M/s Vidit Builders, 932, Wright Town, Jabalpur, Madhya Pradesh 482002

Authority for Advance Ruling — Madhya Pradesh

Order Number 02/2020 dated 06/01/2020 (Case Number 19/2019; copy ref… Dated **06.01.2020**

Q Questions Before the Authority

- Whether the applicant's activity is covered by para 5 of Schedule III (sale of land) or is classified as a works contract.
- If the activity is a works contract, how the valuation is to be done.
- Whether the residual Rules 30 and 31 of the GST Valuation Rules can be applied.

F Facts

The applicant, a partnership real estate developer, entered into a joint development agreement dated 14.03.2019 with the landowner M/s Star Construction to develop a colony. The applicant is to build common facilities such as concrete roads, compound walls, gardens, drains, water supply, electric poles and transformers, and then sell vacant plots to individual buyers. The applicant receives 40% of the sale value of each plot as its share, and the common facilities are handed over to the municipal corporation. The land is mortgaged to the State Bank of India, Jabalpur, and the bank's permission was obtained for the agreement.

H Ruling

Whether the activity falls under para 5 of Schedule III (sale of land) or is a works contract	**Not covered by para 5 of Schedule III. It is a supply of services under a works contract, taxable under the GST Act.**	The applicant has no title to the land and is not the seller. It is a service provider to the landowner, and para 5 applies only to landowners.
How the value of the works contract supply is determined	**Value of supply equals the amount received or receivable by the applicant, i.e. 40% of the sale amount of each plot.**	Ruling 8.2. Reached by excluding Rules 27 to 30 and applying Rule 31.
Whether residual Rules 30 and 31 of the Valuation Rules can be applied	**Yes. Rule 31 applies in the instant case.**	Rules 27, 28, 29 and 30 were found inapplicable, so Rule 31 governs.

The authority held that the activities cannot be classified under para 5 of Schedule III. The activities are a supply of services under a works contract and are taxable under the GST Act. **Rule 31 applies** , and the value of supply is the amount received or receivable by the applicant, which is **40% of the amount at which the plots are sold** .

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

R Reasoning

The authority found that the applicant develops the land and is not its owner, so the sale-of-land entry in para 5 of Schedule III cannot apply, and sale of plots is only incidental to development. The applicant's consideration is 40% of each plot's sale value, which is money consideration under the definition of consideration in section 2(31). Section 15 was then examined, but the transaction value could not be applied because the applicant's consideration is not a price paid for a supply with distinct, sole consideration. Rule 27 was excluded because consideration is wholly in money, Rule 28 because there are no distinct or related persons under section 25(4) and (5), and Rules 29 and 30 because they do not apply. Rule 31 was therefore applied using reasonable means consistent with section 15.

P Provisions Relied On

- Section 97(2)(a), (c) and (f) of the CGST/SGST Act, 2017 (questions raised)
- Section 98(4) of the CGST/SGST Act, 2017 (proceedings)
- Schedule III, para 5 (sale of land)
- Section 2(31) (definition of consideration)
- Section 15 (value of supply: transaction value)
- Section 25(4) and (5) (distinct persons)
- Rules 27, 28, 29, 30 and 31 of the GST Valuation Rules
- Section 103(2) and Section 104(1) (validity and voiding of the ruling)

! For the Practitioner

This ruling is useful for joint development arrangements in which a developer builds infrastructure and receives a share of plot sale proceeds, since it treats such a developer as a service provider rather than a seller. It signals that Schedule III para 5 will not protect such a developer and that Rule 31 may be used to value the supply. It does not decide the tax position of the landowner's share, cases where the developer holds title to the land, or the applicable rate of tax. The ruling binds only the applicant, and the authority's reasoning is fact-specific to this agreement.

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 -> mp_aar_02_2020_06.01.2020_vb.pdf

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