

Transfer of Development Rights under JDA taxable on value of similar flats offered to independent buyers

In *M/s. Thiru Neelakanta Realtors Ltd [ORDER No. 33/ARA/2021 dated August 17, 2021]*, M/s. Thiru Neelakanta Realtors Ltd (**"the Applicant"**) has sought clarification on mainly two issues. The first issue pertains to applicability of paragraph 2A of *Notification No. 03/2019-Central Tax (Rate) dated March 29, 2019 ("Notification No. 03/ 2019")* on agreements entered into with unregistered persons before September 29, 2019 whereas the second issue deals with applicability of the said notification i.e Notification No. 03/2019 on valuation when the actual cost of construction of services is known. The Applicant relating to the above issues have further sought clarification about which valuation rule would apply in the prevalent case to identify value of supply and the consequence, if Rule 30 or Rule 31 of the Central Goods and Services Tax Rules 2017 (**"the CGST Rules"**) is to be adopted by the Applicant.

The Applicant entered into a Joint Development Agreement (**"JDA"**) with K. Alamelu and N. Rama (**"the Owners"**), who being the owners of the property approached by the Applicant for developing and constructing a property in return for transferring an Undivided Share of Land (**"UDS"**) to the Applicant who can further market its share to prospective purchasers. The Applicant has thereby submitted Para 2A of the Notification No. 03/2019 prescribing a notional value of construction service is not applicable to its case since the actual cost of construction is very much available.

Para 2A of the Notification No. 03/ 2019 provides the value to be taxed where a person transfers development rights or Floor Space Index (**"FSI"**) to a promoter against consideration and does not limit itself to the transfer of development rights alone to be the taxable event as stated by the Applicant. This Notification No. 11/2017-C.T(Rate) dated June 28, 2017 was amended vide the impugned Notification No. 03/ 2019 to replace the words "registered person" to "persons".

The Hon'ble Tamil Nadu Authority of Advance Ruling (**"TNAAR"**) after analyzing the provisions of Para 2A held that in the present case, the Owners have vested the rights to develop the immovable property owned by them, into a residential apartment with the Applicant thereby, holding the contention of the Applicant that Para 2 will not be applicable and thus is unsustainable.

Further observed that in the instant case, the taxable event would be the completion of construction of the building even though the Applicant states that the developer has received the development rights on April 17, 2019 and the same date should be the date on which the levy is liable to be imposed.

Noted, that the date of levy being the date of issuance of completion certificate. Para 2A becomes applicable to the Applicant and so the value should be calculated only as prescribed in the said paragraph. The said paragraph prescribes that the value of construction in respect of such apartments shall be deemed to be equal to the Total amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development rights. From the wording of this paragraph, it is seen that the only value which can be adopted is as prescribed, there being no choice of adoption of any other value. As the law has provided for such valuation, the contention that paragraph 2A is not applicable when the actual cost of construction is available does not hold good as we cannot go beyond the law pronounced.

Held, the time of supply falls after the amendment in Para 2A making the method of valuation to be adopted for the construction service extended to the landowners both registered or unregistered in lieu of the development rights. Therefore, the Applicant has to adopt the value as per Para 2A to the Notification.

Further noted, that since *Para 2A of the Notification No. 03/2019* is applicable to the transaction and the TNAAR has answered the same being affirmative, issues relating to Rule 30 and Rule 31 of the CGST Rules become redundant and not required to be answered.

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