M/s Nagpur Integrated Township Private Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-107/2018-19/B-35, Mumbai Dated **02.04.2019**

Q Questions Before the Authority

- Whether the transaction between the Applicant and the lessee is outside the purview of GST as a transaction in immovable property?
- If not, what is the appropriate classification and rate of GST?

F Facts

The applicant holds development rights over land owned by Maharashtra Airport Development Company at MIHAN, Nagpur, under a development agreement and power of attorney dated 08.12.2017. It is building flats and commercial units and proposes to 'lease' them to customers under an agreement of lease, with lease consideration paid in an advance followed by instalments linked to construction progress. Flats are to be transferred to lessees after completion, and the lessees are to bear GST and maintenance charges.

H Ruling

Whether the transaction with the lessee is outside GST as a transaction in immovable property	****Taxable under GST; not a transaction in immovable property****	The authority found the arrangement was given the colour of a lease, and the lease amounts paid during construction resembled instalments for an under-construction sale.
Appropriate classification and rate of GST	**Composite supply of works contract, classifiable under C H 9954 (ii), **tax at 18%****	The heading is printed as 'C H 9954 (ii)' on the scan and may be a SAC reference; the exact code is not fully legible. The authority did not accept the applicant's claim of exemption under Notification 12/2017.

The authority held that the transaction between the applicant and the lessee is taxable under GST and is not a transaction in immovable property. It treated the arrangement as a composite supply of works contract, which is a supply of services, and held that it attracts GST at 18 per cent.

R Reasoning

The authority reasoned that the applicant's arrangement is a supply of construction services for a consideration, within Section 7 of the CGST Act and Schedule II. It relied on the works contract definition in Section 2(119) and Schedule II entry 6(a), which treats works contracts as supply of services. It found the lease label unconvincing because lease payments were made in construction-linked instalments before completion, lease amounts were around 50 to 60 per cent of ready-to-move-in prices, and lessees bore maintenance charges. It also held that residential rent is not taxable, but that did not apply because the transaction was in substance a building sale rather than a rental.

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

P Provisions Relied On

- Section 7(1)(a) of the CGST Act, 2017, on supply including lease
- Schedule II, paragraph 2 (land and building) and paragraph 5(a) and 5(b) (renting of immovable property; construction of com…
- Schedule III, paragraph 5 (sale of land and building), considered
- Section 2(119) of the CGST Act, 2017, works contract
- Schedule II, entry 6(a), composite supply of works contract treated as supply of services
- Notification 12/2017-Central Tax (Rate), entry 12, examined by the applicant and rejected

! For the Practitioner

Developers who structure sales of under-construction flats as long-term leases with instalment payments should note that this order treats such arrangements as taxable works contract supplies at 18 per cent, not as exempt rentals or transactions in immovable property. It does not decide valuation or the treatment of genuine leases of completed residential units, and as an Advance Ruling it binds only the applicant and the State. Any appeal lies to the Maharashtra Appellate Authority for Advance Ruling.

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 -> maharashtra_aar_107_2018-19_nitpl_02.04.19.pdf

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