

Sale of small plots of land with development work is not taxable under GST

The AAAR, Karnataka, in the matter of *M/s. Ms. Rabia Khanum [KAR/AAAR /02/2023 dated February 14, 2023]* has upheld the advance ruling passed by AAR, Karnataka and held that the amounts received by the assessee due to the consideration, advance received on the sale of small plots which have the development work are not taxable under GST. Stated that, the sale of land developed by the assessee falls under the scope of the term "sale of land" as mentioned in Entry 5 of Schedule III of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"), hence it is not taxable.

Facts:

Ms. Rabia Khanum ("**the Respondent**") owns three acres of land and intends to convert it for residential use by forming small plots and selling them to the individual. The Respondent states that, it will be developing the land as per the regulations of the District Town and Country Planning Act ("**DTCPA**"), The Karnataka Real Estate Regulation Act and other zonal regulations that would be applicable while obtaining the sanction of the plan.

Thereafter, the Respondent filed an application before the AAR, Karnataka ("**the AAR**"), praying for a ruling on whether the consideration received for the sale of sites is taxable; whether the advance received towards the sale of the site is liable to GST and whether GST is applicable on sale of plots after completion of development works. The Respondent submitted that, land development would involve the formation of roads, formation of rainwater drains, laying of electricity cables, water pipes, sewerage lines, drilling of borewells for water supply, etc., creating necessary basic requirements for human habitation. After completion of these works, the plots will be released for sale by the sanctioning authority. On receipt of the full consideration, the ownership of the residential plot will be transferred to the buyer under the Transfer of Property Act.

The AAR ruled on September 8, 2022 (“**the Impugned Ruling**”) that the activity of sale of land by the Respondent, the receipt of advances towards the sale of sites and the sale of plots after completion of development works, are not leviable to GST, as per the Entry 5 of Schedule III of the CGST Act and **Circular No.177/09/2022, dated August 3, 2022** (“**the Impugned Circular**”) issued by the CBIC.

Aggrieved by the advance ruling of the AAR, this appeal has been filed by the Revenue Department (“**the Appellant**”) on the grounds that the sale of developed plots of land, which includes the cost of common amenities, is covered under 'construction services.' It is a supply of service taxable at 18% GST under the CGST Act and the Central Goods and Services Tax Rules, 2017 (“**the CGST Rules**”) and the relevant notifications issued. Further, even if the development activities are carried out at the behest of the local authorities, the same will be taxable and there will be no immunity for payment of tax. Once the agreement is entered into with the prospective buyer and consideration is received by the developer, in the course of development of plot, it would be a works contract and GST will be payable.

Issue:

Whether the sale of small plots of land, which includes the cost of common amenities, is taxable under GST?

Held:

The AAAR, Karnataka in **KAR/AAAR /02/2023** held as under:

- Observed that, the Respondent owns a land and intends to develop the same with basic amenities required for human habitation and form small plots and sell them to individuals after obtaining necessary permission from the concerned Government authorities.

- Noted that, the transfer of land ownership to buyers can only occur after the completion of development works overseen by the relevant authorities. The sale of land is the dominant intention, with development being incidental to it.
- Stated that, in a plotted development, any amounts received from interested buyers are only advances for the purchase of land, not for the development works.
- Further observed that, the Respondent is developing the land because it is required by law to sell the plots, not because the purchaser has requested any services. The development of the land is incidental to the sale of land, and any consideration received is only for the sale of the land. Hence, the Respondent provides no service to the buyer.
- Further stated that, if the Respondent engages a third party to carry out the development activity or provides any additional development work beyond what is mandated by local authorities, that transaction will be taxable under GST as a service.
- Noted that, as per the Impugned Circular, the sale of land, whether as it is or after some development work such as laying down drainage lines, water lines, electricity lines, etc., is covered under SI. No 5 of Schedule III of the CGST Act is not taxable under GST.
- Relied on the judgment of the Hon'ble Supreme Court in the matter of ***Paper Products Ltd v. Commissioner of Central excise [1999 (112) ELT 765 dated August 24, 1999]***, wherein, it was held that Board's circulars are binding on the Department and any action taken by the Department will have to be consistent with the circular which is in force at the relevant point of time therefore, the consideration received from prospective buyers whether as advances or full consideration is only towards obtaining a transfer in the title of the plot of land and hence not taxable under GST in terms of entry 5 of Schedule III of the CGST Act.

- Held that, the sale of land developed by the Respondent falls under the scope of the term "sale of land" as mentioned in entry 5 of Schedule III of the CGST Act.
- Upheld the Impugned Ruling.

Relevant Provisions:

Entry 5 of Schedule III of the CGST Act:

“Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

(5.) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

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