

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/11
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/49)
Date: 19.05.2020

Name and address of the applicant	: Shree Dipesh Anilkumar Naik, C/16, Kishore Park Society, Behind St. Xavier's School, Ghoddod Road, Surat-395007 (Gujarat).
GSTIN of the applicant	: Unregistered-PAN-ACNPN3475F
Date of application	: 18.08.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	: Change of question in Nov-18: <i>(g) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services, within the meaning of that term?</i>
Date of Personal Hearing	: 19.03.2020
Present for the applicant	: Shri Avinash Poddar (Adv.)

BRIEF FACTS

The applicant has submitted that he is having a vacant land outside the municipal area of town on which he has some proposed business activity. The applicant is having all the necessary approvals for the proposed project from the Plan Passing Authority (i.e. Jilla Panchayat).

2. The applicant has further submitted that as per the Plan Passing Authority, the seller of land is required to develop the primary amenities like Sewerage and drainage line, Water line, Electricity line, Land levelling for road, Pipe line facilities for drinking water, Street lights, Telephone line etc..

3. The applicant further submitted that they will sell the individual plots to different buyers without any construction on the same but by providing the primary amenities as mentioned above, which are mandatory requirement of the approved Plan Passing Authority (i.e. Jilla Panchayat).

4. In view of the above, the applicant has sought for an advance ruling in respect of the following question:

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?

5. At the time of personal hearing, the Authorised Representative of the applicant reiterated the facts as stated in the Application and as mentioned herein above.

DISCUSSION & FINDINGS:

6. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing.

7. In this case, a moot point is to be decided as to 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?

8. Coming to GST, tax is levied on supply of goods/services. Schedule III to GST Law sets out the activities or transactions which are treated as neither a supply of goods nor as supply of services. Therein entry 5 covers sale of land, which is excluded from GST levy.

8.1 For the sake of understanding, the relevant provisions are reproduced herein below:

Serial Number 5 to Schedule III of the CGST Act:

*“5. **Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”*

9. From the above definition, it is clear that the transaction shall be out of GST net only if the activity is exclusively dealing with transfer of title or transfer of ownership of land, which is immovable property or earth. Here the substance of agreement between the parties is important. Where the nature of activity is that of ONLY sale of immovable property of plot, it is excluded from GST levy.

10. As per the applicant, he is the owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land levelling etc. as per the requirement of the approved Plan Passing Authority (i.e. Jilla Panchayat). After this development of the land, he will not do any building constructions and all. He sales only developed land as plots.

11. We find that the plotted development is a scheme which involves forming land into layout after obtaining necessary plan approval from the Development Authority, get all other permission required to take up, commence and complete what would be the layout, comprised of individual sites. In the activity of plot development, the following are done-levelling the land, construction of boundary wall, construction of roads, laying of underground cables and water pipelines, laying of underground sewerage lines with sewer treatments plant, development of landscaped gardens, drainage system, water harvesting system, demarcation of individual plots, construction of overhead tanks, other infrastructure works. Further common amenities like garden, community hall, etc. are also offered in some schemes. Sale of such sites is done to end customers who may construct houses/villas in the plots.

11.1 The sellers charge the rates on super built-up basis and not the actual measure of the plot. The super built-up area 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, roads, water tank and other infrastructure on a proportionate basis. In other words, such common amenities, roads, water tank and other infrastructure is an intrinsic part of the plot allotted to the buyer.

11.2 The above indicates that sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such plotted development tantamount to rendering of service. This 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).

12. In present case, we also find that the applicant is the owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land levelling etc. as per the requirement of the approved Plan Passing Authority (i.e. Jilla Panchayat). After this development of the land, he sales developed land as plots. His sales price includes the cost of the land as well as the cost of common amenities, Drainage line, Water line, Electricity line, Land levelling charges, etc. on a proportionate basis.

13. 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-II of the CGST Act, 2017**, *construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer is a "Supply of service"* and, hence, is liable to the Goods and Services Tax (GST).

14. We find that 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 is payable on the sale of developed plots in terms of CGST Act / Rules and relevant Notification issued time to time.

15. In light of the foregoing, we rule as under –

R U L I N G

Ques.1: 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?

Answer: Answered in the Affirmative, as discussed above.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 19.05.2020.