M/s NBCC (India) Limited, NBCC Bhawan, Lodhi Road, New Delhi-110003

Authority for Advance Ruling — Delhi

07/DAAR/2018 dated 05.10.2018 (Advance Ruling No. 07/DAAR/2018 date… Dated **05.10.2018**

Q Questions Before the Authority

- Whether the applicant is liable to pay GST on sale of commercial super built-up area on behalf of the Ministry of Housing and Urban Affairs (MoHUA), Government of India, in the colonies being redeveloped at Nauroji Nagar, Netaji Nagar and Sarojini Nagar, Delhi.
- Whether MoHUA, Government of India, is liable to pay GST on sale of commercial built-up space, or whether that sale relates to a function entrusted to a municipality under Article 243W of the Constitution and is exempt.
- Whether the applicant is liable to pay GST on sale of built-up space where part of the consideration was received before 01.07.2017 and part on or after 01.07.2017.
- Whether the applicant is liable to pay GST on consideration received under an agreement for sale of constructed units in a building which is under construction.

F Facts

NBCC was appointed by MoHUA under a memorandum of understanding dated 25.10.2016 as executing agency for redeveloping the GPRA and GPOA colonies at Nauroji Nagar, Sarojini Nagar and Netaji Nagar. The work includes residential units, office space, commercial built-up area and social infrastructure, to be funded largely by e-auction sale of commercial built-up area in the name of MoHUA. Sale proceeds go to an escrow account managed by a Capital Management Committee, and NBCC is paid project management charges and a share of sale proceeds.

H Ruling

Q1: Whether NBCC is liable to GST on sale of commercial built-up area made on behalf of MoHUA (Para 133)	**Yes. NBCC is liable to pay GST under Section 9(1) of the CGST Act, 2017.**	NBCC is covered as 'agent' (s. 2(5)), 'supplier' (s. 2(105)) and 'taxable person' (s. 2(107)), so acting for MoHUA does not exclude it. The promoter definition under RERA was held irrelevant.
Q2: Whether MoHUA is exempt from GST on sale of commercial built-up space (Para 134)	**No. MoHUA is not exempt from GST on sale of commercial built-up space.**	The activity is not a function entrusted to a municipality under Article 243W. S. No. 4 of Notification 12/2017-CT(Rate) is not available, and after amendment by Notification 14/2018-CT(Rate) dated 26.07.2018 it covers only services by a 'governmental authority'. S. No. 6 is also unavailable because the services are provided to business entities.

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

Q3: GST where part consideration was received before 01.07.2017 (Para 135)	**Yes. GST is payable on services supplied under the GST regime from 01.07.2017.**	This applies even though part of the consideration was received before that date. Under Section 142(11)(b), the service tax already paid or payable on the pre-GST portion is not charged GST again, as the order states at Para 125.
Q4: GST on consideration under an agreement for sale of units under construction (Para 136)	**Yes. GST is payable on sale of commercial built-up area under construction.**	The sale is a 'supply of service' under clause 5(b) of Schedule II of the CGST Act, 2017. The order relies on the builder FAQ at Para 131 to rule out treatment as a sale of immovable property under Schedule III.

The authority held that NBCC is an 'agent', 'supplier' and 'taxable person' under Sections 2(5), 2(105) and 2(107) of the CGST Act, 2017, and is liable to GST under Section 9(1) on the sale of commercial built-up area, even though it sells on behalf of MoHUA. It held that MoHUA's activity does not relate to a function entrusted to a municipality under Article 243W, so the exemption under S. No. 4 of Notification 12/2017-Central Tax (Rate) is not available. It further held that GST applies to services supplied from 01.07.2017 even where part of the consideration was received earlier, and that GST is payable on sale of commercial units under construction as a supply of service under Schedule II, para 5(b).

R Reasoning

The authority treated NBCC as an agent of MoHUA who is nonetheless a supplier and taxable person, because Section 2(5) expressly includes agents and Section 24(vii) requires registration of persons supplying on behalf of others. It held that the MoHUA sale is not a function entrusted to a municipality under Article 243W read with the Twelfth Schedule, so the S. No. 4 exemption fails. It applied Section 142(10) and 142(11)(b) to split liability between the pre- and post-01.07.2017 consideration. It treated the under-construction sales as a supply of service under Schedule II, para 5(b), following the FAQ answers on builder flats.

P Provisions Relied On

- Section 2(5) CGST Act, 2017 (agent)
- Section 2(105) CGST Act, 2017 (supplier)
- Section 2(107) CGST Act, 2017 (taxable person)
- Section 9(1) CGST Act, 2017 (levy)
- Section 22 and Section 24(vii) CGST Act, 2017 (registration)
- Section 7 and Section 13 CGST Act, 2017
- Section 142(10) and Section 142(11)(b) CGST Act, 2017 (transitional treatment)
- Schedule II, para 5(b) CGST Act, 2017 (construction of complex as supply of services)
- Schedule III, para 5 CGST Act, 2017 (sale of land and building; considered and distinguished)
- Notification 12/2017-Central Tax (Rate) dated 28.06.2017, S. No. 4 and S. No. 6
- Notification 14/2018-Central Tax (Rate) dated 26.07.2018 (amendment to S. No. 4)
- Article 243W, 243P and 243Q of the Constitution; Twelfth Schedule

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Section 2(zk) Real Estate (Regulation and Development) Act, 2016 (considered; held not decisive)

! For the Practitioner

The order is useful for a practitioner advising a government-appointed executing agency that sells built-up space as an agent for a ministry, since it holds the agent is itself the taxable person. It also settles that the Article 243W exemption does not extend to a central ministry's commercial sales, and that GST applies to post-01.07.2017 receipts under a pre-GST contract, subject to Section 142(11)(b). It does not decide the valuation method or the 2/3 abatement mechanics in detail, and it is an AAR ruling binding only on the applicant. Its reasoning on the Article 243W question may be tested on appeal.

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 -> 07_daar_2018_nbcc_1.pdf

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