

GST leviable on the sale of land provided with construction of primary amenities

The AAAR, Gujarat in the matter of *Shree Dipesh Anilkumar Naik [Advance Ruling No. GUJ/GAAAR/APPEAL/2021/35, dated December 12, 2021]* affirmed the order passed by the AAR holding that GST is leviable on sale of plot of land, where primary amenities such as water line, electricity line, and other infrastructure are being constructed/developed. Held that, it is a sale of developed plots and will be covered under the scope of supply of taxable service falling under the head of 'Construction services'. Hence liable to 18% GST.

Facts:

Shree Dipesh Anilkumar Naik ("**the Appellant**"), is a farmer having a vacant land, for which the Appellant got the necessary approvals for proposed project from the Plan Passing Authority i.e. Jilla Panchayat ("**the Authority**") as per which the seller of land prior to its sale is mandatorily 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. and sell the individual plots to different buyers with such amenities without any construction on the land.

This appeal has been filed against the order passed by the AAR, Gujarat in *Advance Ruling No. GUJ/GAAR/R/2020/11 dated May 19, 2020* wherein, it was held that, the Appellant is liable to pay GST on sale of plot of land, where such primary amenities are constructed, under Para 5(b) of Schedule-II to the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). Further held that activities of constructing common amenities clearly indicates that sale of developed plot and is not equivalent to sale of land but is a different transaction which tantamounts to supply/rendering of service.

Issue:

Whether GST is applicable on sale of plot of land where, such primary amenities are provided by the Appellant as per the requirement of the Authority?

Held:

The AAAR, Gujarat in ***Advance Ruling No. GUJ/GAAAR/APPEAL/2021/35, dated December 12, 2021*** held as under:

- Observed that, the plotted land is a scheme that involves forming land into layout obtaining plan approval from the Authority and selling it to the buyers on super built basis or plots.
- Noted that, the expense of developing common facilities in the plot of the Appellant will undoubtedly be included in the value of supply as per the provisions of Section 15(b) of the CGST Act.
- Further noted that, the Appellant develops infrastructure on lands for such amenities and later sales at a price inclusive of cost of land, cost of common amenities and other infrastructure, which clearly indicate that sale of developed plot is not equivalent to sale of land but is a different transaction.
- Stated that, when the transaction involves mere sale of land, then it will be out of the scope of supply and will be squarely covered under Entry No.5 of Schedule-III to the CGST Act which covers activities or transactions which shall be treated neither as a supply of goods nor supply of services. However, in view of the common facilities being developed by the Appellant, it will be covered under the scope of taxable service i.e. 'construction of civil structure or a part thereof, intended for sale to a buyer'. Thus, the sale of developed land is not covered under Entry No.5 of Schedule-III to the CGST Act.
- Affirmed the order passed by the AAR, Gujarat and held that the a sale of developed plots by the Appellant is a supply of taxable service falling under the head 'Construction

services' appearing at **Sr.No.3 of Notification No.11/2017-Central Tax (Rate) dated June 26, 2017 ("the Service Rate Notification")**, and is liable to GST @ 18%.

Relevant Provisions:

Para 5(b) of Schedule-II to the CGST Act:

"5. Supply of services

(b) 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".

Entry 5 of Schedule-III to the CGST Act:

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

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