



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,



HARYANA VANIJYA BHAWAN, PLOT NO I-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)

ADVANCE RULING NO.HAR/HAAR/2018-19/ 26

(In Application No.: 26 dated 23.08.2018)

Name & Address of the Applicant	:	M/s Ashiana Housing Ltd., 8 th Floor, Block- One, Vatika Business Park, Sohna Road, Sector-49, Gurugram (South), Haryana.
GSTIN of the Applicant	:	06AADCA9093P1Z1
Date of Application	:	23.08.2018
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	(c) determination of time and value of supply of goods or services or both (e) determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	23.10.2018
Present for the Applicant	:	Sh. Amar Pratap Singh, Advocate (PoA) Sh. Ankit Awal, Advocate (PoA)

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND SUB-SECTION (4) OF SECTION 98 OF THE HARYANA GOODS AND SERVICES TAX ACT, 2017

Factual Background

1. M/s Ashiana Housing Limited [hereinafter referred to as the "Applicant"], having registered address at 8th Floor, Block-One, Vatika Business Park, Sohna Road, Sector-49, Gurgaon-122018 (Haryana) and correspondence address at Ashiana Housing Limited, 304, Southern | Park, District Centre, Saket, New Delhi- 110017 is a registered taxable person having GSTIN - 06AADCA9093P1Z1.
2. The Applicant is a real estate developer and is engaged in the business of development of residential and commercial properties. For sale of developed property, the Applicant enters into agreements with buyers and is paying GST on consideration received from buyers, where arrangement with buyers is entered into before receipt of completion certificate, by classifying its services under SAC 995411 - 'Construction services of single dwelling or multi dwelling or multi-storied residential buildings'.
3. The Applicant is, inter-alia, recovering statutory charges, i.e. External Development Charges and Infrastructural Development Charges (EDC and IDC), from buyers on

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Excise & Taxation Commissioner (GST)
Haryana, Panchkula

actual basis, which is paid by it to respective authorities as required under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (for short 'HDRUA Act').

4. The clause (g) of section 2 of the HDRUA Act defines "external development works" as under:

(g) external development works" shall include any or all infrastructure development works like water supply, sewerage, drains, provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and/or any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area.

The clause (hha) of section 2 of the HDRUA Act defines "infrastructure development charges" as under:

(hha) "infrastructure development charges" include the cost of development of major infrastructure projects.

The clause (jj) of section 2 of the HDRUA Act defines "major infrastructure projects" as under:

(jj) "major infrastructure projects" include national/state highways, transport, Major water supply scheme and power facilities etc.

5. The Applicant vide his application dated 23.08.2018 has sought advance ruling on the following issue / question :-

"Whether the amount of statutory charges i.e. External Development Charges and Infrastructural Development Charges, recovered by the Applicant from buyers and paid further to respective government authorities will form part of value of taxable supplies being made by the Applicant?"

RECORDS OF PERSONAL HEARING / PROCEEDING HELD ON 19.11.2018

6. Opportunity of personal hearing was granted to the applicant on 23.10.2018 and the proceedings on behalf of applicant were attended by Sh. Amar Pratap Singh, Advocate and Sh. Ankit Ahwal, Advocate (Power of Attorney). The submissions made by the Applicant in their application for advance ruling as well as during the personal hearing on 19.11.2018 were duly considered. Since, the question submitted for ruling was covered by clauses (c) and (e) of sub-section (2) of section 97 of the CGST/HGST Act, 2017, the application was admitted.

7. After considering the question / issue on which advance ruling is sought by the applicant, relevant facts having bearing on the question, the statement containing the applicant's understanding of law in respect of the question and after detailed


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Joint Commissioner for Central Goods and Services Tax
Gurgaon

discussion with the representatives of the company, judgment was reserved on merit in the matter, which is released today.

DISCUSSIONS AND FINDINGS OF THE AUTHORITY

8. The applicant has submitted that as per their understanding, the recovery of statutory charges, i.e. External Development Charges (EDC) and Infrastructural Development Charges (IDC), by it from buyers cannot be said to be the consideration / price payable for the services supplied by the Applicant and therefore are not includible in value of taxable supplies made by the Applicant. In this regard, the plea submitted by the Applicant is as under:-

8.1 As per the above provisions of the HDRUA Act, the amount of EDC and IDC are payable by the developer mandatorily. These are in nature of statutory charges payable under the HDRUA Act, which are as such recovered from the buyers on actual basis. Such charges are not towards rendition of any service by the Applicant, but are towards the mandatory charges payable under the HDRUA Act. The purpose of such charges is the overall development of the state, and not for provision of any service to the buyer as a service recipient.

8.2 The Applicant has further referred to sub-section 15(1) of the HGST/CGST Act, 2017 which provides that the value of a taxable supply of services shall be the transaction value, i.e. the price actually paid or payable for the said supply of services, where the supplier and recipient are unrelated and the price is the sole consideration for the supply. The Applicant has argued that inherent in Section 15(1) is the presence of contractual understanding of parties, which determines the price payable by the recipient to the supplier for the supply. It is the price paid or payable by the recipient to the supplier for the supply, which constitutes value of a taxable supply being the transaction value. The Applicant has submitted that to similar effect was the concept of consideration under the erstwhile Section 67 of the erstwhile Finance Act, 1994, which provided for valuation of taxable services for purposes of Service Tax law. Interpreting the same, Hon'ble Supreme Court in *Commissioner v. Bhayana Builders Private Limited, 2018 (10) GSTL 118 (SC)* held that it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act.

8.3 The applicant has further argued that the definition of 'consideration', as contained in section 2(31) of the CGST Act, 2017, needs to be understood in common parlance. In common parlance, the concept of 'quid pro quo' is inherent in 'consideration', i.e. something in return. Thus, consideration is the benefit bargained and agreed between the parties.


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8.4 The applicant has further submitted that expression, i.e. price actually paid or payable being the transaction value, used in Section 4(3)(d) of the Central Excise Act, 1944 came up for interpretation before the Hon'ble Supreme Court in Purolator India Limited vs. Commissioner, 2015 (323) ELT 227 (SC), wherein it was held that the expression "actually paid or payable for the goods, when sold" only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of "transaction value" is therefore the agreed contractual price.

8.5 The Applicant has also relied upon the Hon'ble Supreme Court judgment case of in case of Commissioner v. Super Synotex (India) Limited, 2014 (301) ELT 273 (SC) where the above definition of 'transaction value' under Section 4(3)(d) of the Central Excise Act, 1944 was interpreted by the Apex Court, as under:

"The amount paid or payable to the State Government towards sales tax, VAT, etc. is excluded because it is not an amount paid to the manufacturer towards the price, but an amount paid or payable to the State Government for the sale transaction, i.e., transfer of title from the manufacturer to a third party."

8.6 It is also submitted by the Applicant that the Hon'ble Supreme Court in DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622 has acknowledged that the cost of development works will be raised from the plot holders.

8.7 It is submission of the Applicant that he is only acting as a pure agent in respect of these charges. The EDC charges, as defined under the HDRUA Act, are paid for development of the area in the periphery of the colony and not inside it (which pertains to internal development charges). The IDC charges, as defined under the HDRUA Act, are also paid for major infrastructural work in the state as such. These charges are levied and collected under the HDRUA Act. As the developer is the licensee for development of colonies, the said amounts are collected from buyers through the developer-licensee. The role of a developer is similar to that of a pure agent, as envisaged under Rule 33 of the Central Goods & Service Tax Rules, 2017. The concept of pure agent was also provided under Rule 5(2) of the erstwhile Service Tax (Determination of Value) Rules, 2006. It was for this reason that vide Circular No. 334/1/2010-TRU, dated 26.02.2010, it was clarified that development charges, to the extent they are paid to State Government or local bodies, would be excluded from the taxable value levy for Service Tax purposes.

9. After careful consideration of the submissions put forward by the applicant, the observations of the authority are as under:-

9.1 The advance ruling sought by the Applicant is regarding determination of value of supply of services. The provisions for determination of value of supply under the CGST/HGST Act, 2017 are provided under section 15 of the said Acts. The clause (a)



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Commissioner (GS)
Panchsala

of sub-section (2) of section 15 of the said Acts provides that *the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.*

- 9.2 The Applicant has submitted that to similar effect was the concept of consideration under the erstwhile Section 67 of the erstwhile Finance Act, 1994, which provided for valuation of taxable services for purposes of Service Tax law. Interpreting the same, Hon'ble Supreme Court in *Commissioner v. Bhayana Builders Private Limited, 2018 (10) GSTL 118 (SC)* held that it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. In this regard, it is observed by the committee that the provisions regarding value of supply under CGST / HGST Act, 2017, as contained in section 15 of the said Acts, are patently different from the provisions of Section 67 of the erstwhile Finance Act, 1994 that were applicable for determination of value of supply of services in the pre-GST regime. As discussed above, the clause (a) of sub section (2) of section 15 specifically provides that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force. So, the facts of the case are patently distinguishable. Likewise, the judgment of Hon'ble Apex Court in case of *Purolator India Limited vs. Commissioner, 2015 (323) ELT 227 (SC)* is not applicable. Due to this reason only, the judgment of Hon'ble Supreme Court issued in case of *Commissioner v. Super Synotex (India) Limited, 2014 (301) ELT 273 (SC)*. It is pertinent to mention here that under the provisions of Haryana Value Added Tax Act, 2003 the excise duty paid on any goods was added to the value of goods for determining the sales price and VAT was accordingly leviable on the gross price after addition of excise duty/service tax, as applicable.
- 9.3 It is further submitted in the application that the applicant is only acting as a pure agent in respect of these charges, as envisaged under Rule 33 of the Central Goods & Service Tax Rules, 2017. It is also submitted in the application that the concept of pure agent was also provided under Rule 5(2) of the erstwhile Service Tax (Determination of Value) Rules, 2006. It was for this reason that vide Circular No. 334/1/2010-TRU, dated 26.02.2010, it was clarified that development charges, to the extent they are paid to State Government or local bodies, would be excluded from the taxable value levy for Service Tax purposes. In this regard, authority has observed from the perusal of the cited circular that it nowhere states that the role of developer is of pure agent. The conditions of pure agent as contained in rule 33 are not satisfied in the circumstances mentioned by the applicant as the first condition requires that the pure agent should make payment to the third party on authorisation of recipient of service is not met.


Sanjay

Dr. E. S. Lakshmi, Tax Consultant (GST)
Helping Professionals

10. In view of the foregoing, we rule as under:

RULING

The amount of statutory charges i.e. External Development Charges and Infrastructural Development Charges, recovered by the Applicant from buyers and paid further to respective government authorities will form part of value of taxable supplies being made by the Applicant.

Ordered accordingly.
To be communicated.
Dated: 22.11.2018
Panchkula.

Sangeeta
(Sangeeta Karmakar)
Member CGST

Certified true Copy
[Signature]
Addl. Excise & Taxation Commissioner (GST)
Haryana, Panchkula

[Signature]
(Vijay Kumar Singh)
Member SGST

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Copy to

1. Deputy Excise & Taxation Commissioner (ST), Gurugram (North)
2. The Assistant Commissioner of Central Tax Division Gurugram, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana
3. The Commissioner of CGST Gurugram Commissionerate, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.