THE IDEAL CONSTRUCTION

Authority for Advance Ruling — Maharashtra

NO.GST-ARA- 01/2018-19/B- 109, Mumbai Dated **05.09.2018**

Q Questions Before the Authority

- What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers, and whether registration of the project under Pradhan Mantri Awas Yojana is required?
- What is the rate of tax to be levied by the supplier (registered under GST) from whom the applicant will receive composite works contract service (inward supply of composite works contract): 12% or 18%?
- Admissibility of input tax credit: whether full ITC is allowable or whether it will be restricted to output GST liability?

F Facts

The applicant is a partnership firm registered under GST, engaged as a builder and developer, planning an affordable housing project in Kolhapur on land it already owns. The units will be up to 30 sq m (EWS) or up to 60 sq m (LIG), and the applicant's area statement shows all FSI consumed in flats below 60 sq m carpet area. The applicant may either build through its own labour and material, attracting 18% or 28% on inward supplies, or sublet the entire construction to a contractor under a composite works contract.

H Ruling

Rate on sale of flats/units to prospective buyers, and whether PMAY registration is required	****12% (8% GST after deducting value of land)** for an affordable housing project; PMAY registration not required**	Applies only if the project qualifies as an affordable housing project. The order notes the rate benefit is available only for supplies made after 25.01.2018.
Rate charged by the supplier of the composite works contract service (inward supply): 12% or 18%	**Not answered**	The authority said this question can only be raised by the supplier, and the applicant agreed.
Admissibility of input tax credit: full ITC or restricted to output GST liability	****Eligible for ITC**, subject to fulfilment of conditions under the GST Act**	The order does not go into the detailed conditions or any restriction on specific credits.

The authority held that the rate for an affordable housing project is 12% (8% after deducting the value of land), and that PMAY registration is not needed to avail this rate if the project qualifies as affordable housing. It declined to answer the second question, on the rate charged by the supplier, because only the supplier can raise it. It held that the applicant will be eligible for input tax credit subject to the conditions prescribed under the GST Act.

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

R Reasoning

The authority read entry 3 of Notification 11/2017-Central Tax (Rate) as amended by Notification 1/2018-Central Tax (Rate). It found that items (iv)(da), (iv)(db) and (v)(da) were relevant. Sub-items (iv)(da) and (iv)(db) were held not applicable because they require State or urban authority partnership or a Credit Linked Subsidy Scheme. Item (v)(da) covers low-cost houses up to 60 sq m carpet area in a project given infrastructure status under Notification 13/6/2009-INF dated 30.03.2017, which defines affordable housing as using at least 50% of FAR/FSI for units of up to 60 sq m. The authority relied on the Ministry of Finance clarification F. No. 354/52/2018-TRU dated 07.05.2018, under which the builder decides whether the project qualifies, without any certificate. It noted the GST Council's 25th meeting observation on ITC. On ITC, it relied on Section 16 of the GST Act.

P Provisions Relied On

- Section 97 and Section 98 of the CGST Act, 2017 and the MGST Act, 2017
- Section 16 of the CGST/MGST Act, 2017 (eligibility and conditions for input tax credit)
- Sections 16 to 20 of the GST Act (input tax credit)
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, entry 3(iv) and 3(v), as amended by Notification 20/2017 dated 22.…
- Notification 1/2018-Central Tax (Rate) dated 25.01.2018
- Notification No. 13/6/2009-INF dated 30.03.2017 of the Department of Economic Affairs, Ministry of Finance
- Ministry of Finance clarification F. No. 354/52/2018-TRU dated 07.05.2018
- GST Council 25th meeting recommendations dated 18.01.2018 (as quoted in the order)
- Section 171 of the GST Act (anti-profiteering), as referred to in the GST Council observations quoted in the order

! For the Practitioner

This order is useful for affordable housing developers who want to confirm the 12% (8% net of land) rate for units of 60 sq m carpet area or less in an infrastructure-status project, and to see that PMAY registration is not needed. It also confirms that ITC is available in principle. It does not decide the supplier's rate on the inward composite works contract, which the authority declined to answer. It also does not set out how the ITC conditions or blocked credits apply to these facts. The ruling binds only the applicant.

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 -> maha-gst-ara-01-b-109_dt._05.09.18_ideal_constructions.pdf

Prepared 23-10-2026.

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