M/s Rajeev Bansal & Sudershan Mittal, 789, 1st Floor, Awas Vikas, Ranipur More, Hardwar, Uttarakhand

Authority for Advance Ruling — Uttarakhand

Ruling No. 10/2019-20 dated 09 January 2020 (Application No. 09/2019-2… Dated **09.01.2020**

Q Questions Before the Authority

- Whether a 'Business Transfer Agreement' as a going concern, which consists of transferring an under-construction project, is covered under serial no. 12 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and is therefore exempt from GST.

F Facts

The applicant, a partnership firm, constructs and sells residential and commercial complexes at Manoharpur, Jwalapur, Hardwar, under an approved map. Up to the date of transfer, about 85,000 sq ft of carpet area had been built on a covered area of about 1.25 lakh sq ft. The firm sold the incomplete project as a going concern to M/s Ronav Infrastructure, which is in the same business, under an agreement dated 24.10.2019 and a sale deed for Rs. 21.80 crore. The assets transferred include the land, the incomplete flats, and the approved map.

H Ruling

Transfer of under-construction project by Business Transfer Agreement as a going concern: GST treatment	****Exempt from GST** (rate Nil) under serial no. 2 of Notification No. 12/2017-CT(Rate), Chapter 99**	The applicant had cited serial no. 12. The Authority held that serial no. 2 is the applicable entry. The ruling applies 'as amended from time to time' and 'as on date'.

The Authority held that the transfer of the business in question is to be treated as a going concern and is exempt from GST as on the date of the ruling. The exemption arises under serial no. 2 of Notification No. 12/2017-Central Tax (Rate), as amended from time to time, which covers **services by way of transfer of a going concern, as a whole or an independent part thereof** , under Chapter 99. The Authority noted that the applicant had cited serial no. 12, but found that the applicable entry is serial no. 2.

R Reasoning

The Authority read the definition of 'business' in Section 2(17) of the Act, which includes acquisition of goods and services in connection with commencement or closure of business. It treated the transfer of a running business, capable of being carried on by the buyer as an independent business, as a going concern. It applied the going-concern conditions drawn from HMRC guidelines: the assets were sold as part of a business, the buyer intends to carry on the same kind of business, and there is no series of immediately consecutive transfers. The sale deed terms (saleable flats, right to construct further floors, right to replace the seller's name in Nagar Nigam records) were examined. On that basis the Authority held that serial no. 2 of the Notification applies.

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

P Provisions Relied On

Section 97(1) and 97(2)(b) of the CGST/SGST Act, 2017 (advance ruling on applicability of a notification)

Section 2(17) of the Act (definition of 'business')

Section 11(1) of the CGST Act, 2017 (power to grant exemption), as recited in the Notification

Section 9(1) of the CGST Act, 2017, as recited in the Notification

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, serial no. 2 (Chapter 99, services by way of transfer of a going…

HMRC guidelines on transfer of a business as a going concern (cited by the Authority as internationally accepted)

! For the Practitioner

A practitioner advising on the sale of an incomplete real estate project to a buyer in the same business can use this ruling to support a **nil GST treatment under serial no. 2 of Notification 12/2017-CT(Rate)** , provided the going-concern conditions are met. It also shows that the Authority looked at the substance of the sale (assets, buyer's intended use, and absence of consecutive transfers). The ruling does not decide the treatment of separate sales of individual flats to end buyers, the valuation of the transfer, or any input tax credit issue. Its reasoning is specific to the facts found in this application.

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 -> uk_aar_10_2019-20_09.01.2020.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com