Ltd to determine the amount of compensation to be given against diversion of land and to issue an NOC against such diversion.
- 2.4 FDCM submitted an NOC towards transfer of land for Kolsapada Minor Irrigation Project on 30-05-14, subject to the payment of valuation of the affected assets, at the time of transfer of land to the User Agency. Value of affected assets estimated by FDCM Ltd was Rs 15,26,20,014. The Chief Conservator of Forest, Revenue and Forest Department, Maharashtra in his letter Dt 25-11-2014 to the Ministry of Environment, Forest and Climate Change recommended the diversion of forest land for non-forestry use. The amount determined above was paid on 30-03-2019. Due to delay in payment of compensation, the value of asset was enhanced to Rs 17,41,92,890. The enhanced amount of Rs 2,15,72,876 has not been paid to FDCM Ltd and as such FDCM Ltd has not transferred the right to use the above land. The user agency under the State Government of Maharashtra, now wants to pay the balance amount to FDCM Ltd along with the amount of GST applicable on the transaction, if any.



**B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW**

- 2.5 Section 7 of The CGST Act, 2017 determines the scope of supply. Certain activities, specified in schedule 1 of the Act, even made or agreed to be made without a consideration shall be treated as supply. This section also provides activities which are neither supply of goods nor supply of services as specified in Schedule III of the Act while activities to be specifically treated as supply of goods or supply of services are as per Schedule II of the Act.

Section 7 (1A) specifies certain supplies to be specifically treated as a supply of goods or supply of services as referred to in Schedule II, which has been reproduced below,

Schedule II

2. Land and Building

any lease, tenancy, easement, licence to occupy land is a supply of services; any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

- 2.6 It is evident from Schedule II, Entry 2 read with section 7 1(A) of The Central Goods and Service Tax Act, 2017, that, any activity which creates any lease, tenancy, easement or licence to occupy land shall be treated as supply of service.

In light of the above, it is submitted that, since FDCM is transferring the leased land back to Forest & Revenue Department of Maharashtra for the purpose mentioned above, any compensation received by FDCM from Kolsapada Minor Irrigation Project under Irrigation Department can only be attributed to have been against supply of service.

- 2.7 As per Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017, amended by Notification No. 2/2018- Central Tax (Rate) DT 25/01/18, services provided to State, Central Government or local authority or a Governmental Authority by way of an activity in relation to any function covered under Article 243G or 243W of The Constitution of India are exempt from levy of GST.

Activities entrusted to a Panchayat specifically covers Minor irrigation, water management and watershed development. Hence any supply of service provided towards Kolsapada Minor Irrigation Project under The Irrigation Department of The State of Maharashtra shall be exempted under Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

- 2.8 The land held under lease by FDCM is essential for Kolsapada Minor Irrigation Project and the easement or the right to occupy the land provided by FDCM is for the sole purpose of creation of Minor Irrigation Project which is an activity covered under Article 243 G or 243 W of The Constitution of India.

- 2.9 Such supply of impugned service shall be exempt under the CGST Act under Notification No. 12/2017-CTR, dated 28.06.2017, further amended by Notification No. 2/2018- CTR dt 25/01/18.

**03. CONTENTION – AS PER THE CONCERNED OFFICER:**

The concerned/jurisdictional officer has not made any submissions:-

**04. HEARING**

- 4.1 Preliminary e-hearing in the matter was held on 29.06.2021. Authorized Representative of the applicant, Shri. Indraneel Dani, CA was present and the Jurisdictional officer was absent. The Authorized Representatives of the applicant made oral submission with respect to admission of their application.





- 4.2 The application was admitted and called for final e-hearing on 14.12.2021. The Authorized representative of the applicant, Shri. Indraneel Dani, CA was present. The Jurisdictional officer was absent. The Applicant was directed to produce details and /or documents or correspondence related to consideration received i.e. from whom it is received, specific details regarding the same. Hearing was completed accordingly.

**05. OBSERVATIONS AND FINDINGS:**

- 5.1 We have perused the documents on record and considered the submissions, both oral and written, made by the applicant.

- 5.2 We find that, M/s Forest Development Corporation of Maharashtra Limited", the applicant, is a wholly owned Company of State Government of Maharashtra and it has been leased certain land by the Maharashtra State Forest and Revenue Department (MSFR department) and, the applicant has undertaken plantation and harvesting activities, predominantly of teak and further, has been collecting and paying GST on sale of teak and other woods. It is further stated by applicant that, a part of the land allocated under lease to it is required to be diverted for the Kolsapada Minor Irrigation project for which the applicant shall be paid compensation.

Thereafter, the applicant received part compensation of Rs 15,26,20,014/- out of a total compensation of Rs 17,41,92,890/- and is yet to receive the balance payment of Rs 2,15,72,876/- The applicant has not transferred the right to use the said land but has issue NOC for the said transfer of rights.

- 5.4 During the course of final hearing the applicant was specifically asked to produce the details and documents regarding the consideration received and from whom it is received. The applicant as per its email dated 22/12/2021 has informed that the compensation is received from the agency that requires the land. Since the applicant is holding land on lease which is allocated by Forest & Revenue Department of Maharashtra the implementing agency, in this case, the Irrigation Department coordinates with Forest & Revenue Department who in turn instructs the applicant to release the lease held land against compensation which is paid by implementing agency.

- 5.5 The applicant has also stated in its application as under:

*"In light of the above, it is submitted that, since FDCM is transferring the leased land back to Forest & Revenue Department of Maharashtra for the sole purpose of diversion of land towards Kolsapada Minor Irrigation Project under The Irrigation Department of Government of*

*Maharashtra, any compensation received by FDCM from Kolsapada Minor Irrigation Project under Irrigation Department can only be attributed to have been against supply of service."*

5.6 It is presumed for the purpose of present ruling **that the amount is directly received from the Irrigation department of the Government of Maharashtra and not from anyone else**, since, in spite of specific request to produce the details as from whom payments are received and proof thereof, no details in support of payments received have been produced. However, since the applicant is a government company, their contentions are accepted based on submissions made. Therefore, if the payments received from anyone else other than Irrigation department, present advance ruling shall not have any binding effect.

5.7 We observe that, the land belongs to the MSFR Department who is the owner. As an owner, MSFR Department has leased the land to the applicant. The applicant is not the owner of the land. Now, the MSFR Department has asked the applicant to hand over a part of the land to the Irrigation Department as mentioned in the application. Thus, in respect of the land to be transferred to the Irrigation Department, as and when the transfer is done it would have the effect of making MSFR Department as the lessor and the Irrigation Department as the lessee (with the applicant being nowhere in the picture) and presumably the lease rent if any, would be paid by the Irrigation Department to MSFR Department.

In view of the scenario mentioned in 5.7 above, we need to find out whether the subject transaction is a supply of service by the applicant. Prima facie, we find that the land will not be leased by the applicant to the Irrigation Department. In fact, the applicant will be relinquishing its lease right on the said land in favour of Irrigation Department on the directions of the owner of the land i.e. MSFR Department.

5.9.1 Section 7 of the CGST Act, 2017 which defines "supply" is reproduced as under:-

7. Scope of supply.—

(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;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

**Explanation.**—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order





of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

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

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(d) [\*\*\*\*\*]

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

5.9.2 Schedule II of the CGST Act, 2017, defines activities or transactions to be treated as supply of goods or supply of services and is reproduced as under:-

#### **1. Transfer**

(a) .....

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) .....

#### **2. Land and Building**

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) .....

3. ....

#### **4. Transfer of business assets**

(a) .....

(b) .....

(c) .....

#### **5. Supply of services**

The following shall be treated as supply of services, namely:—

(a) .....

(b) .....

(c) .....

(d) .....



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

*(f) .....*

**6. Composite supply**

*The following composite supplies shall be treated as .....*

5.9.3 As per 5 (e) of Schedule mentioned above, agreeing to the obligation to do an act amounts to supply of services. In the subject case, the applicant has agreed to do an act i.e. the applicant has agreed to relinquish its lease right on the said land in favour of Irrigation Department on the directions of the owner of the land i.e. MSFR Department. Thus the said action of the applicant is nothing but supply of services under the GST Laws and the said supply is to MSFR department for which compensation is received from the Irrigation department.

5.10 The applicant has submitted that the impugned supply is to the Irrigation department. However, it is seen that the applicant is **agreeing to do an act** as per the directions of the MSFR department and not the Irrigation department and the applicant has not brought anything on record to show that the impugned services are provided to MSFR department by way of an activity in relation to any function covered under Article 243G or 243W of The Constitution of India. In view of non- submissions of details on this aspect by the applicant, the second question i.e. **"Whether exemption under entry No 3. Of Notification No. 12/2017 Central Tax (Rate), Dated: 28.06.2017 will be applicable on the amount of compensation received by FDCM against transfer of land held under lease for Kolsapada Minor Irrigation Project"** cannot be answered.

5.11 In view of the extensive deliberations as held hereinabove, we pass an order as follows:

**ORDER**

**(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

For reasons as discussed in the body of the order, the questions are answered thus –

**Question 1: -** Whether the transfer of land, held under lease by FDCM, towards Kolsapada Minor Irrigation Project is supply of service?

**Answer: -** Answered in the affirmative.





**Question 2: -** Whether exemption under entry No 3. Of Notification No. 12/2017 Central Tax (Rate), Dated 28.06.2017 will be applicable on the amount of compensation received by FDCM against transfer of land held under lease for Kolsapada Minor Irrigation Project?

**Answer: -** Not answered in view of discussions made above.



**RAJIV MAGOO**  
(MEMBER)



**T. R. RAMNANI**  
(MEMBER)



Copy to:

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

**Note:-**An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on [gst.gov.in](http://gst.gov.in) for online appeal application against order passed by Advance Ruling Authority.