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 :aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

2. Virendra Kumar Jain
Joint Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AARFV3245R1ZE
Name and address of the applicant	M/s Vidit Builders 932, Wright Town Jabalpur Madhya Pradesh 482002
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a)Classification of any goods or services or both; c)Determination of time and value of supply of goods or services or both; f)Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term;
Present on behalf of applicant	Shree Vishal Jaseja CA
Case Number	19/2019
Order dated	06/01/2020
Order Number	02/2020

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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. The present application has been filed u/s 97 of the Central Goods and Services Act,2017 and MP Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s Vidit Builders(hereinafter referred to as the Applicant), registered under the Goods & Services Tax.
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 The applicant is partnership firm and engaged in the business of real estate developer and is developing a colony by executing joint development agreement on 14.03.2019 with the land owner M/s Star Construction. In this project developer will develop and provide the following common facilities in the colony.

1. Construction of concrete roads and compound walls.
2. Development of garden.
3. Construction of drain and water supply system.
4. Erection of electric poles and transformers etc.

3.2 With due permission from the local municipal corporation. Developer will sale vacant plots to individual buyers and will not do any construction activities on these plots. No common facilities developed like road, garden, electric poles, water drainage etc. will be transferred / sold to buyers.

3.3 After development of all the above-mentioned common facilities, local municipal corporation will review and provide completion certificate to the developer and developer will hand over the colony to the municipal corporation for further maintenance.

4. **QUESTIONS RAISED BEFORE THE AUTHORITHY:-**

In view of the above, the applicant has sought in respect of the following question.

4.1. Whether it is covered in para 5 of Schedule III (Sale of Land) or classified under works contract.

4.2. If it is covered under works contract, how the valuation would be done.

4.3. Residual Rules i.e. Rule 30/31 provided under GST Valuation Rules can be considered or not.

5. **CONCERNED OFFICER'S VIEW POINT:**

The concerned officer is his view submitted that the work undertaken by the applicant doesn't fall under Para 5 of schedule III. And rule 31 applies for the valuation.

6. **RECORD OF PERSONAL HEARING:** Shree Vishal Jaseja CA authorized representative of the applicant appeared and reiterated the submission given in the application. He also gave a copy of the agreement executed between the applicant and the land owner M/s Star construction.

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7. **DISCUSSIONS AND FINDINGS:**

7.1 We have carefully gone through the submission made by the applicant in their application, as well as the submission made at the time of personal hearing and copy of agreement between the applicant and the land owner.

7.2 The applicant has entered into joint development agreement with the land owners in terms of the agreement the applicant undertakes the development of plots which also concludes construction of concrete roads and compound walls, development of garden, construction of drain and water supply system and erection of electric poles and transformer etc. The revenue accruing from the sale of the plots is shared as per the agreement. After developing the land and formation of developed plots, the amenities like roads, etc. are handed over to the Authorities as per the Statutory requirement. The salient provisions contained in the agreement and having a bearing on the questions raised by the applicant are discussed in the following paragraphs.

7.3 The agreement deed clearly states that as the land is under mortgage of the State Bank of India, Jabalpur, therefore permission was taken from State Bank of India, Jabalpur of entering into the agreement. Init it has been clearly stated that the applicant would enter into an agreement with the land owner only for the development of the land.

7.4 "Para (1)" of the agreement says that applicant would follow all rules and regulations for development of colony.

7.5 In "Para (2), (3), (5), (6), (7) , (14), (15) and (16)" deals with the works and duties to be carried out by the applicant.

7.6 In Para (4)" says that it is land owner who has got diversification of land use to residential purpose.

7.7 The agreement further provides that once the project has been developed the applicant will ensure the sale of the plots. For selling any expenses incurred by the applicant will be recovered by the applicant from the purchaser and would be shared between land owner and applicant in a fixed ratio

7.8 "Para (8)" of the agreement provides for the revenue sharing arrangement. The applicant is entitled to a revenue share equal to 40% of the sale value of each plot. The agreement also states that the security deposited by the applicant will be refundable within a stipulated time and if not it will be refunded with 18% percent per annum interest.

7.9 "Para (11)" of the agreement obliges the applicant to complete the work in a stipulated time.

7.10 In "Para (10)" it is the land owner who gives the right to the applicant to develop the land.

7.11 "Para (13) and (14)" entrust upon the land owner to pay any tax/rent and to settle any legal dispute regarding land.

7.12 "Para (15)": says that the land owner authorizes the applicant would get the approval of design, layout and other permission from the concerned authorities.

7.13 The above are salient features of the agreement. The main argument of the applicant is that they are primarily engaged in the sale of land and the said activity is not liable to be taxed in terms of the provisions contained in serial number 5 of Schedule III of the GST Act, 2017. Therefore nearly by developing common facilities

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like drainage, electricity, road facilities, garden development etc should not attract GST.

7.14 The applicant further contempt that mentioned development activities should not be covered under the ambit of GST. Since the dominancy in the transaction / activities is in respect of land/plots, whole transaction / activities would be covered in sale of plots/ land though the ancillary services (Common facilities) has been provided.

7.15 Now we examine the contention of applicant in light of the salient features of the agreement discussed in the preceding paragraph.

7.16 The core contention of the applicant is that they are engaged in the sale of land. The sine qua non for any sale of land is the ownership of the land sold. The seller can claim that he is engaged in the supply of land by way of sale only if he himself enjoys the title of the land. Anyone who does not possess any title of the land cannot be considered as the seller. Such a person may have a role in the activity of sale but he cannot claim himself to be the seller. In the instant case the applicant understands that they have a right to 40 % of the total number of plots developed and the sale of these plots, as well as those of the landowners share, is covered under serial number 5 of Schedule III. We do not agree with this interpretation of the agreement by the applicant. We deconstruct the understanding and the arguments professed by the applicant in the following discussion.

7.17 The first and foremost point to understand is the actual nature of the activities required to be performed by the applicant in terms of the agreement. One of the important point in the agreement is that as the land is under mortgage of State Bank of India, Jabalpur, permission was taken by the bank for the development of the land and in that permission it was clearly stated that the applicant would enter into an agreement with the land owner only for the development of the land the agreement also clearly defines the scope of work to be undertaken by the applicant the main work to be carried out by the applicant the development of plots which also concludes construction of concrete roads and compound walls, development of garden, construction of drain and water supply system and erection of electric poles and transformer etc. Therefore it is very much clear that the activities to be undertaken by the applicant are in nature of development of land into residential layout. The agreement provides that the applicant can enter into sale agreements. However this activity is incidental to the main activity of development of land. The sale is entrusted to the applicant as the applicant has invested huge sums in the development of the land and it is a measure to protect his financial exposure in the matter. Here it becomes evident that the core competence and the activity actually carried out by the applicant is that of development of land and not the sale of land. The land owner still remains the land owner till the property is transferred in the name of purchaser.

7.18 The agreement also states that the land owner authorizes the applicant to prepare the necessary plans drawing designs and get it approved by the concern authority. The authorization clause clearly shows that the activities are to be done by the applicant is on behalf of the land owner. The applicant doesn't become the land owner himself.

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7.19 There are many other provisions in the agreement that applicant has no right over the land and consequently the applicant cannot claim to be engaged in the activity of sale of land as envisaged in the provisions of entry at Serial number 5 of said Schedule III. The provisions of this entry will apply only to those persons who are the owners of the land and not to persons who are incidental to the sale of land.

7.20 According to the agreement the primary role of the applicant is development of the land into residential plots. The other activities to be done by the applicant are ancillary to the above prime activity. The applicant doesn't get the right himself to deal with many government agencies but he has been authorized by land owner to do so. He doesn't himself become the land owner.

7.21 The agreement also provides that the cost of development shall be borne by the applicant. It is agreed upon by the applicant and the landowners that all the cost of the execution of the project subsequent to the receipt of the Sanctioned plan, including costs like fee payable to architects, engineers, workmen etc shall be borne by the applicant. The applicant is entitled to recover these costs from the purchasers of the plots.

7.22 The revenue sharing agreement in "Para 8" of the agreement indicates that the applicant gets an amount on the sale of each individual plot. This shows that there are no fixed earmarked plots to which the applicant can claim an entitlement. Further the amount received on the sale of the plots is credited to an escrow account and then only the same is divided. This further shows that the applicant is not the owner of the plots and consequently cannot claim sale of the plots as his supply.

7.23 On the basis of the aforementioned provisions of the agreement it would be in order to conclude that activities undertaken by the applicant are not qualified to be covered under entry number 5 of Schedule III of the said Act. Thus the activities to be performed by the applicant amount to a supply of service.

7.24 The service provided by the applicant is regarding development of the site which includes civil construction and amenities regarding the site in order to make it for the purpose of residence. The services provided by the applicant are based on an agreement signed between the land owner and the applicant which comes under works contract.

7.25 The applicant has also raised that if the activity to be performed comes under works contract how the valuation would be done. GST Rule 30/31 will be considered or not.

7.26 The terms of the agreement provide that the cost of execution of the development of the land including the cost of fee payable to the architects, contractors, staff , workmen etc shall be borne by the applicant. Further it provides that the applicant recovers the cost from the purchasers of the plots. In this regard the provisions of Para 8 dealing with revenue sharing are worth noting. Para 8.1 provides that as and when any plot is sold, the proceeds shall be divided between the applicant and the landowners in the given ratio. This shows that the charges that the applicant receives for the services provided by them to the landowners for the development of the land are equal to their revenue share when the plots are sold. Now we look at the definition

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of 'Consideration' as enumerated in Section 2(31) of the Act. It is stated therein that "consideration" in relation to supply of goods or services or both includes any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, supply of goods or services or both, whether by the recipient or by any other person.

7.27 In this context we see that the applicant receives consideration equal to 40% of the value at which each of the plots is sold. This amount constitutes the consideration for the services provided by the applicant. Section 15 of the CGST Act, 2017 provides that 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 where the supplier and the recipient are not related and the price is the sole consideration. It is seen here that the applicant does not get any physical possession of 40% of the plots as understood by the applicant. The agreement provides that the applicant gets 40% of the amount at which each of the plots is sold. This shows that the consideration that the applicant receives is in the form of money and not in the form of land. The only peculiar feature of this arrangement is that the landowners do not arrange any cash amount on their own to pay to the applicant for their services. They do not have to invest any personal amount in this manner and as and when a plot is sold the amount is shared and the applicant receives a part of their consideration. In this manner the applicant gets paid his consideration progressively. Therefore in terms of the provisions of Section 15 the applicant receives the value of taxable supply made by them.

7.28 Rule 27 deals with the determination of Value of supply of goods or services where the consideration is not wholly in money. In the present case the entire consideration is received in money form. Therefore this Rule does not apply to the present case. Rule 28 is applicable for determination of value of supply of goods or services or both between distinct or related persons, other than through an agent. The distinct persons are as defined in sub section (4) and (5) of Section 25. In the present transaction there are no distinct persons as defined in sub section (4) and (5) of Section 25 are involved. Therefore Rule 28 also does not apply. Rule 29 and 30 also do not apply in the case. Consequently Rule 31 comes into play in the instant case. Rule 31 provides that where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15.

7.29 Section 15, as already discussed in para 7.27 above, provides that 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 where the supplier and the recipient are not related and the price is the sole consideration. In the instant case what the applicant receives as their remuneration for the provision of the services of development of the land and their subsequent activities related to the sale of the plots is an amount equal to 40% of the open market value of each plot. The arrangement is that the applicant shall get the amount only as and when the plots are sold. As already discussed earlier this arrangement, where the applicant gets paid for their services only upon the sale of the plots, enables the landowners to not to spend their financial

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resources to pay the applicant for their services. The applicant gets 40% of the amount collected from the plot purchasers. This amount constitutes their consideration for their services rendered to the landowners. Consideration for a service is the total value that the service provider gets in the deal and not what the service provider expends for the provisioning of the service. The total gain to the applicant or the total amount accruing to the applicant for the services is 40% of the amount at which the plots are sold. It has already been emphasized and held that the applicant has no right in the title of the land and therefore the applicant cannot be considered as the sellers of the plots. Their role is limited to aiding and assisting the landowners in the sale of the plots. They are only service providers in the whole process, be it development of the raw land into residential plots or their sale after the development. Therefore the entire amount received by them is liable to be taxed.

8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

8.1 The activities performed/to be performed by the applicant cannot be classified under Para 5 of schedule III. It amounts to supply of services under works contract and is liable to be taxed under GST Act.

8.2 Rule 31 applies in the instant case and the value of supply is equal to the amount received/receivable by the applicant which is equal to 40% of the amount on which the plots are sold.

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

VIRENDRA KUMAR JAIN
(MEMBER)

MANOJ KUMAR CHOUBEY
(MEMBER)

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INDORE सत्यप्रतिलिपि dt. 06/01/2020

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

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