

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

**BEFORE THE BENCH OF**

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax  
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	UNREGISTERED
Legal Name of Applicant	ZAVER SHANKARLAL BHANUSHALI
Registered Address/ Address provided while obtaining user id	24, VAISHALI APARTMENT, 353/2B, R. B. MEHTA MARG, GHATKOPAR EAST, MUMBAI - 400077.
Details of application	GST-ARA, Application No. 29 Dated 22.02.2018
Concerned officer	COMMISSIONERATE, MUMBAI EAST
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	-
B Description (in brief)	As reproduced in para 02 of the Proceedings below.
Issue/s on which advance ruling required	(vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

**PROCEEDINGS**

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by ZAVER SHANKARLAL BHANUSHALI, the applicant, seeking an advance ruling in respect of the following issues.

1. *Is GST applicable on the compensation for alternate accommodation to be paid to me (the tenant of the old building) by the developer/owner?*
2. *Is GST applicable on the compensation for alternate accommodation / damages for delayed handover of possession of the new premises to be paid to me (the tenant of the old building) by the developer / owner?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

**02. FACTS AND CONTENTION - AS PER THE APPLICANT**

The submission (Brief facts of the case), as reproduced verbatim, could be seen thus -



"M/s Future Communications Limited are the owners of a plot of land bearing C.T.S. No. 837 (S.No. 5, H. No. 1, 2, 3, 5, 7, 8, 9 of Village Mohili) admeasuring 4898.61 sq.mtrs. and C.T.S. No. 837 (S.NO. 5, H. No. 6 of Village Mohili) admeasuring 497.89 sq.mtrs. and the commercial building thereon.

I, Zaver Bhanushali, am a tenant of the second floor of commercial building mentioned above. The total Area of the said tenanted premises is 2600 sq. ft. carpet area with terrace.

M/s Future Communications Limited (the owner), have entered into an agreement with M/s Spenta Residency Private Limited, the Developers, to develop a new building in place of the old building and thereby they have entered into an agreement with me (tenant) for new premises to be allotted to me in lieu of giving up the possession of the old abovementioned premises. The Owners are to provide me with a permanent alternate accommodation, shops admeasuring 4200 sq. ft. carpet area in the new building to be constructed by the developers.

It has been agreed with the developers and the owners that, during the construction period, I am to make arrangements for accommodation elsewhere on my own and the Owner/Developer shall pay an amount of Rs. 2,05,000/- per month as compensation for alternate accommodation. If the construction period extends beyond 2 years the compensation for alternate accommodation is to increase to Rs. 2,25,000/- per month for the first 6 months (granted as grace over and above two years) and Rs. 2,47,000/- for further 6 months (additional Grace Period).

In case, the construction period goes beyond the Original period of 2 years plus total grace period of 1 year (i.e. 3 years in total), The Developers/Owner Are Liable to pay an amount of Rs. 5,00,000/- per month as compensation for alternate accommodation / damages for delayed handover of possession.

The Income Tax Department does not recognise the above transaction as a rental transaction as per the definition of Rent under The Income Tax Act, 1961 and considers the same as a compensation. It has been clearly established in Income Tax Appellate Tribunal, Mumbai in the case of M/s Sahana Dwellers Pruvate Limited v/s Income Tax Officer 8(3)(1) (ITA No. 5963/Mum/2013) for A.Y. 2010-11. The same is also not liable to TDS u/s 194I of the Income Tax Act."

On the basis of the above, the questions as reproduced above have been raised.

### 03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

"As per the brief facts given by the applicant, M/s Future Communications Ltd. owned a commercial building at C.T.S. No.837 wherein Shri Zaver Bhanushali was a tenant. In other words, the applicant viz. Shri Zaver Bhanushali was recipient of renting of premises services from M/s Future Communications Ltd.. However, as per the tri-party agreement between M/s Future Communications Limited (Owner of the land), M/s Spenta Residency Private Ltd (Developer) and Shri Zaver Bhanushali (tenant of the old building.), the applicant has to vacate the rented premises occupied by him for minimum of 2years and maximum as agreed by them. For doing the said act (i.e. for vacating the premises), Shri Zaver Bhanushali will get compensation/consideration of Rs. 2,05,000/- per month for the period of first two years or Rs. 2,25,000/- or Rs.2,47,000/- or Rs. 5,00,000/- per month as the case may be.

Section 9 of the Central Goods and Service Tax Act 2017 explains levy and collection of the tax. The extract of Section 9 of CGST Act,2017 quoted below:

" Section 9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Scope of supply. Tax liability on composite and mixed supplies. Levy and collection. 14 THE GAZETTE OF INDIA EXTRAORDINARY [PART II— (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services."

The Scope of supply has been specified under Section 7 of the Central Goods and Service Tax Act 2017. Section 7 (1)(d) of the Central Goods and Services Tax Act, 2017 reads as under:

"Section 7. (1) For the purposes of this Act, the expression "supply" includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II."

Under Schedule-II at sr. No. 5(e) it has been specified as under :

"agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and" will be treated as supply of services.

In view of the above legal provisions, for levy of tax in GST regime; following requirements are to be fulfilled.

- (i) There should be 'goods' or 'services' or 'goods & services'
- (ii) There should be 'supply' of goods, or services or goods & Services.
- (iii) The supply should be 'in the course of furtherance of business'.

In the instant case, it is seen that the applicant viz. Shri Zaver Bhanushali is supplying services to M/s Spenta Residency Private Ltd (Developer) inasmuch as doing the act of vacating the premises which was rented by M/s Future Communications Ltd. In addition to that he will get permanent alternate accommodation, shop admeasuring 4200 Sq.ft. carpet area in the new building to be constructed by the developer. Thus this transaction of vacating the premises for re-development and also getting compensation for alternative accommodation is in furtherance of business and therefore it is taxable.

In the instant case, it is also seen that the applicant viz. Shri Zaver Bhanushali is receiver of construction services from M/s Spenta Residency Private Ltd (Developer). Other than the compensation/consideration, the applicant will also get free



flat/constructed premises from the developer i.e. M/s Spenta Residency Private Ltd. M/s Spenta Residency Private Ltd would be liable to pay tax on the construction services for permanent alternate accommodation, shop admeasuring 4200 sq. ft. provided to the applicant and the GST paid by the applicant on compensation would be available as input tax credit to the developer.

In view of the above this office is of the view that the applicant should take GST registration for compensation received and pay appropriate GST on the same, in respect of consideration received for alternate accommodation."

#### 04. HEARING

The case was taken up for preliminary hearing on dt.27.03.2018 with respect to admission or rejection of the application when Sh. Harshit Kadhi, Chartered Accountant attended alongwith Mrs. Zaver Bhanushali, applicant and Sh. Shankarlal Bhanushali. They requested for admission of application as per their written submission.

During hearing, Sh. V. D. Gawade (Superintendent), Jurisdictional Officer stated that they have made written submissions and they do not have objection to admission of application. The applicant orally stated that they do not require final hearing in the matter and the issue be decided on the basis of oral and written submissions made in the case on merits.

#### 05. OBSERVATIONS

We have gone through the facts of the case. We shall look at the agreement and the relevant clauses to note the circumstances in which the instant questions have been raised –

**"THIS AGREEMENT** made at Mumbai this 22nd day of August,2013 **between FUTURE COMMUNICATIONS LIMITED (PAN : AAACF0924F)**, a company registered under the Companies Act, 1956 and having it's registered office at 141, Santosh Towers, 3<sup>rd</sup> Cross Lane, Lokhandwala Complex, Andheri (West), Mumbai - 400053 hereinafter referred to as the **'OWNERS'** (which expression shall unless repugnant to the context or meaning thereof mean and include it's successors and assigns) of the **PARTIES OF THE FIRST PART**, represented by its Director, Mrs. Satish (nee Sattee) Shourie residing at 131/141, Santosh Towers, 3<sup>rd</sup> Cross Lane, Lokhandwala Complex, Andheri (West), Mumbai - 400053 **AND SPENTA RESIDENCY PRIVATE LIMITED (PAN AAMPS2210H)**, a company registered under the Companies Act, 1956 and having it's registered office at Rajabhadur Mansion, 1<sup>st</sup> floor, 20, Ambalal Doshi Marg, Fort, Mumbai - 400023 hereinafter referred to as the **'DEVELOPERS'** (which expression shall unless repugnant to the context or meaning thereof mean and include it's successors and assigns) of the **Second Part** represented by its Directors **(1) SHRI FARSHID ASPAN COOPER (PAN : ADVPC5976F)** of Mumbai, Indian Inhabitant residing at 501, Aventa, 16A, Altamount Road, Mumbai - 400036 and **(2) SHRI GAGANDEEP SINGH MANGAT, (PAN AAVPM7257L)** of Mumbai, Indian Inhabitant residing at 1901, Spenta Towers, 55-57, Forjett Street, Mumbai - 400036., the present directors of the Company hereinafter referred to as the **PARTIES OF THE SECOND PART** (which expression shall unless repugnant to the context or meaning thereof mean and include their respective heirs, executors and administrators ) **AND (1) SMT. ZAVER alias ZAVERBEN SHANKAR BHANUSHALI (PAN AAFP0292C)** and **(2) SHRI SIDDHARTH SHANKAR BHANUSHALI (PAN AHYPB6316M)** both of Mumbai, Indian Inhabitants carrying business at on 2<sup>nd</sup> floor, of the Building Anuradha Compound, Plot No.837, Anuradha Mill Compound, Andheri-Kurla Road, Sakin Naka, Mumbai-400072, hereinafter referred to as the **'TENANT'** (which expression shall unless it be repugnant to the context or meaning thereof mean and include their respective heirs, executors and administrators) of the **PARTIES OF THE THIRD PART**.

#### WHEREAS:

(b) The Owners have purchased the said property from Aditya Textile Industries Private Limited under (i) Deed of Conveyance dated 16/4/2007.....

(c) By an Agreement for Joint Development dated 15<sup>th</sup> February, 2010 registered with ....made between the Owners (therein referred to as the Owners) of the One Part and the Developers (therein referred to as the Developers) of the Second Part, the Owners have granted to the Developers the development rights in respect of the said Property for the consideration and upon the terms and conditions therein mentioned.

(e) The existing building standing on the plot of land bearing C.T.S. No.837 out of the said Property was constructed somewhere in the year 1970 and the same is consisting of ground and two upper floors having commercial premises. The Tenants are in use, occupation and possession of office premises admeasuring 2600 sq. ft. carpet area on the Second Floor with the terrace premises of the said Building for use of water storage tanks and air conditioning systems (hereinafter referred to as the 'said old premises').

(f) The Tenants were the tenants of Aditya Textile Industries Private Limited in respect of the said old premises since the year 1994 at the rent of Rs.5,000/- per month inclusive of all other maintenance, security and municipal property taxes. Upon execution of the above recited Conveyance dated 16<sup>th</sup> April, 2007 by the said Aditya Textile Industries Private Limited in favour of Future Communications Ltd. (i.e. the Owners herein), the Tennats became the tenants of the Owners.

(g) As the 'said Building' was constructed in or about the year 1970 it had become old and the same is in dilapidated condition. The Owners of the said Building Future Communications Ltd. were desirous of getting the said Building repaired heavily and for that purpose they had discussions with the Tenants herein and also the Tenants had also showed their willingness to contribute their proportionate share of expenses for getting the said Building repaired heavily.



(i) For development of the said Property in pursuance of the said Agreement for Joint Development dated 15<sup>th</sup> February, 2010, it is necessary to execute the Agreement for Alternate Accommodation with the Tenants in respect of the new premises to be provided to the Tenants in the new building and for obtaining from the Tenant the possession of the said Old Premises in their occupation and to obtain nay other facility from the Tenants for development of the said Property.

(l) .....Finally the Owners and the Developers have agreed to provide to the Tenants the shops admeasuring 4200 sq. ft. carpet area in the new building free of cost on ownership basis as permanent alternate accommodation upon the terms and conditions agreed by and between the parties hereto which are now recorded in writing by executing this Agreement.

NOW THIS AGREEMENT WITNESSETH AND IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER:-

2. The Tenants are in use, occupation and possession of the office premises being admeasuring 2600 sq. ft. carpet area (approx.) on the Second floor of the said Building standing on the portion of the said Property shown by \_\_\_\_\_ colour wash/ \_\_\_\_\_ colour boundary line on the plan hereto annexed and marked **Annexure : A** (hereinafter referred to as the 'said Old Premises').

4. The floor height of the said old Premises on second floor is 14 feet. Under the said letter dated 10/07/2011 the Owners and the Developers have agreed to provide to the Tenants the new premises admeasuring 3250 sq. ft. carpet area (consisting of 2600 sq. ft. area presently occupied by the Tenants and 650 sq. ft. area being additional 25 % of 2600 sq. ft.). However now as the height of the new premises shall be 9 feet 6 inches only instead of 14 feet the Owners and the Developers have agreed to provide to the Tenants as and by way of permanent alternate accommodation an area admeasuring 4200 sq. ft. carpet area (consisting of 2600 sq. ft. area presently occupied by the Tenants and 650 sq. ft. area being additional 25% of 2600 sq. ft. and 950 sq. ft. additional area in lieu of the new premises being 9 feet 6 inches instead off 14 feet height) by having three partition walls, free of cost on ownership basis on the ground floor of the New Building to be named as \_\_\_\_\_ to be constructed by the Developers on the portion of the said Property and delineated on the draft typical floor plan annexed hereto and marked as Annexure : 'B' and thereon shown surrounded by red colour boundary line (hereinafter referred to as 'said New Premises').

8. The Owners hereby confirm that the Tenants have paid to the Owners the rent, taxes and other outgoings in respect of the said Old Premises upto date and now no further amount is due and payable by the Tenants to the Owners in respect of the said Old Premises for the period upto the date of this Agreement. The Tenant shall continue to pay to the Owners the rent in respect of the said Old Premises at the rate of Rs. 5000/- per month till the date on which the Owners and the Developers handover to the Tenants the possession of the said New Premises as provided in this Agreement. Upon obtaining the possession of the said New Premises from the Owners and the Developers the Tenants shall surrender their tenancy rights in respect of the said Old Premises.

14. The Owners and the Developers hereby specifically agree and confirm that :

- (i) The Tenants shall be entitled to use the said New Premises for 24 hours throughout the year and use the same for lawful business and commercial activity including using the same for call centre, hotel, restaurant, subject however to the Rules and Regulations of the MCGM, State Government and other concerned authorities.
- (ii) The Tenants shall be entitled to give the said New Premises or any part thereof on leave and licence basis, on lease, on franchise basis or any other basis to any person or party of their choice as the Tenants may deem fit and proper;
- (iii) The Tenants shall be entitled to use the said New Premises or any part thereof for carrying on nay business therein partnership or on any other basis with any person or party as the Tenants may deem fit and proper;
- (iv) The Tenants shall be entitled to deal with the said New Premises as the Tenants may deem fit and proper.

17. It is agreed between the parties hereto that during the period of construction of the new building the Tenants shall make their own arrangement for temporary alternate accommodation and the Owners/the Developers shall pay to the Tenants the rent/compensation for the temporary alternate accommodation to be arranged by the Tenants at the rate of Rs. 2,05, 000/- (Rupees Two Lacs Five Thousand only) per month for the period of first 24 months. It is agreed and confirmed that on the execution of this Agreement within 15 days from the date hereof. The Tenant shall hand over quiet, vacant and peaceful possession of the old premises to the Owner and Developers and against the same the Tenant will be paid Rs. 48,00,000/- (Rupees Forty Eight Lacs Only) at a time by a single cheque for the said period of 24 months, the rent/compensation as mentioned above.

18. The Owners and the Developers hereby agree and confirm that the Developers shall complete the construction of the new building as per sanctioned plans within 24 months from the date of issuance off Commencement Certificate subject to the usual force majeure clause as applicable in which case the time shall be extended automatically and to which the Tenant shall have no objection. The Developer shall endeavor to get the Commencement Certificate within 6 months from the date hereof. In the event the Developers are unable to complete the construction of the new building with 24 months and handover the possession of the said New Premises to the Tenants with Occupation Certificate due to reasons beyond their control the Developers will be entitled to a grace period of 6 months and additional grace period of further 6 months i.e. in all 12 months subject however to the Owners and/ or the Developers paying to the Tenants the rent/compensation for the temporary alternate accommodation at the rate of Rs. 2,25, 000/- per month for the period from 25<sup>th</sup> month to 30<sup>th</sup> month and at the rate of Rs. 2,47,000/- per month for the period from 31<sup>st</sup> month onwards. In the event the Developers are unable to handover the possession of the said New Premises within 24 months then in that event at the end of the period of 24 months the Owners/the Developers shall give the post dated cheques to the Tenants towards the rent for the period from 25<sup>th</sup> month to 36<sup>th</sup> month at the rate provided hereinabove.

20. Subsequent to what is mentioned in Clause 19 above, the Owners and/or the Developers hereby confirm that in the event the Owners and/or the Developers are unable to handover the possession of the said New Premises to the Tenants within 36 months the Owners and the Developers shall be liable to pay to the Tenants Rs. 5,00,000/- (Rupees Five Lakhs only) per month as damages without prejudice to the Tenants' other rights under the law and under this Agreement.

21. The Owners and the Developers hereby confirm that (i) the Developers shall provide to the said New Premises the amenities and specifications as specified in the Second Schedule hereunder written and (ii) the Developers at their own cost shall provide the electric connection and water connection in the said New Premises.

22. The Owners and the Developers shall also provide to the Tenants 4 Car Parking Spaces in the basement free of cost of the New Building to be constructed on the said Property on ownership basis. The Owners and the Developers while handing voer the charge to the Society or any other organization formed or registered of the said parkings in the basement.

23. The Owners shall pay to the Tenants Rs. 25,00,000/- (Rupees Twenty Five Lacs only) as compensation/corpus fund to enable the Tenants to pay the taxes and outgoings of the said New Premises at a higher rate as compared to the said Old Premises at the time of entering into this Agreement.



24. *The Owners and the Developers hereby specifically confirm that till the time the Tenant is given the new premises, the Tenancy rights of the Tenant shall be subsisting subject to the Tenant paying the monthly rent to the Owners/Developers."*

It can be seen that the transaction is about the receipt by the applicant, of certain sums towards –

- a. *Compensation for alternate accommodation for the period of first 24 months.*
- b. *Compensation for alternate accommodation for the further period from 25<sup>th</sup> month to 36<sup>th</sup> month and damages for delayed handover of possession after the period of 36 months.*

Section 9 of the GST Act says that there shall be levied a tax on supplies of goods or services or both. So we need to understand as to whether the aforesaid receipt of amounts would be for a supply made by the applicant. A 'supply' defined under Section 7 of the GST Act is as follows -

"7. (1) For the purposes of this Act, the expression "supply" includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods."

**SCHEDULE I [See section 7] ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

**SCHEDULE II [See section 7] ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (i) the business is transferred as a going concern to another person; or



(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

**From the above, we find that under sub-section (1) of Section 7 ---**

- 'Supply' as per clause (a) is for supply of goods or services or both. It is for a consideration AND has to be in the course or furtherance of business.
- 'Supply' as per clause (b) is for import of services. It is for a consideration AND may or may not be in the course or furtherance of business.
- 'Supply' as per clause (c) are the activities specified in Schedule I appended to the GST Act. It is not for a consideration. And though it has not been specifically mentioned in the clause, if we look at Schedule I, as reproduced above, the 'supply' herein would be in the course or furtherance of business.
- 'Supply' as per clause (d) is the enumeration or categorization as given in Schedule II appended to the GST Act as to which activities should be treated as supply of 'goods' and which activities to be treated as supply of 'services'. The clause does not define 'supply' but classifies the supply into either 'supply of goods' or 'supply of services'. [Clause (e) of Schedule II defines "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" as a Supply of Services].

**Further, Sub-section (2) of section 7 states that ---**

- certain, specified or notified activities shall be treated neither as a supply of goods nor a supply of services.

**We also find that Sub-section (3) of section 7 states ---**



- that certain activities would be notified as being –
  - (a) a supply of goods and not as a supply of services; or
  - (b) a supply of services and not as a supply of goods.

**In the case before us we find that :-**

- The applicant was a tenant in a building premises, owner of which was M/s Future Communications Limited.
- M/s Future Communications Limited entered into an agreement for redevelopment of the said premises with M/s Spenta Residency Private Limited, a developer.
- Consequent to the said redevelopment agreement, the applicant was required to vacate the premises to facilitate the redevelopment of the building, by the developer.
- In the process the applicant has agreed to do an act (vacating the premises) to facilitate the supply of service by the developer to the owner, as per conditions reiterated below :-
  1. *The Tenant shall continue to pay to the Owners the rent in respect of the said Old Premises at the rate of Rs. 5000/- per month till the date on which the Owners and the Developers handover to the Tenants the possession of the said New Premises as provided in this Agreement.*
  2. *However for vacating the said premises, During the period of construction of the new building the Tenants shall make their own arrangement for temporary alternate accommodation and the Owners/the Developers shall pay to the Tenants the rent/compensation for the temporary alternate accommodation to be arranged by the Tenants at the rate of Rs. 2,05, 000/- (Rupees Two Lacs Five Thousand only) per month for the period of first 24 months and against the same the Tenant will be paid Rs. 48,00,000/- (Rupees Forty Eight Lacs Only) at a time by a single cheque for the said period of 24 months, the rent/compensation as mentioned above.*
  3. *Further, we also find the condition that in the event the Developers are unable to complete the construction of the new building within 24 months and handover the possession of the said New Premises to the Tenants with Occupation Certificate due to reasons beyond their control the Developers will be entitled to a grace period of 6 months and additional grace period of further 6 months i.e. in all 12 months subject however to the Owners and/ or the Developers paying to the Tenants the rent/compensation for the temporary alternate accommodation at the rate of Rs. 2,25, 000/- per month for the period from 25<sup>th</sup> month to 30<sup>th</sup> month and at the rate of Rs. 2,47,000/- per month for the period from 31<sup>st</sup> month onwards. In the event the Developers are unable to handover the possession of the said New Premises within 24 months then in that event at the end of the period of 24 months the Owners/the Developers shall give the post dated cheques to the Tenants towards the rent for the period from 25<sup>th</sup> month to 36<sup>th</sup> month at the rate provided hereinabove.*
  4. *In continuation, we further find the condition that subsequent to what is mentioned in Clause 3 above, the Owners and/or the Developers hereby confirm that in the event the Owners and/or the Developers are unable to handover the possession of the said New Premises to the Tenants within 36 months the Owners and the Developers shall be liable to pay to the Tenants Rs. 5,00,000/- (Rupees Five Lakhs only) per month as damages without prejudice to the Tenants' other rights under the law and under this Agreement.*
  5. Thus we find that for vacating the said premises, the applicant has received/is to receive compensation from the developer as per details mentioned above.
  6. It is also to be noted that for their premises in the old building, after redevelopment is complete the applicant is to receive newly constructed and redeveloped property as per the below mentioned clause of the agreement.



*"The floor height of the **said old Premises** on second floor is 14 feet. Under the said letter dated 10/07/2011 the Owners and the Developers have agreed to provide to the Tenants the new premises admeasuring 3250 sq. ft. carpet area (consisting of 2600 sq. ft. area presently occupied by the Tenants and 650 sq. ft. area being additional 25 % of 2600 sq. ft.). However now as the height of the new premises shall be 9 feet 6 inches only instead of 14 feet the Owners and the Developers have agreed to provide to the Tenants as and by way of permanent alternate accommodation an area admeasuring 4200 sq. ft. carpet area (consisting of 2600 sq. ft. area presently occupied by the Tenants and 650 sq. ft. area being additional 25% of 2600 sq. ft. and 950 sq. ft. additional area in lieu of the new premises being 9 feet 6 inches instead off 14 feet height) by having three partition walls, free of cost on ownership basis on the ground floor of the New Building to be named as \_\_\_\_\_ to be constructed by the Developers on the portion of the **said Property** and delineated on the draft typical floor plan annexed hereto and marked as Annexure : 'B' and thereon shown surrounded by red colour boundary line (hereinafter referred to as '**said New Premises**')".*

Thus, the act of vacating premises for facilitating the developer implies that **the applicant has agreed to do an act** and such act, of vacating the premises, by the applicant, squarely falls under clause 5(e) of the Schedule II mentioned above and therefore the amounts received by the applicant for having agreed to do such an act, would attract tax liability.

Thus from the above referred terms of the agreement for redevelopment of the premises referred above we find that even during the period of redevelopment, the applicant remains a tenant of the owners of the old premises and continues to pay them due rent @ Rs. 5,000/- per month. However in lieu of they vacating the rented premises for redevelopment as per the agreement of redevelopment as referred above, the applicant is agreeing to the obligation to the obligation to refrain from an act or tolerating an act or situation of redevelopment in place of old premises and of not causing hindrance or creating obstacle in the same.

We observe herein that the receipt of amounts towards alternate accommodation or delayed possession of premises would be receipt of amounts for doing an act i.e. vacating the premises for redevelopment as well as tolerating the construction cum redevelopment work till possession of new redeveloped premises as per agreement and further for tolerating an act i.e. the act of not having completed the redevelopment work within 36 months. In view thereof, the same would definitely be a 'supply' under the GST Act and therefore, there arises an occasion to levy tax under the GST Act on the impugned transactions.

The applicant has also cited the decision of the Income Tax Appellate Tribunal, Mumbai, in the case of M/s Sahana Dwellers Private Limited v/s Income Tax Officer, in support of their contention that the transactions in question are not recognized as a rental transaction by the said Tribunal. Citing the said decision, the applicant has submitted that the said amounts received by them is a compensation and not rental income. They are right to an extent that, the said amounts are in the form of compensation paid to them, to do an act i.e. vacating the premises for redevelopment as well as tolerating construction cum redevelopment work during the





specified period of redevelopment as per their agreement referred above and also to tolerate an act i.e. the act of not having received the New Premises within 36 months from the developer.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

**ORDER**

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 29/2017-18/B- 37

Mumbai, dt. 22/05/2018

For reasons as discussed in the body of the order, the questions are answered thus –

Q.1 Is GST applicable on the compensation for alternate accommodation to be paid to me (the tenant of the old building) by the developer/owner?

A.1 Answered in the affirmative. GST is applicable on the compensation for alternate accommodation received by them.


Q.2 Is GST applicable on the compensation for alternate accommodation / damages for delayed handover of possession of the new premises to be paid to me (the tenant of the old building) by the developer / owner?

A.2 Answered in the affirmative. GST is applicable on the compensation for alternate accommodation/ damages for delayed handover of possession of the new premises received by them.

An appeal against this order will lie with the Appellate Authority, Advance Ruling Maharashtra, 15th floor, Air India Building, Madame Cama Road, Churchgate, Mumbai- 400020, as provided under Section 100 of the GST Act, 2017.

The appeal should be filed in Form GST ARA-02 accompanied by a fee of Rs. 10,000/- pertaining to each Act. It shall be signed by the appellant or his authorised representative.



  
B. V. BORHADE  
(MEMBER)

  
PANKAJ KUMAR  
(MEMBER)

9  
CERTIFIED TRUE COPY

  
ADVANCE RULING AUTHORITY  
MAHARASHTRA STATE, MUMBAI

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax, Churchgate, Mumbai.

