

2022 (1) TMI 659 - AUTHORITY FOR ADVANCE RULING, GOA**IN RE: M/S. SHANTILAL REAL ESTATE SERVICES**

GOA/GAAR/02/2020-21/340

Dated: - 18 May 2021

Classification of supply - supply of goods or supply of services - sale of plots - valuation of supply - rate of tax - whether mere value addition done to land will change the nature of land from immovable property and to goods taxable under the cover of supply? - HELD THAT:- Firstly, that the roads, poles or drainages constructed by seller of land are at no time transferred to the purchaser of sub divided developed plot. These amenities will be available for use to every plot holder without any title to it. Further, these amenities in turn will be gifted to the local authority as mentioned by applicant and thereafter, the local authority will be the owner of such road and/ or electricity poles - Secondly, the sub divided plots sold will be merely on the basis of rate per sq. mts. of land being the actual land area of the plot and not on built up or super built-up area. Thirdly, the findings further indicate that no structure is being erected nor construction of facilities such as gyms, clubhouse etc. in the nature of complex, building, civil structure or part thereof are being undertaken. Thus,, it can be concluded that the object for sale is land.

Scope of Supply - HELD THAT:- As per entry 5 (b) of Schedule II of SGST Act, construction of a complex, building, civil structure or 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. Thus, if some conditions are satisfied, construction of a complex, building, civil structure or part thereof, including a complex or building intended for sale to a buyer takes on the character of supply - In the instant case, the entry 5(b) of Schedule II, cannot be applied as these roads, poles or drainages are not for sale to probable buyers of plot. Neither their ownership nor their exclusive possession shall be passed on the probably buyers of plots, rather these are intended to be eventually vested with local authorities. The principal transaction is the sale of land and these amenities are a natural part of the sale of the plot of land and these do not, in anyway, change the nature of the land or of the transaction or activity being that of sale of land.

As per entry 5 of Schedule III of SGST Act, sale of land and, subject to clause(b) of paragraph 5 of Schedule II, Sale of building, is the activity or transaction which shall be treated neither as a supply of goods nor a supply of services. Here it will be important to note that, the sale of building has conditions for the qualification to be covered in clause (b)of paragraph 5 of Schedule II. However, for sale of land, there is no such condition. Thus, land is excluded in entirety and in all circumstances whereas building is includable within the scope of supply only upon meeting certain specific criteria.

Judgment / Order**SMT. SARITA S. GADGIL, AND SHRI. PRADNYASHEEL JUMLE, MEMBER****Persons Present for Hearing : Shri. Vinesh Pikale, Authorized Representative of the Applicant.****PROCEEDINGS**

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

The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017 (hereinafter referred to as the 'SGST Act' and 'CGST Act') by M/s. Shantilal Real Estate Services, Vasco da Gama, Goa seeking an Advance Ruling in respect of the following questions:

- a) *Whether sale of plots is a supply.*
- b) *If yes, whether it is a supply of goods or services and under which category it falls.*
- c) *The valuation of the supply, if applicable.*
- d) *Rate of tax as applicable.*
- e) *Abatement is any.*

BRIEF FACTS**A. Applicants Background:**

M/s. Shantilal Real Estate Services, have their registered office at Shop No.11, Apna Bazar, 1st Floor, Vasco da Gama, Goa-403801 and hold GSTIN 30AAZFS3304A1ZL. The Applicant is a real estate developer carrying on the business of construction of residential apartments, shops and development of plots. The applicant has acquired by sale deeds certain parcels of Land at Dabolim & Chicalim in Mormugao, Goa and is currently the Owner of the Land and the applicant is currently undertaking certain plotting schemes on these parcels of lands in respect of which the applicant is seeking through the advance ruling for the purpose of determination of the following question:

- (a) *Whether sale of plots is a supply.*
- (b) *If yes, whether it is a supply of goods or services and under which category it falls.*
- (c) *The valuation of the supply, if applicable.*
- (d) *Rate of tax as applicable.*
- (e) *Abatement if any.*

B. Project Detail

The applicant has by way of sale deeds acquired the parcels of land intended for development. As such the applicant is the owner of the land. The applicant is proposing to sub divide the larger parcel of land into smaller plots for sale to buyers.

(i) Project 1: Waddo by Shantilal

This project comprises a parcel of land which will be sub-divided into plots as per sub-division plan approved by the Mormugao Planning and Development Authority (Annexure Permissions-collectively attached). There is already an existing road and as such no road development work will be undertaken. Further, drainage and electricity lines are already pre-existing which would be used as it is or may be marginally improved. There would be no development of amenities or open areas. No construction of building or structures will be done.

(ii) Project 2: Valley and Hills by Shantilal

This project comprises of land wherein the land will be sub-divided into plots and new roads and drains will be constructed in line with the subdivision plan approved by Mormugao Planning and Development Authority (Annexure Permissions-collectively attached). Further, electricity poles will be realigned and added as necessary. No construction of building or structures will be done.

In respect of both the projects in line with the development permission granted by the Authorities the roads, open spaces etc. are being transferred to the Authority being the nature of public utility.

Further in both the projects the sale is only of the plots of land the applicant being the owner. The price charged is based on the actual area of the plot and there is no built-up area, super built-up area or constructed structure which is being sold.

INTERPRETATION OF LAW AND/OR FACTS BY APPLICANT

The development of both the plots is regulated by the Mormugao Planning and Development Authority (MPDA) which grants the development permission u/s 44 of the Goa Town and Country Planning Act, 1974. Likewise, the Panchayats grants the development permission /NOC.

This statutory permission requires inter-alia the construction of roads and drainages and the demarcation of plots with permanent boundary stones. Further, all roads developed are to be gifted to the Authority and are as such public utility.

(i) POINT 1

Serial no. 5 to schedule III of the GST Act dealing with "Activities or transactions which shall be treated neither as supply of goods nor a supply of services" provided for "sale of land and, subject to clause (b) of paragraph 5 of Schedule II, Sale of building".

Thus, by virtue of the above sale of land is fully excluded from the ambit of GST law as it neither a supply of goods nor a supply of services.

Further, sale of building is also excluded subject however to Paragraph 5b of schedule II. Paragraph 5b of schedule II provides for

"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 before its first occupation, whichever is earlier.

Explanation. - For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: -

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

The development of the plots does not include the construction of a complex, building, civil structures or any part thereof.

Thus, the sale being merely of a plot of land, sold based on it's actual measurement and not on the basis of any built up area/super built up area or carpet area and without any construction of any buildings or structure would fail within the purview of land as per pars 5 of Schedule III.

(ii) POINT II

Without prejudice to the above points.

The GST law also provides for the concept of composite supply. Under the principle of composite supply, a supply of goods and all services will be treated as a composite supply if they are naturally bundled and cannot be treated as separate. In case of composite supply, the character adopted of the composite supply would be that of the principal item.

Principal supply u/s 2 (90) of the GST Act provides that “principle supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Thus, in the given facts of the case, for argument’s sake if the development of plots were to be treated as a supply, land being the principle element in the supply, it would have to be the determinant of the applicable tax rate. Since by virtue of schedule III, land is not a supply, it would have to follow that the entire supply is not a supply or at the very minimum is not a taxable supply.

(iii) POINT III

Further, without prejudice to Point I and II above, if it were to be said that development of a plot does constitute then determination is needed as to whether it constitutes supply of goods or supply of service.

If it were to be argued that it is covered by virtue of 5B of schedule II, then the applicable rate of tax would need determination.

With effect from 01.04.2019 under the new mechanism of taxation of real estate projects rates are prescribed variously depending upon the nature of the project.

REAL ESTATE PROJECT (REP)

The term “Real Estate Project (REP)” shall have the same meaning as assigned to it in section 2 (zn) of the Real Estate (Regulation and Development) Act, 2016 [RERA] - clause (xviii) of paragraph 4 of Notification No.11/2017-C.T.(Rate) and 8/2017-I.T.(Rate) both dated 28-6-2017 inserted w.e.f.1-4-2019. As per section 2(zn) of the Real Estate (Regulation and development Act, 2016 [RERA], “Real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

RESIDENTIAL REAL ESTATE PROJECT (RREP)

The term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP - clause (xix) of paragraph 4 of Notification No. 11/2017-C.T. (Rate) and 8/2017-I.T. (rate) both dated 28/06/2017 inserted w.e.f.1-4-2019.

In the project of the applicant there is no construction of any buildings or structures.

Therefore, the question arises whether it can be said to fall under any of the categories REP or RREP.

If it were to be decided that it falls within the purview of para 5(b) of Schedule II the type of project, the tax rate and the abatement thereon would need determination.

(iv) POINT IV

Without prejudice to the above since the other provisions are not entirely appropriately application to plot developments whether the residual manner of valuation prescribed under GST law can be adopted and the cost of development plus reasonable margin can be adopted as the value of supply and the remaining

portion of the total consideration for sale of the plot received be treated as towards to the value of the land. In such case the total cost incurred in development works apportioned over the sum total of area of all plots plus a reasonable margin of say 20% be the consideration towards supply and thereby taxable @18% GST (CGST 9% and SGST 9%) with eligibility of input and the rest being towards the value of land and therefore not taxable.

PERSONAL HEARING

Shri. Vinesh Pikale, Chartered Accountant, duly authorized representative appeared for personal hearing on 26/04/2021 before this authority and reiterated the points deliberated in written submissions made along with application.

FINDINGS AND DISCUSSIONS

The Applicant having acquired the plot of land by way of various sale deeds is absolute owner of plot of land with clear title without any conditions. The applicant in its capacity as owner of the plot of land have proposed for value addition by subdividing it into smaller plots.

The process of sub division of plot of land into smaller plots basically involves dividing the larger plot of land into small plots of land by demarcating them in line with the permissions obtained by the applicant from various authorities. In case of their Project 1: Waddo by Shantilal, there is already an existing road and as such no road development work will be undertaken. Further, drainage and electricity lines are already pre-existing which would be used as it is or may be marginally improved. That, there would be no development of amenities or open areas. No construction of building or structures will be done. In case of their Project 2: Valley and Hills by Shantilal, new roads and drains will be constructed in line with the sub division plan approved by the Mormugao Planning and Development Authority. Further, electricity poles will be realigned and added as necessary. No construction of building or structures will be done.

It appears that these roads, drainages, and poles which are proposed for construction/ erection are as per the conditions mandated by the local bodies as preconditions for giving NOC for plot development. Plot when purchased as a parcel of land, subdivided into smaller plots saleable with basic amenities involves sizable amount of value addition. It is beyond doubt that there is a contract between probable buyer and seller of subdivided plot. This contract is qualified to be called as sale and the sale in consideration is in respect of the subdivided plot of land. Land will be converted into plots through some value addition works. Before OC, it is land and after OC, it will be a plot. Such value addition works will be carried out to make it marketable as per the norms of the local authority.

However, question to be answered is whether it is qualified to be covered by definition of 'Supply' under GST Act. It is also to be determined as mere value addition done to land will change the nature of land from immovable property and to goods taxable under the cover of supply.

Here it will be important to note, firstly, that the roads, poles or drainages constructed by seller of land are at no time transferred to the purchaser of sub divided developed plot. These amenities will be available for use to every plot holder without any title to it. Further, these amenities in turn will be gifted to the local authority as mentioned by applicant and thereafter, the local authority will be the owner of such road and/ or electricity poles. Moreover, this can be better understood from position that no plot owner or collectively all plot owners will be in a position to sell these polls or roads or drainages nor they will be in a position to sell only plots without having these poles or roads on it. Here probable plot buyer cannot opt to buy only plot without these amenities. In future, in case plot owner among these buyers intends to sell plot which he purchases, it will be sold as plot of particular sq. mts. Secondly, the sub divided plots sold will be merely on the basis of rate per sq. mts. of land being the actual land area of the plot and not on built up or super built-up area. Thirdly, the findings further indicate that no structure is being erected nor construction of facilities such as gyms, clubhouse etc. in the nature of complex, building, civil structure or part thereof are being undertaken. So, from above discussion, it can be concluded that the object for sale is land.

Now the question is under what circumstance, it is covered in the Scope of Supply.

As per entry 5 (b) of Schedule II of SGST Act, construction of a complex, building, civil structure or 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. Thus, if some conditions are satisfied, construction of a complex, building, civil structure or part thereof, including a complex or building intended for sale to a buyer takes on the character of supply.

In the instant case, the entry 5(b) of Schedule II, cannot be applied as these roads, poles or drainages are not for sale to probable buyers of plot. Neither their ownership nor their exclusive possession shall be passed on the probably buyers of plots, rather these are intended to be eventually vested with local authorities. The principal transaction is the sale of land and these amenities are a natural part of the sale of the plot of land and these do not, in anyway, change the nature of the land or of the transaction or activity being that of sale of land. Further, the sale is taking place from the owner of the plot of land to the prospective buyer of the subdivided plot and it is the ownership that is passing from the current owner of the plot of land to the buyer who will thereby become the owner of the subdivided plot only.

As per entry 5 of Schedule III of SGST Act, sale of land and, subject to clause(b) of paragraph 5 of Schedule II, Sale of building, is the activity or transaction which shall be treated neither as a supply of goods nor a supply of services. Here it will be important to note that, the sale of building has conditions for the qualification to be covered in clause (b) of paragraph 5 of Schedule II. However, for sale of land, there is no such condition. Thus, land is excluded in entirety and in all circumstances whereas building is includable within the scope of supply only upon meeting certain specific criteria.

In view of the foregoing discussion, we rule as follows:

RULING

ADVANCE RULING UNDER SECTION 98 OF THE CGST/ GGST ACT, 2017.

The ruling so sought by the applicant is accordingly answered as under: -

a) Whether sale of plots is a supply?

Ans: Sale of plots is not a supply.

b) If yes, whether it is a supply of goods or services and under which category it falls?

Ans) Since answer to (a) above is negative, there is no question of classification.

c) The valuation of the supply, if applicable?

Ans) Not applicable since (a) above is negative.

d) Rate of tax as applicable?

Ans) Not applicable since (a) above is negative.

e) Abatement is any?

Ans) Not applicable since (a) above is negative.