

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	27AAHFP6426G1Z4
Legal Name of Applicant	THE IDEAL CONSTRUCTION
Registered Address/Address provided while obtaining user id	B 9. RAYSONS PRESTIGE TARABAI PARK, KOLHAPUR - 416003
Details of application	GST-ARA, Application No. 01 Dated 02.04.2018
Concerned officer	KOL-VAT-C-001, Kolhapur Division
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Works Contract
B Description (in brief)	Works Contract Services by way of construction of residential complex.
Issue/s on which advance ruling required	(ii) applicability of a notification issued under the provisions of the Act (iv) admissibility of input tax credit of tax paid or deemed to have been paid (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 02 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 THE IDEAL CONSTRUCTION, the applicant, seeking an advance ruling in respect of the following questions :

1. What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? And whether registration of project under Pradhan Mantri Awas Yojana is required?
2. What is the rate of tax to be levied by the supplier from whom we will received Composite works contract service (Inward Supply of composite works contract)? Will it be 12% or 18%?
3. Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

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 submissions, **as reproduced verbatim**, could be seen thus-
Statement of relevant facts having a bearing on the question(s) raised

The dealer i.e. The Ideal Construction is a partnership firm duly registered under GST. The nature of business of the firm is that of builders and developers. The said firm is desirous to undertake an affordable housing project in Kolhapur. The land required for the project is already possessed by the Firm. The firm is currently in the process of designing and planning for the said project. The units to be constructed in the said project will be of upto 30 sqmtrs(EWS) or upto 60 sqmtrs (LIG). The firm is considering following two options regarding the activities of the project.

1. To undertake construction activity on its own. In this case the required material, labour etc and all other ancillary activities will be undertaken by the firm itself. In that case the majority of tax rate on inward supplied will be of the rate 18% or 28%.

2. To sublet the entire construction activity to a third party contractor. In this case our inward supply will be in the form of a composite works contract service.

Since the impact of GST on costing of the project will be of major amount, we are coming before your honor to get the clarity about the taxation/ITC etc.

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought)

1. What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers?

Dealer is undertaking a Affordable Housing project. The consolidated notification 11 of 28/6/2017 is again amended by notification No 1/2018 central tax (rate) dated 25/1/18. A combined reading of both the notifications give two different possible situations for applying concessional rate of tax of 12% for affordable housing projects (and after claiming 1/30 deduction for Land effective rate will be 8%).

First Scenario: Wide Notification 1/2018 following amendment was made:

Against serial number 3, in column (3), - after sub-item (d), the following sub-items shall be inserted, namely: -

(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);

As regards insertion of clause (db) above, flats/units in our project may be some times acquired by persons coming under EWS/LIG/MIG-1/MIG-2 etc. So in that case what is the rate of tax to be applied? What documents to be collected from prospective buyers in order to make them eligible for concessional rate as per said notification? And whether it is mandatory to get the project registered under Pradhan Mantri Awas Yojana(Urban) in order to levy the concessional rate to the prospective buyers. In our opinion registration of project under Pradhan Mantri Awas Yojana is not required.

Second Scenario:

Wide Notification 1/2018 following amendment was also made:

in item (v), after sub-item (d), the following sub-item shall be inserted, namely: - "(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;

In this case as regards insertion of clause (da) above, notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, the affordable housing projects are given "Infrastructure" status under the category of "Social and Commercial Infrastructure" by adding a new sub-sector - "Affordable Housing". In the same notification affordable housing is defined as 10 "Affordable Housing" is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area @ of not more than 60 square meters.

@ "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

Thus as per our interpretation we will be covered by the above said notification issued by Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated 30th March. And our project will be covered in clause (da) under item (v) of serial no 3 of the amended notification 11/2017 dated 28/6/17. And the rate of tax applicable will be 12% (i.e. CGST 6% and SGST 6%) irrespective of the status of the prospective purchaser i.e. whether or not he is EWS/LIG/MIG-1/MIG-II.(and after claiming 1/3rd deduction for Land effective rate will be 8%).



2. What is the rate of tax to be levied by the supplier (who is registered under GST) from whom we intend to receive composite works contract service (Inward Supply of Composite works contract)? Will it be 12% or 18%?

The firm is considering option of subletting the entire construction activity to a different contractor who will also be registered under the GST Act. In this case the said Contractor will be procuring the all the material, Labour and other ancillary goods and services on his own account and will be issuing his Tax Invoice to us. Thus the firm will be having inward supply of "works contract service". As per our interpretation of Law and notification mentioned above, the services supplied by the said contractor will be covered under Sr. 3 Column No 3 item no (iv) (db) or Item No (v) (da). In this case since the other contractor is providing the works contract service to the affordable housing project the rate of tax which he will be levying in his tax invoice will have to be 12% and not 18%.

3. Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

If the rate of tax to be levied on our outward supply of works contract service is 12% (Effective rate after land deduction 8%), In this case our purchases or inward supplies will be of the rate 12% or 18% or 28% as the case may be. Thus there will be a considerable amount of ITC (Input Tax Credit) available in our electronic credit ledger. Section 16 of CGST Act specifies the Eligibility and conditions for taking input tax credit subject to conditions and restrictions mentioned in section 49. Section 17 lets the conditions for Apportionment of credit and Blocked credit. In our opinion we are not covered under sub section 5(c) of section 17 as the inward works contract service will be input service for further supply of works contract service. Section 49 (6) states The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest ,penalty, fee or any other amount payable under this Act or the rules made there under may be refunded in accordance with the provisions of section 54.

However as per the booklet "Rate of GST on services published by GST council at page no 23 under the list of services at 12% rate against Sr No 7 entry is as follows:

Sr No.	Description of services	Rate
7	Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly (the value of land is deemed to be one-third of the total amount charged for such supplies)	12% with no refund Of accumulated ITC

But since the project is of affordable housing the above entry rate will not be applicable to the same. Thus as per our interpretation of provisions of law full ITC is allowable to us and balance amount in our electronic credit ledger can be claimed as refund.

Vide further communication the applicant has submitted the Area Statement as follows:-

Area of Plot	16090.00 sq mtrs.
Less- Amenity Space	810.00 sq mtrs.
Net Plot Area	15280.00 sq mtrs.
Total consumed FSI of the plot	26055.00 sqmtrs.
FSI Area consumed in flats having carpet area below 60 sq mtrs.	26055.00 sq mtrs.
FSI Area consumed in flats having carpet area above 60 sq mtrs.	NIL
FSI consumed	1.7

03. CONTENTION - AS PER THE CONCERNED OFFICER

No contentions has been filed by the department in the matter.

04. HEARING

The Preliminary Hearing was held on date 24.04.2018. Shri Kedar P Hasabnis, Chartered Accountant, duly authorized appeared along with Shri Atul Powar, partner and Shri Anand Bhogle, Accountant. They orally contended for admission of their application in view of detailed submissions made by them. They were informed that in respect of Question No. 2, the question could only be raised by their supplier, and they agreed to the same. Shri B. R. Patil, STO, State GST appeared on behalf of the department and stated that submissions would be made in due course and that the department had no objection to the application being admitted.

The Final Hearing was held on 06.06.2018. Shri Kedar P Hasabnis, Chartered Accountant, duly authorized appeared along with Shri Sagar Patil, Accountant and made oral submissions as per their



application. They were further requested to submit documents relating to PMAY and Housing for All (Urban) Scheme guidelines. Nobody was present from the department's side.

05. **OBSERVATIONS**

We have gone through the facts of the case, documents on record and the submissions made by the Applicant. The applicant has posed three questions for which they are seeking responses from this authority. We shall deal with each question as under:-

Question No. 1: What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? And whether registration of project under Pradhan Mantri Awas Yojana is required?

This issue is with respect to the affordable housing projects to be undertaken by the applicant in Kolhapur. The applicant has submitted that on the land already in possession with them, they are proposing to construct units which will be of upto 30 square meters [Economically Weaker Section (EWS) houses] or upto 60 sq.mtrs [Lower Income Group (LIG) houses].

Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, has specified the rate of central tax to be levied on Intra State supply of services of description specified in Column 3 of the Table in the said Notfn, falling under scheme of classification of services mentioned therein. The relevant clauses of the said Notfn as amended by Notfn No. 20/2017-Central Tax (Rate) dated 22.10.2017 is reproduced below:-

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a); (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers; (d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e); or (f)	6	-]
		(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-		



		<p>(a);</p> <p>(b);</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-</p> <p>(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(2) any housing scheme of a State Government;</p> <p>(e); or</p> <p>(f)</p>		
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Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 has made amendments to Sr. No. 3, column no. 3, item no. iv & v the above Notfn No 11/2017 as follows:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, in column (3), -

(A) in item (iv),-

(I) for sub-item (c), the following sub-item shall be substituted, namely: -

'(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)";'

(II) after sub-item (d), the following sub-items shall be inserted, namely: -

'(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);'

(III)";

(B) in item (v),

(I) in sub-item (a), for the word "excluding",;

(II) after sub-item (d), the following sub-item shall be inserted, namely: -

"(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017;"

According to sub item (da) of item iv, "a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) would attract a tax rate of 12%. This clause will not be applicable to the applicant because the same envisages partnership by State or Union territory or local authority or urban development authority



According to sub item (db) in item v "a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban). This clause also shall not be applicable to the applicant since this clause states that the houses should be constructed or acquired under the Credit Linked Subsidy Scheme of the Government.

According to sub item (da) of item (v), "low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017 would attract a tax rate of 12%. This clause will be applicable to the applicant if the project undertaken by them is an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.

Department of Economic Affairs' notification issued vide F. No. 13/6/2009-INF, dated the 30th March, 2017 has included Affordable Housing under the column "Infrastructure sub sector" against the category of Social and Commercial Infrastructure and has further defined "Affordable Housing" as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters and "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

One of the recommendations made by the GST Council in its 25th meeting held on 18th January 2018 at Delhi was to extend the concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30th March, 2009. The said notification of Department of Economic Affairs provides infrastructure status to Affordable Housing. The recommendation of the Council would extend the concessional rate to construction of flats/ houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also. The GST Council has also observed that "It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats." The GST Council has also mentioned that the builders/developers are expected to follow the principles laid down under Section 171 of the GST Act (Anti-Profiteering Rules) scrupulously.

In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI vide their letter no. CREDAI/MoF/2018/14 dated 19th March, 2018, the Government vide F.No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th May, 2018 has clarified that "Low cost houses up to a carpet area of 60 .square metres per house in an affordable housing project, which has been given infrastructure status under



notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). *Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/ developer as per the definition of affordable housing given in the above mentioned notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required."*

The applicant in their submissions have stated that the entire FSI of 26055.00 sq mtrs. are consumed in flats having an area less than 60 sq mtrs. Hence, from a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, we find that that the applicant's case is covered under the tax rate of 12%, under Heading 9954 (Construction Services), (v) (da) of above mentioned Notification No. 11/2017, as amended since the project undertaken by them falls under the definition of "Affordable Housing" as stated by them in the application (Whether the housing project qualifies as affordable housing project or not, shall be determined by the applicant as per the definition of affordable housing given in the above mentioned notification.) The benefit of reduced rate would be available to them only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued.

Q No. 2. What is the rate of tax to be levied by the supplier (who is registered under GST) from whom we intend to receive composite works contract service (Inward Supply of Composite works contract)? Will it be 12% or 18%?

At the time of hearing it was communicated to them that this question can only be raised by the supplier and not by them and they agreed to the same and the question is therefore not answered in this case.

Q No. 3. Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

As rightly submitted by the applicant, Section 16 of the GST Act, 2017 specifies the eligibility and conditions for availing input tax credit. Section 16 to Section 20 of the GST Act deals with Input Tax Credit. The GST Council in its 25th meeting held on 18th January 2018 at Delhi has extended concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30th March, 2009. The GST Council has also observed that "It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). **As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats."**

The applicant will be eligible for ITC subject to fulfilment of conditions as prescribed under the GST Act.

In view of the 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- 01/2018-19/B-

109

Mumbai, dt.

05-09-2018

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

Question 1.What is the rate of tax to be levied on the sale of Flats/Units to the prospective buyers? And whether registration of project under Pradhan Mantri Awas Yojana is required?

Answer :- The rate of tax to be levied is 12% (8% GST after deducting value of land) in case of Affordable Housing Project. If the project qualifies as an Affordable Housing Project, then registration under Pradhan Mantri Awas Yojana is not required to avail this benefit.

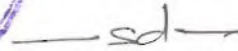
Question 2. What is the rate of tax to be levied by the supplier from whom we will receive Composite works contract service (Inward Supply of composite works contract)? Will it be 12% or 18%?

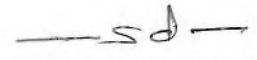
Answer :- Not answered as per detailed discussions under 'Observations'.

Question 3. Admissibility of Input tax credit. Whether full ITC is allowable or it will be restricted to output GST liability?

Answer :- The applicant will be eligible for ITC subject to fulfilment of conditions as prescribed under the GST Act.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

Copy to:-

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

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021

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MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI