

ZAVER SHANKARLAL BHANUSHALI

Authority for Advance Ruling — Maharashtra

GST-ARA- 29/2017-18/B-37

Dated **22.05.2018**

Q Questions Before the Authority

- Is GST applicable on the compensation for alternate accommodation to be paid to me (the tenant of the old building) by the developer/owner?
- Is GST applicable on the compensation for alternate accommodation / damages for delayed handover of possession of the new premises to be paid to me (the tenant of the old building) by the developer/owner?

F Facts

The Applicant was a tenant in a building owned by M/s Future Communications Limited. The owner and developer (M/s Spenta Residency Private Limited) entered into a tripartite redevelopment agreement requiring the tenant to vacate the premises. Under the agreement, the developer agreed to pay monthly compensation for temporary alternate accommodation and liquidated damages/compensation in case of delayed handover of the newly constructed premises.

H Ruling

Compensation for alternate accommodation paid to tenant

Answered in the affirmative (GST applicable)

Treated as supply of service under Schedule II Para 5(e)

Compensation/damages for delayed handover of possession

Answered in the affirmative (GST applicable)

Treated as supply of service under Schedule II Para 5(e)

The Authority held that **GST is applicable** on both compensation for alternate accommodation and damages for delayed handover received by the tenant. Vacating the premises to facilitate redevelopment and tolerating delays constitute agreeing to do an act or tolerating a situation, which qualifies as a **taxable supply of service**.

R Reasoning

The decision turned on Section 7 read with **Schedule II, Para 5(e)** of the CGST Act, 2017, which defines agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act as a supply of services. By vacating the tenanted premises to allow redevelopment and tolerating construction delays beyond the agreed timeline, the tenant is agreeing to do an act and to tolerate an act/situation. Therefore, compensation and delay damages received from the developer constitute consideration for a **supply of service** subject to GST.

P Provisions Relied On

Section 7 of the CGST Act, 2017

Section 9 of the CGST Act, 2017

Schedule I of the CGST Act, 2017

Schedule II, Para 5(e) of the CGST Act, 2017

! For the Practitioner

This order shows an early aggressive interpretation by the Authority treating tenant compensation for redevelopment as a **taxable supply of service** under the 'tolerating an act' clause. Tax practitioners advising developers or tenants should note this risk, though subsequent circulars and judicial rulings on liquidated damages and tenancy rights surrender should also be evaluated.

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 29 2017-18 b-37 zaver shankar bhanushali.pdf

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