Vilas Chandanmal Gandhi

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-40/2019-20/B-06, Mumbai, dated 15/01/2020 (date partly ha… Dated **15.01.2020**

Q Questions Before the Authority

- Whether GST is leviable on sale of Transferable Development Rights ('TDR')/Floor Space Index ('FSI') received as consideration for surrendering the joint rights in land in terms of Development Control Regulations, granted in light of the article of agreement dated 18 December 2017 between the Applicant and Pune Municipal Corporation ('PMC') read with Development Control Regulations.
- If yes, what will be the classification under GST and what will be the applicable rate of GST?

F Facts

The applicant, a landowner in Pune, entered into a joint development arrangement with Amar Builders and Developers under which the developer paid 45% of sale proceeds and a refundable security deposit of Rs. 3.6 crore. The land was reserved in the draft development plan, so the applicant and developer surrendered their rights to PMC and received TDR/Additional FSI and Development Right Certificates in return. A part of that TDR/FSI was then sold to Vamona Developers Pvt. Ltd. under an assignment deed, and the applicant later raised GST invoices that the buyer disputed.

H Ruling

Whether GST is leviable on sale of TDR/FSI received for surrendering joint land rights under DCR	**Yes, answered in the affirmative**	Based on the reading of Notification 4/2018-CT(Rate), Notification 13/2017-CT(Rate) as amended by Notification 5/2019-CT(Rate), and the CBIC FAQ dated 14.05.2019 (Sr. No. 7).
Classification and rate of GST on the TDR/FSI transaction	**Heading 9972; 18% (9% CGST + 9% SGST)**	Rate taken from Sl. No. 16, item (iii) of Notification 11/2017-CT(Rate) dated 28.06.2017, as read with the CBIC FAQ.

The Authority answered the first question in the affirmative, holding that GST is leviable on the sale of TDR/FSI received as consideration for surrendering joint rights in land. It held that such transfers fall under Heading 9972 and attract GST at **18% (9% CGST and 9% SGST)** . The applicant's contention that the transaction is a sale of land exempt under Schedule III was not accepted.

R Reasoning

The Authority relied on Notification 4/2018-CT(Rate) dated 25.01.2018, issued under section 148 of the CGST Act, which fixes the incidence of tax on transfers of development rights. It also relied on the amendments made by Notifications 4/2019 and 5/2019-CT(Rate) dated 29.03.2019, which treat transfers of development rights and Additional FSI as taxable services, including under reverse charge. The CBIC FAQ dated 14.05.2019 (Sr. No. 7)

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

was treated as confirming that GST is payable at 18% under Heading 9972. The order does not expressly engage with the applicant's argument that the transaction is a sale of immovable property covered by Schedule III, para 5.

P Provisions Relied On

Section 97 and Section 98 of the CGST Act, 2017 and the MGST Act, 2017

Section 148 of the CGST Act, 2017

Notification 4/2018-CT(Rate) dated 25.01.2018

Notification 4/2019-CT(Rate) dated 29.03.2019 (amending Notification 12/2017-CT(Rate))

Notification 5/2019-CT(Rate) dated 29.03.2019 (amending Notification 13/2017-CT(Rate))

Notification 6/2019-CT(Rate) dated 29.03.2019

Notification 11/2017-CT(Rate) dated 28.06.2017, Sl. No. 16, item (iii), Heading 9972

CBIC FAQ on real estate (Part II), F. No. 354/32/2019-TRU dated 14.05.2019, Sr. No. 7

! For the Practitioner

This ruling gives a direct answer that TDR and Additional FSI transfers received in exchange for surrendering land rights to a municipal corporation are taxable at 18% under Heading 9972. It is useful for any developer or landowner who is deciding whether GST applies to such transactions. The ruling is binding only on the applicant and the concerned officers, and it does not decide the Schedule III land-sale argument on its merits. It also does not address how the time of supply or reverse-charge liability applies to the particular transaction.

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 -> mah_aar_40_2019-20_b-06_15.01.2020_vcg.pdf

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