

GST/2020-21/08

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Recently Karnataka Appellate Authority for Advance Ruling (AAAR) has upheld the ruling given by Karnataka AAR in the matter of “M/s Maarq Spaces Private Limited”. AAR has earlier held that consideration received by developer in terms of Joint Development Agreement (JDA) is neither a composite supply nor an exempt supply and instead is a taxable supply liable to GST. We have analysed the original AAR ruling and reasons extended by AAAR while upholding the same in this update.

A. FACTS OF THE CASE

- Appellant “Maarq Spaces Private Limited” is a private limited company engaged in the business of property development.
- Appellant has entered into a Joint Development Agreement (JDA) with landowner for development of land into residential layout along with specifications and amenities. Cost of development shall be borne by the appellant
- Appellant sought an advance ruling in respect of *whether activity of development for sale of land attracts tax under GST law.*
- Karnataka AAR ruled that agreement between the appellant and the landowners amounts to supply of services and is taxable under GST
- Being aggrieved by the above ruling, the appellant filed an appeal before the AAAR.

B. CONTENTION OF THE TAXPAYER

- The appellant was of the view that sale of land being the primary activity with development being incidental, GST was not liable to be paid on the activity carried out by them
- That there is nothing in JDA which gives rise to the contention that appellant had agreed to supply any service to the landowners.
- That the law recognizes the “recipient” as the person who is liable to pay consideration and that there is no such clause in the JDA, which fixes the responsibility on landowners to pay the consideration to the Appellant for development of land.
- JDA is also silent about the consequences of unsold plots, as to whether landowners are liable to pay any consideration to the Appellant or not. Therefore, in the absence of consideration flowing from Landowners, it cannot be construed that, Appellant had agreed to execute work for the Landowners for a consideration.
- The appellant submitted that transaction in terms of the JDA is a composite supply where the principal supply being the sale of land is outside the purview of GST in terms of entry 5 of Schedule III of the Act. Therefore, the consideration of 25% received by the appellant is not taxable under GST.

B. OBSERVATIONS AND ORDER OF THE AAAR

- Appellate AAR examined the provisions of **composite supply** as defined in Section 2(30) of the CGST Act, 2017 which are reproduced below:

“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.**”
- Two activities involved here are development of land and sale of plots. The transaction relating to the sale of land is not a supply of either goods or service under GST (as per entry 5 of Schedule III of the CGST Act). The activity of sale of land cannot be considered as an 'exempt supply' since the activity is not at all a supply and hence the question exempting it under Section 11 of the Act does not arise.
- On the other hand, the activity of development of land is a supply in terms of Section 7 of the CGST Act. A combination of two activities one of which is not a supply under GST **cannot** be said to be a **composite supply**.
- The AAR further noted that the consideration for the development of the land is in the form of the revenue earned from the sale of land. The revenue accruing from the sale of the plots comprised in the project shall be shared between the landowner and the Appellant-developer in the ratio of 75% of the RP revenue to the landowner and 25% of RP revenue to the Appellant-Developer. Therefore, the entire amount received by the Appellant for development of land is liable to be taxed
- Appellate AAR also examined that the Joint Development agreement (JDA) is entered into for the two parties to **jointly reap** the **benefits** of the sale of the land to customers, there is a clear rendering of a service by the developer to the landowner in developing the land which belongs to the landowner. Therefore, it is a supply of service.
- The Appellate Authority of Advance Ruling (AAAR) **upheld** the **ruling of AAR** and held that GST is **payable on development of land into residential layout and sale**.

C. OUR COMMENTS

The aforesaid ruling initially by AAR and thereafter upheld by AAAR has distinguished between development of land and sale of land. Generally, development and sale of land are carried out together by one person and in that case, concept of composite supply may become applicable resulting in exemption of entire sales consideration. However if as per the scope of work defined in agreement, developed is engaged for performing a certain set of functions, then that shall be treated as independent supply liable for GST irrespective of the fact that the consideration of developer has been linked to sale of plots.

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