M/s Nforce Infrastructure India Pvt. Ltd., #25-14-840/1, Victoria, Near Valencia Church, Kankanady, Dakshina Kannada, Mangalore - 575 002, Karnataka (GSTIN 29AADCN3089J1Z0)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 30 / 2018, Dated: 28th November 2018 Dated **28.11.2018**

Q Questions Before the Authority

- Whether the applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement?
- If there is liability to pay GST, on what value is the GST to be paid since there is no monetary consideration involved?
- Is the applicant liable to pay service tax up to 30.06.2017 and GST thereafter?

F Facts

The applicant, a builder and developer, entered into a Joint Development Agreement with six land owners to construct and hand over 8828 sq ft of residential apartment area, 1630 sq ft of commercial area and 8 car parkings on the owners' land. The applicant submitted that the agreement was entered in January 2016 for 12 apartments and 2 shops, and that the project was completed after 01.07.2017. No monetary consideration passes to the applicant for the construction.

H Ruling

Liability to GST on building constructed and handed over to land owner under JDA	****Liable to pay GST****	Applies to the building constructed and handed over to the land owner under the Joint Development Agreement.
Value on which GST is payable where no monetary consideration passes	****Value determined under para 2 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017****	Per the quoted para 2, the taxable value is the total amount charged less the value of land, and the land value is deemed to be one-third of the total amount charged.
Service tax up to 30.06.2017 and GST thereafter	**Service tax for services before 30.06.2017; GST for services after 30.06.2017**	Liability is proportionate to services provided before and after 30.06.2017 respectively, per s.142(11)(b) of the CGST Act.

The authority held that the applicant is liable to pay GST on the value of the building constructed and handed over to the land owner under the Joint Development Agreement. The value for GST is to be determined under para 2

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

of Notification No. 11/2017-Central Tax (Rate). The applicant is liable to pay service tax for services provided up to 30.06.2017 and GST for services provided after 01.07.2017, on a proportionate basis.

R Reasoning

The authority read Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018, para (b), as making the supplier of construction service to a supplier of development rights liable to GST, with liability arising when possession or right in the constructed building is transferred by conveyance deed or similar instrument such as an allotment letter. It treated the applicant as a registered person under s.2(94), s.22 and s.25 of the CGST Act. For valuation it applied para 2 of Notification No. 11/2017-Central Tax (Rate). For the transition it relied on s.142(11)(a) to (c) of the CGST Act, holding that service tax under Chapter V of the Finance Act, 1994 applies to services provided up to 30.06.2017 and GST applies to services after 01.07.2017.

P Provisions Relied On

- Section 97 of the CGST Act, 2017, KGST Act, 2017 and IGST Act, 2017 (advance ruling application)
- Rule 104 of the CGST Rules, 2017 and KGST Rules, 2017
- Section 2(94) of the CGST Act, 2017 (registered person)
- Section 22 of the CGST Act, 2017 (persons liable for registration)
- Section 25 of the CGST Act, 2017 (procedure for registration)
- Section 142(11)(a), (b) and (c) of the CGST/KGST Act, 2017 (transitional treatment of existing taxes)
- Notification No. 4/2018-Central Tax (Rate) dated 25.01.2018, para (b)
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, para 2
- Chapter V of the Finance Act, 1994 (service tax, referred to in s.142(11))

! For the Practitioner

A practitioner dealing with land-owner-share JDAs where the developer builds and hands over flats without monetary consideration can use this ruling to support GST on the built area, with the taxable value computed under the one-third land deemed value in Notification No. 11/2017. It also supports a split between service tax and GST at 30.06.2017 for projects spanning the transition. The ruling binds only the applicant and does not expressly resolve whether land value should be taken at the JDA-date price or at market value on the date of supply, which the applicant had raised. It also does not address projects where possession passed entirely before 01.07.2017.

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 -> krntk_30_2018_niipl.pdf

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