

GST/2020-21/13

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Hon'ble Gujarat Authority for Advance Ruling (AAR) has given a ruling in the matter of "*Shree Deepesh Kumar Anil Kumar Naik*" holding that that Sale of land developed with primary amenities such as boundary wall, drainage line, water line, electricity line etc. is liable to GST as service of construction of a complex. Relevant facts of the case alongwith relevant legal provisions leading to captioned ruling are analysed below:

A. FACTS OF THE MATTER

- The applicant is having a vacant land on which he has some proposed business activity for which he has all necessary approvals for the proposed project from the plan passing authority (i.e Jilla Panchayat).
- Such land will be divided into small plots which in turn will be sold to end consumers for a consideration.
- The plan passing authority requires the seller to provide primary amenities like Sewerage and drainage line, Water line, Electricity line, Land levelling for road, Pipeline facilities for drinking water, Street lights, Telephone line etc. These are the mandatory requirements of plan passing authority.

B. ISSUE BEFORE THE AAR

Whether GST is applicable on sale of plot of land for which, as per the requirement of approved by the respective authority (i.e. Jilla Panchayat), primary amenities such as, Drainage line, Water line, Electricity line, Land levelling etc. are to be provided by the applicant?

C. OBSERVATIONS AND FINDINGS OF THE AAR

- The AAR referred the below relevant provisions related to taxability of immovable property:
 - Paragraph 5 to schedule III of CGST Act,2017 specifies "*Sale of land, subject to paragraph 5(b) to schedule II, sale of building*" to be treated as neither supply of goods nor supply of services.
 - Schedule II of the CGST Act,2017 pertains to activities or transactions to be treated as supply of goods or supply of services. As per clause 5 (b) of the schedule III, *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 shall be treated as a supply of services.*
- From the above-mentioned provisions, it is clear that GST shall not be applicable in case the transaction is exclusively for transfer of title or transfer of ownership of land, which is immovable property or earth.

- Here, the applicant is developing basic infrastructure such as levelling of land, construction of boundary walls & roads, laying of underground cables, pipelines, underground sewerage lines and other infrastructure works. Thereafter, the sellers charge the rates on super built-up basis which includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis.
- Thus, in effect, the seller is collecting charges towards the land as well as the common amenities.
- *Sale of such plotted development tantamount to rendering of service* such view has also been taken by the Supreme Court in the case of *M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC)*.

D. RULING OF THE AAR

Based on above observations and relying upon the judgment of Hon'ble Apex Court in the case of *M/s Narne Construction P Ltd*, AAR passed following ruling:

The activity of the sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer'. Thus, the said activity is covered under 'construction services' and GST would be payable on the sale of developed plots in terms of CGST Act / Rules.

E. SNR COMMENTS

In our view, the ruling is not in line with GST laws due to following reasons:

- The concept of composite and mixed supply is not at all discussed by AAR. Generally, such supplies are treated as composite supply since principal supply is always land and ancillary services such as sewerage, drainage line, water line, electricity line etc are provided along with the land and without such ancillary facilities, plot of land would not be marketable.
- The judgment of Hon'ble SC in the case of *M/s Narne Construction P Ltd* is in relation to 'The Consumer Protection Act, 1986 and is completely misfit for being applied in relation to GST law for deriving the service element included in sale of plotted land.
- This ruling is a repetition of ruling passed by the AAR Gujarat in the case of 'Satyaja Infratech'. Though on the contrary, Kerala AAR has held that absorption of development charges in the land cost is lawful in the matter of *M/s PPD Living Spaces Private Limited*.
- This ruling is quite unexpected for real estate sector and is against the common understanding of GST law. Government is expected to clear the air like it has ably done in case of Directors' Remuneration.

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