

AUTHORITY FOR ADVANCE RULING - CHHATTISGARH
3rd & 4th Floor, Vanijyik Kar GST Bhawan, Sector-19, Atal Nagar
Raipur (C.G.) 492002
Email ID - gst.aar-cg@gov.in

Advance Ruling No. STC/ AAR/05/2019-Raipur

Dated 30th August, 2019

**PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING U/s, 98 OF
THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017**

Members Present are

Smt. Kalpana Tiwari	Shri Rajesh Kumar Singh,
Joint Commissioner	Additional Commissioner,
O/o Commissioner, State Tax	O/o Principal Commissioner,
Chhattisgarh, Raipur	CGST & Central Excise, Raipur

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

The applicant Shri Aman Agrawal, Director, M/s. Bilaspur Infrastructure Pvt. Ltd. BF-1 First Floor, Rajiv Plaza, Opposite Axis Bank, Old Bus Stand, Bilaspur (C.G.) GSTIN 22AACCB4045M1ZV has filed the application U/s 97 of the Chhattisgarh Goods and Services Tax Act, 2017 requesting advance ruling in respect of the following questions :-

(i) Whether the sale / booking of units in a project after its first occupation and receipt of advance against that booking is classifiable under Para 5 of Schedule-III to the CGST Act, 2017 as sale of building and thus neither regarded as Supply of goods nor supply of services? Thus whether the same is outside the purview of Goods and Services Tax?

(ii) Whether the booking of units in a project and consequently receipt of advance against that booking after first occupation of the project, where the project has been completed and promoter has applied for issuance of completion certificate, which is pending before local authority; is outside the purview of Goods and Services Tax?

2. Facts of the case :-

(I) M/s. Bilaspur Infrastructure Private Limited having its registered office of BF-1. First Floor, Rajiv Plaza, Opposite Axis Bank, Bilaspur, Chhattisgarh,

Pin-495001 (hereinafter referred to as the company) is a company registered under GST vide Registration NO. 22AACCB4045MIZV.

(II) The company is engaged in development of real estate projects. The company is having a project at Juno, Bilaspur named as City Centre comprising of 77 individual saleable units. The said project is residential-cum-commercial project.

(III) Out of total of 77 units, the company has booked 33 units in advance and received consideration in advance in respect of those 33 units when the project was under construction. The company has duly collected and paid applicable service tax or GST on those 33 units.

(IV) At present, the project has been completed fully in all respect and the company has also applied for completion certificate before the competent authority i.e. Nagar Nigam, Bilaspur. However the said completion certificate has still not been received.

(V) Out of those 33 units sold, the company has provided the possession to 4-5 buyers. Thus First Occupancy has been provided by the Company in the project premises.

(VI) Now the company desires to book rest of the 44 units wherein it has not received any consideration in advance before the first occupancy.

3. Contention of the applicant: -

(I) That the applicant has applied for grant of Building Completion Certificate before Nagar Nigam, Bilaspur on 14th January, 2019 intimating the fact that building completion in this respect has been done by the applicant.

(II) That Structural Engineer has also certified the fact that work has been completed in the applicant's project and issued completion Certificate.

(III) That although they have applied for completion certificate before the Nagar Nigam, Bilaspur on 14th January, 2019, but completion certificate has neither been granted nor been rejected by that authority as on the date of filing Advance Ruling.

(IV) That Schedule-II of CGST Act, 2017 provides as under:

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

"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 completion certificate. required, by the competent authority or after its first occupation, whichever is earlier"

(V) Thus as per Sch. II of CGST Act, 2017, even if completion certificate has not been issued, but where first occupation has taken place in the building, receipt of entire consideration after the said first occupation will not be regarded as supply of services and hence the same will be outside the purview of GST in terms of clause 5 of Schedule III to the CGST Act, 2017.

(VI) It is important to mention here that the term "First Occupation" was not there in Section 66E of erstwhile Service Tax Act (Finance Act, 1994) and is newly introduced in GST regime. Further the said term is nowhere defined in entire GST law. Thus meaning of said term is required to be taken from general parlance.

As per general parlance, the term first occupation may said to be taken place when a particular unit of the building is first occupied by the occupier/ allottee/transferee.

(VII) In applicant's case, the first occupation was done in the first week of March, 2019. Further that they have already submitted some sample photographs proving the completion of building before the Advance Ruling Authority in the hearing conducted on 3rd July, 2019.

(VIII) Thus in applicant's case, whether the first occupation can be said to have taken place in the applicant's building as on date and hence Whether the entire consideration against bookings if received after the said first occupation will be outside the purview of GST, is the main question to be decided by the authority, as levy of GST will depend on this interpretation of first occupation. The same question has been raised as Question No. 2 of applicant's advance ruling application, as under:-

"2 Whether the booking of units and consequently receipt of advance against that booking after first occupation of the project, where applied issuance of completion certificate and pending before local authority is outside the purview of Goods and Services Tax?"

(IX) If answer to the aforesaid question raised in Para 8 is negative, when the first occupation will be said to have taken place for a project situated within the territory of Bilaspur. Chhattisgarh.

(X) The applicant also wishes to highlight the relevant sections of The Chhattisgarh Municipalities Act, 1961 and The Chhattisgarh Municipal Corporation Act, 1956, before the authority.-

Section 191 of "The Chhattisgarh Municipalities Act, 1961" provides as under :

"(1) Every person who -

(i) erects or re-erects any building; or

(ii) makes any material external alteration in or addition to any existing building; or

(iii) constructs or re-constructs any projecting portion of a building which the Council is empowered under Section 184 to require to be set back or is empowered to give permission to construct or reconstruct :

shall within month of the completion of the work, deliver to the Council at its office a notice, in writing, of such completion and shall give to the Council all necessary facilities for the inspection of such work.

(2) No person shall or permit to be occupied any such building or use or permit to be used any building or part thereof effected by any such work until permission has been granted by the Council in this behalf in accordance With the bye-laws made under this Act :

Provided that if the Council fails, within a period of fifteen days after the receipt of notice of completion under sub-section to communicate its refusal to grant such permission, such permission shall be deemed have been granted."

Thus the aforesaid act clearly provides that if the Council fails to communicate its refusal to grant permission, within a period of 15 days after receipt of notice of completion, such permission shall be deemed to have been granted.

Section 301 of "The Chhattisgarh Municipal Corporation Act, 1956" provides as under :

"Completion certificate and permission to occupy or use.-

(1) Every person who -

(i) erects or re-erects any buildings; or

(ii) makes any material external alteration in or addition to any existing building or

(iii) constructs or re-constructs any projecting portion of a building which the Commissioner is empowered under Section 305 require to be set back or is empowered to give permission to construct or re-construct:

shall within one month of the completion of the work liver to the Commissioner at his office a notice in writing of such completion and shall give to the Commissioner all necessary facilities for the inspection of such work.

(2) Within seven days after the receipt of the said notice the Commissioner shall depute an officer to commence the inspection of such work.

(3) Within seven days from the date of Commencement of such inspection the Commissioner shall -

(a) give permission for the occupation of the building erected or for the use of the part of the building re-erected : or

(b) refuse such permission in case such erection, Construction or reconstruction is in contravention of any provision of this Act or any rule or bye-law made thereunder or any other enactment for the time being in force.

(4) No person Shall occupy or permit to be occupied any such building or use or permit to be used any part affected by the re-erection of such building -

(a) until the permission referred to in clause (a) of sub-section (3) has been granted in the manner prescribed by bye-laws;

(b) unless the Commissioner has failed for fifteen days after the receipt of notice of completion to intimate his refusal to grant the said permission."

(XI) Thus both the aforesaid Act, clearly provides that if the Council/Commissioner fails to communicate its refusal to grant permission, within a period of 15 days after receipt of notice of completion, such permission Shall be deemed to have been granted.

(XII) In such a scenario, when the applicant has applied for completion Certificate on 14th January 2019, but has neither been granted nor rejected the completion certificate, and has already given possession of several units to its buyers, whether the first occupation as referred in Schedule-II is said to have taken place and thus where the entire consideration against fresh bookings received after the said first occupation will be outside the purview of GST.

4. Personal Hearing :-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant and accordingly Shri Nitin Goyal CA and Shri Ankit Goyal, CA (Authorized representatives of the applicant, appeared for hearing before us on 3-7-2019 and reiterated their contention. They furnished an additional written submission dated 10-7-2019 in support of their contention, which has been taken on record.

5. The legal position, analysis and discussion :-

5.1 The applicant, Shri Aman Agrawal, Director, M/s. Bilaspur infrastructure Pvt. Ltd. Bilaspur (C .G.), engaged in development of real estate projects having GSTIN 22AACCB4D45MIZV, through their instant application seeks advance ruling under Section 97 of the Chhattisgarh Goods and Services Tax Act, 2017 as to whether the sale booking of units in a project after its first occupation and receipt of advance against that booking attracts no GST, being out of the purview of either supply of goods or supply of services and such transaction being sale, falling under Para 5 of Schedule -III to the CGST Act, 2017. Similarly they also desire ruling as to whether in the case of booking of units in a project and consequently on receipt of advance against such booking after the first occupation of the project, where the project has been completed and promoter has applied for issuance of completion certificate which is pending before local authority, is outside the purview of Goods and Services Tax,

5.2 As per Section 9(1) of the Central Goods and Services Tax ("CGST") Act, 2017, tax shall be levied on supply' of goods or services or both. Further scope of supply is provided u/s 7 of the said Act, Section 7(2) is relevant and hence reproduced below :-

"Section 7. Scope of supply -

(2) Notwithstanding anything contained in sub-section activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services."

5.3 Thus from above it follows that the activities or transactions specified in Schedule III shall not be regarded as supply of goods or supply of services. Relevant Entry of the said Schedule is reproduced below for ready reference :

"SCHEDULE III [See Section 7]

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."

5.4 Thus above entry clearly provides that sale of building subject to clause (b) of Paragraph 5 of Schedule II shall be regarded as neither supply of goods nor supply of services and hence tax shall not be payable.

5.5 Schedule II of the Central Goods and Services Tax Act. 2017 at Entry 5 stipulates as under :-

"5. Supply of services

The following shall be treated as supply of service, 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 nonrequirement 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.

6. Above provisions thus stipulates that Construction of a building intended for sale to a buyer 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 shall be regarded as supply of service and hence will be subjected to tax.

7. It has thus been the contention of the applicant that even if the completion certificate has not been received by the Builder which in the instant case has been claimed by the applicant to be pending with the authorities, if first occupancy in the premises has taken place, then builders may not be required to charge GST if entire consideration is received after first occupation.

8. Schedule-II of CGST Act, 2017 supra provides as under :

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

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

8.1 Thus effectively the relevance here is on the words "entire Consideration", "after the issuance of completion certificate by the competent authority, where required" and "first occupation". Further the competent authority stands defined in clause (29) of Section 2 of the Central Goods and Services Tax Act, 2017 and the same reads as under :-

(29) "competent authority" means such authority as may be notified by the Government;

Clause (80) of Section 2 of the Central Goods and Services Tax Act provides for the meaning of the words "notified" and the same reads as under :-

(80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

Thus primarily the crucial aspect that decides the tax liability is the date of completion certificate or first occupation, whichever is earlier, issued by a competent authority.

8.2 The applicant, engaged in development of real estate projects has filed the instant application in relation to the construction of a project by the name of City Centre at Juna, Bilaspur.

8.3 Section 191 of "The Chhattisgarh Municipalities Act, 1961" provides as under :-

"(1) Every person who -

(i) erects or re-erects any building; or

(ii) makes any material external alteration in or addition to any existing building; or

(iii) constructs or re-constructs any projecting portion of a building which the Council is empowered under Section 184 to require to be set back or is empowered to give permission to construct or reconstruct;

shall within one month of the completion of the work, deliver to the Council at its office a notice, in writing, of such completion and shall give to the Council all necessary facilities for the inspection of such work.

(2) No person shall occupy or permit to be occupied any such building or use or permit to be used any building or part thereof effected by any such work until permission has been granted by the Council in this behalf in accordance with the bye-laws made under this Act :

Provided if the Council fails, within A period of fifteen days after the receipt of notice completion under sub-section (1), to communicate its refusal to grant such permission, such permission shall be deemed to have been granted."

8.4 Section 301 of "The Chhattisgarh Municipal Corporation Act, 1956", provides as under :-

"Completion certificate and permission to occupy or use. -

(1) Every person who -

(i) erects or re-erects any buildings; or

(ii) makes any material external alteration in or addition to any existing building; or

(iii) constructs or re-constructs any projecting portion of a building which the Commissioner is empowered under Section 305 require to be set back or is empowered to give permission to construct or re-construct;

shall within one month of the completion of the work deliver to the Commissioner at his office a notice in writing of such completion and shall give to the Commissioner all necessary facilities for the inspection of such work.

(2) Within seven days after the receipt of the said notice the Commissioner shall depute an officer to commence the inspection of work.

(3) Within seven days from the date of commencement of such inspection the Commissioner shall -

(a) give permission for the occupation of the building erected or for the use of the part of the building re-erected; or

(b) refuse such permission in case such erection, construction or re-construction is in contravention of any provision of this Act or any rule or bye-law made thereunder or any other enactment for the time being in force.

(4) No person shall occupy or permit to be occupied any such building or use or permit to be used any part affected by the re-erection of such building-

(a) until the permission referred to in clause (a) of sub-section (3) has been granted in the manner prescribed by bye-laws;

(b) unless the Commissioner has failed for fifteen days after the receipt of notice of completion to intimate his refusal to grant the said permission."

8.5 In the aforesaid context, taking into consideration the aforesaid contentions made by the applicant that the Completion certificate is pending authorities. a reference in this regard was made to the Commissioner, Municipal Corporation, Bilaspur vide Letter No. 8313, dated 25-7-2019 to ascertain the status of building completion certificate as applied by the applicant. In response to the above under their Letter 188/...../...../2019-20, dated 21-08-2019, the office of the O/o Municipal Corporation, Bilaspur, has informed as under (The scanned copy of the same is pasted herewith)

8.6 Thus it gets amply evident from point no. 9 of the above letter by the responsible authorities of Municipal Corporation that building completion certificate as desired by the applicant, has not been issued by the Municipal Corporation, Bilaspur (C.G.) owing to non-compliance of the legal provisions and for Want of procedures by the applicant, as mandated under Section 301 of Municipal Corporation Act, 1956 and Rule 98 of Land Development Rules, 1984.

8.7 In view of the above, the date of issuance of completion certificate by the competent authority in the instant case, shall be considered as the date of completion of the property and if the entire amount of consideration has been received after such date of completion, then that would not be treated as a taxable service. If any part of the Consideration is received before such date. then the transaction would be treated as a supply of service as per clause 5 of Schedule II to the GST Act and attracts the levy of GST.

It is also noteworthy to observe here that occupancy of any unit, without observance of all procedures as mandated under the statute or any other law/rule for the time being in force leading to non-issuance of such mandatory completion certificate by the Competent authority, can in no way be termed as a valid occupancy, especially in the wake of clarifications supra, issued by the competent jurisdictional authorities. Although this authority is not in judgment on the legality or otherwise of the occupancy of the unit by any of the occupant without the issuance of the said completion certificate by the competent authority, it follows from the response by the authorities of Municipal Corporation supra. that this is against the letter and spirit of law in force. It also needs mention here that occupancy of the residential units without observance of the measures as mandated under the law can in no way be termed as valid/ bona fide occupancy, especially when the competent authorities are seized with the matter for want of observance of legal procedure by the applicant. Allowing the occupants to such occupancy of the units by the applicant, without observance of procedures as mandated under the law can also be inferred as a modus operandi to circumvent the procedures to avoid exigibility to tax. The aforesaid letter from the authorized officers of Municipal Corporation,

Bilaspur makes it abundantly clear that the said completion certificate is a legal requirement and is issued only on compliance, certifying therein that the building is fit to be occupied thereby essentially declaring that the building construction has reached a stage where all bye-laws and features of sanctioned plan have been accomplished or completion has taken place and that the same is ready for safe occupancy.

9. In View of the deliberations and discussions as above, we pass the following order :

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act,2017)

10. Thus in view of the facts and circumstances of the issue in hand, the ruling so sought by the applicant is answered as under,-

(i) The date of issuance of completion certificate by the competent jurisdictional authority in the instant case shall be considered as the date of completion of the property and if the entire amount of consideration has been received after such date of completion, then that would not be treated as a taxable service. If any part of the consideration is received before such date, then the transaction would be treated as a supply of service as per clause 5 of Schedule II to the GST Act, attracting the levy of GST. The first occupation as claimed by the applicant in the instant case, without having the mandatory completion certificate by the jurisdictional authorities is found to be devoid of any merit.

(ii) The completion certificate for the said project of the applicant to be issued by the competent jurisdictional authority is pending owing to non-compliance of the legal provisions and for want of procedures by the applicant, as mandated under Section 301 of the Municipal Corporation Act, 1956 and Rule 98 of the Land Development Rules, 1984, as discussed above. Accordingly it is found that the date of issuance of completion certificate by the competent jurisdictional authority in the instant case shall be considered as the date of completion Of the property and if the entire amount of consideration has been received after such date of completion, then that would not be treated as a taxable service. If any part of the consideration is received before such date, then the transaction would be treated as a supply of service as per clause 5 of Schedule II to the GST Act, attracting the levy of GST. The first occupation as claimed by the applicant in the instant case, without having the mandatory completion certificate by the jurisdictional authorities is found to be devoid of any merit.

Place:- Raipur

Date:- 26.03.2019

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-Sd-

Seal:-

Kalpana Tiwari
(Member)

Rajesh Kumar Singh
(Member)