GST On Sale of Plots- The Legal Tango

It is a common notion that the sale of land is out of the purview of GST. However recent rulings held by different AAR holding the levy of GST on sale of plots has sparked a row amongst tax professionals and Builder's association about legal tenability of such rulings. While trade bodies fear of opening a Pandora Box of litigations and huge demands , the tax professionals are busy in understanding the fine lines of these rulings.

The AAR authorities of Karnataka , Gujarat & Madhya Pradesh are unanimous in holding that development of land and selling it as plots is essentially a supply of service and hence these transactions are taxable. This has been held in the following cases :

1. **M/s Satyaja Infratech , Ahemdabad (AAR Gujrat dated 20.09.2019)**

2. Maarq Spaces Pvt. Ltd., Bengaluru (AAR Karnataka dated 30.09.2019)

3. **M/s Vidit Builders , Jabalpur ((AAR Madhya Pradesh dated 06.01.2020)**

4. **Dipesh Anil Kumar Naik, Surat (AAR Gujrat dated 19.05.2020)**

In respect of Joint Development Agreement **AAR Madhya Pradesh** has held that its not the land owner , but it is the developer who will be responsible for paying the GST on the amount of his share. The AAR further held that the activities of the developer will be taxed as the services of Work Contractors. This ruling is pro revenue & proposes the tax only on the development portion & exempting the land owners share. In all likelihood , the GST authorities may draw reference from the this **AAR.** Hence it becomes important to understand the underlying facts & issues of the matter of M/s Vidit Builders, Jabalpur.

AAR (M.P.)- M/s Vidit Builders , Jabalpur

M/s Vidit Builders , Jabalpur (Applicant)is a partnership firm. It is engaged in the business of real estate development . It is developing a colony by executing joint development agreement with the land owner M/s Star Construction. There is revenue sharing arrangement of 60% (Land Owner) & 40% (Applicant)

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.

After taking 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.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.

The developer will also market the plot, issue the allotment letters, enter into sale agreement ,collect the sale proceeds & will also execute the sale deeds along with the land owner company.

QUESTIONS RAISED BEFORE THE AAR

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

1. Whether the sale of developed plots is covered in para 5 of Schedule III, i.e., Sale of Land ?

2. Whether sale of developed plot is akin to sale of land ?

3. Whether the activity of the developer (applicant) can be classified under works contract ?

4. If the activity of the applicant is covered under works contract, how the valuation would be done ?

5. If there is difficulty in valuing the services then whether Rule 30*/ 31**can be applied in the given transaction ?

FINDINGS OF AAR

1. The applicant's claim is incorrect that he is engaged in the supply of land as he himself does not enjoy the title of the land. Such a person may have a role in the activity of sale but he cannot claim himself to be the seller.

2. 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 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.

3. 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 on behalf of the land owner. The applicant doesn't become the land owner himself.

4. Since the applicant has no right over the land hence 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. Thus the activities to be performed by the applicant amount to a supply of service.

5. From the agreement submitted it is observed that 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.

6. Section 15 of the **CGST Act, 2017** provide 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. 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.

RULING

1. The activities performed/to be performed by the applicant cannot be classified under Para 5 of schedule III.

2. It amounts to supply of services under works contract and is liable to be taxed under GST Act.

3. 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.

Thus as per the ruling laid down by this **AAR (M.P.)** the 40% of the sale value of plot, representing the share of the value of developer has been treated as taxable.

ISSUES ARISING OUT OF THESE AARs.

Certain issues arises on the perusal of all these four AARs which are discussed as below:

a) The issue , for the purpose of para 5 of Schedule III , that Sale of land & Sale of developed plot are different or of same in nature , this can be decided now only by the Court of Law.

b) In respect of joint development agreement the **AAR (M.P)** has decided that the consideration received by the developer (i.e. 40% of the sale value) will be taxable .However **AAR (Gujarat)** , in the matter of M/s Satyaja Infratech & Sh. Dipesh Anil Kumar Naik, Surat, has decided that the entire sale consideration , i.e. 100% of the plot value will be taxable . Therefore what will be the taxable value , that remains a being question?

c) Whether **Notification No.4/2018** will apply in respect of joint development agreements of land also, as this notification is related to taxing of development rights in respect of construction service of complex, building or civil structure only ?

d) Whether the rulings given in these AAR will be effective retrospectively or prospectively?

There are more such issues but for the time being everybody seems to be deliberating on the different dimensions of this legal tango. The CBIC is expected to issue a suitable clarification in this respect.

***Rule 30** :Where the value of a supply of goods or services or both is not determinable by any of the preceding **rules** of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services*.

****Rule 31** : Residual method for determination of value of supply of goods or services or both. If reference rate is not available, then it will be 1% of the gross amount of the Indian Rupees provided or received by the person changing the money*

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