M/s Durga Projects & Infrastructure Private Limited

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 17/2019, Date: 25-07-2019 Dated **25.07.2019**

Q Questions Before the Authority

- Whether the Applicant is liable for GST towards work executed under a Joint Development Agreement (JDA) on the land owner's portion, where the work commenced during the pre-GST regime and continued under the GST law? If tax is applicable, what is the valuation for payment of tax?

F Facts

The Applicant, a company engaged in construction and sale of residential apartments, executed projects under JDAs with land owners for an agreed ratio of built-up area. Construction began before GST and continued after GST came into force, and a substantial part of the work was sub-contracted to another registered person. The Applicant argued that the JDA is a barter in which the land owner transfers an undivided interest in land in exchange for construction, and that tax should apply only to work executed under GST under section 142.

H Ruling

GST liability on work executed under JDA on land owner's portion, where work began pre-GST and continued under GST	**Liable to pay GST**	Valuation per para 2 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Tax arises at the time of transfer of possession of the land owners' portion of the flats, and the whole liability falls under GST law.

The Authority held that the Applicant is liable to pay GST on work executed under the JDA on the land owner's portion. The value is to be arrived at under para 2 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, and the tax liability arises at the time of transfer of possession of the land owners' portion of the flats. The liability arises **entirely under the GST law** , not partly under the earlier law.

R Reasoning

The Authority treated the land owner's arrangement as a barter supply under section 7 of the CGST Act, with development rights as consideration under section 2(31). It relied on Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018, clause (b), which makes the supplier of construction service to a development-rights supplier liable to tax when possession or right in the constructed building is transferred by conveyance deed or similar instrument. Because the record showed no transfer of possession of the land owner's flats before GST, the Authority held that the time of supply falls under GST, so section 142(10) and (11) did not split the liability. The value is fixed by para 2 of Notification No. 11/2017-Central Tax (Rate), under which the value of the service portion is the total amount less the value of land, with the land value deemed one-third of the total amount.

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

P Provisions Relied On

- Section 7 of the CGST Act, 2017
- Section 2(31) of the CGST Act, 2017
- Section 9 of the CGST Act, 2017
- Section 142(10) and (11) of the CGST/KGST Act, 2017 (argued by the Applicant; not accepted)
- Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, para 2 and explanation

! For the Practitioner

Developers working under JDAs that began before GST can use this ruling to see that the Authority treats the land owner's share as a taxable barter supply, with tax arising when possession is transferred. It also shows that the Authority rejected a split between pre-GST and GST work on these facts. The ruling does not decide the position for JDAs where possession was already transferred before GST, nor does it decide the separate valuation questions on different facts. As an advance ruling it binds only the Applicant.

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 -> krntk aar 17 2019 dp ipl 25.07.2019.pdf

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