M/s Ashiana Housing Ltd.

Authority for Advance Ruling — Haryana

Advance Ruling No. HAR/HAAR/2018-19/26 (In Application No. 26 dated… Dated **22.11.2018**

Q Questions Before the Authority

- Whether the amount of statutory charges, i.e. External Development Charges and Infrastructural Development Charges, recovered by the Applicant from buyers and paid further to the respective government authorities will form part of the value of taxable supplies being made by the Applicant?

F Facts

The applicant is a real estate developer engaged in developing residential and commercial properties. It enters into agreements with buyers before receipt of the completion certificate, pays GST on the consideration received, and classifies its services under SAC 995411. It recovers External Development Charges (EDC) and Infrastructural Development Charges (IDC) from buyers on an actual basis and pays them to the authorities under the Haryana Development and Regulation of Urban Areas Act, 1975.

H Ruling

Whether EDC and IDC recovered from buyers and paid to government authorities form part of the value of taxable supplies	**Yes. They will form part of the value of taxable supplies made by the applicant.**	Based on section 15(2)(a) and the finding that the pure agent conditions under Rule 33 are not met. No rate or HSN is involved.

The Authority ruled that the EDC and IDC recovered from buyers and paid further to government authorities **will form part of the value of taxable supplies** made by the applicant. It rejected the applicant's contention that the developer acts as a pure agent in respect of these charges. The pure agent conditions in Rule 33 were not satisfied, because the first condition requires payment to a third party on the authorisation of the recipient of service.

R Reasoning

The Authority held that section 15(2)(a) of the CGST/HGST Act, 2017 requires the value of supply to include taxes, duties, cesses, fees and charges levied under any other law, where charged separately by the supplier. It found that the valuation provisions of section 15 differ materially from section 67 of the erstwhile Finance Act, 1994, so the pre-GST decisions relied on by the applicant (Bhayana Builders, Purolator and Super Synotex) were distinguishable. On the pure agent plea, it held that the conditions in Rule 33 of the CGST Rules were not satisfied, and that Circular No. 334/1/2010-TRU does not state that a developer acts as a pure agent.

P Provisions Relied On

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Section 15(1) of the CGST/HGST Act, 2017	Section 15(2)(a) of the CGST/HGST Act, 2017
Section 2(31) of the CGST Act, 2017 (definition of consideration), as cited by the applicant	
Section 97(2)(c) and (e) of the CGST/HGST Act, 2017	Section 98(4) of the CGST/HGST Act, 2017
Rule 33 of the Central Goods and Services Tax Rules, 2017 (pure agent)	
Section 2(g), (hha) and (jj) of the Haryana Development and Regulation of Urban Areas Act, 1975, as quoted in the order	
Circular No. 334/1/2010-TRU dated 26.02.2010	
Rule 5(2) of the erstwhile Service Tax (Determination of Value) Rules, 2006, as cited by the applicant	
Commissioner v. Bhayana Builders Pvt. Ltd., 2018 (10) GSTL 118 (SC), as cited by the applicant	
Purolator India Ltd. v. Commissioner, 2015 (323) ELT 227 (SC), as cited by the applicant	
Commissioner v. Super Synotex (India) Ltd., 2014 (301) ELT 273 (SC), as cited by the applicant	

! For the Practitioner

Developers who recover EDC and IDC from buyers and pass them to the state can use this ruling to see that the Authority treats these charges as part of taxable value under section 15(2)(a). It also rejects the pure agent route for these charges on the facts as presented. The ruling binds only the applicant and does not decide whether EDC or IDC are taxable in other arrangements, what rate applies, or how the charges are treated where amounts are collected after the completion certificate. The full order should be read for the applicant's arguments on pure agency.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> har_aar_26_2018-19_22.11.2018_ahl.pdf

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