

**GUJARAT AUTHORITY FOR ADVANCE RULING,
 GOODS AND SERVICES TAX,
 D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
 AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/52/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/23)

Date: 15-09-2021

Name and address of GHB	:	M/s. Gujarat Hira Bourse, 18, GIDC, Icchapore village, Surat, Gujarat. 394510.
GSTIN of GHB	:	24AACCG0717B1ZE
Date of application	:	28-06-21.
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, under which the question(s) raised.	:	(b)Applicability of a notification issued under the provisions of this Act. (d)Admissibility of input tax credit of tax paid or deemed to have been paid.
Date of Personal Hearing	:	12-08-21.
Present for GHB	:	Shri Hardik Modh, Shri Nitin Gheewale, Shri Arjun Akruwala

BRIEF FACTS:

M/s. Gujarat Hira Bourse (hereinafter referred to as GHB for sake of brevity) submits that it is Not-for-Profit Company incorporated under Section 25 of the erstwhile Companies Act, 1956 which is now the Section 8 of the Companies Act, 2013 and that it is registered under Section 12A of the Income Tax, 1961, engaged in the development of Gems and Jewellery Park.

2. GHB submits that its main object is to establish a Bourse for promotion of exports of Diamond, Gems, Pearl and Jewellery from India and provide for this purpose, an infrastructure and other facilities in India for Indian and overseas buyers and sellers of Diamond, Gems, Pearl and Jewellery; that within its objects, to develop India as Modern and sophisticated Diamond market, GHB has taken the activity of developing a superlative Gem and Jewellery park in Surat, which has traditionally been the head-quarter of Diamond polishing, trading and export industry in Gujarat; that for the fulfilment of its objects, GHB has acquired pieces of land within the village limits of Ichchapore-Bhatpore of Surat District vide Lease Deed executed between the Gujarat Industrial Development Corporation (GIDC) as owner and GHB as Lessee, for a period of 99 years which is further sub-leased based on plots allotted to its members/applicants; that to achieve the intended purpose, GHB receives contribution from its members who are well known Gem and Jewellery exporters which is used towards the Infrastructure cost of the facilities like road, drainage, park, water supply, etc. for the members/applicants as per their booked area; that the members' contribution towards the infrastructure

cost includes building of roads, storm water drainage, water distribution network, sewage network, landscape infrastructure, cable network, ESR water tank, sump, pump house, control room, sub-station, minor bridge on canal, approach road, electrical and power installation and fittings and street light infrastructure, Administrative cum Custom House Building, Compound wall etc.

3. GHB further submits that the amendment to Section 7(1) of the CGST Act, 2017 by insertion of new sub-clause(aa) through Finance Budget, 2021, has culminated the essence of Doctrine of Mutuality and upturned the hypothesis that the income which falls within the purview of the doctrine of mutuality is exempt from taxation; that this is despite of perpetuity of the right to use the land and other allied conditions that form part of the agreement between GIDC, which bestows sufficient justification for the amount of infrastructure cost contributed by the members to be exempt from tax under Central GST Act, 2017, the perceptible state of affairs has hauled this Not-for-Profit Company towards payment of GST with retrospective effect from 1st July, 2017 till date; that pursuant to the above, GHB has paid GST along with interest, under Protest on the contribution by members towards Infrastructure cost with retrospective effect.

4. GHB has submitted as follows:

- (i) GHB being a not-for-profit company incorporated under Section 8 of the Companies Act, 2013(section 25 of erstwhile Companies Act, 1956), is a body Corporate, Limited by Guarantee, which collects one time infrastructure cost from its members to develop infrastructure for its members to achieve its intended purpose as mentioned under the facts of the case.
- (ii) This immovable property leased by GIDC to GHB is subject to conversion into freehold land but has been leased by the GIDC with an option to convert the leasehold land into freehold land subject to an obligation for the company to operate for 15 years continuously and then only the demised premises can be converted into freehold land. It is to be noted that after this conversion to free hold superior rights shall accrue to GHB and GHB will become the owner of the land. This shall be subject to payment of premium which shall be 30% of the amount determined by the GIDC at the time of allotment of land or the value fixed as per new 'Jantri' (a ready reckoner for stamp duty being used by the revenue department of the state) whichever is higher. Considering the above, the ownership of the demised land shall be transferred to GHB and ultimately the ownership of the

demised land shall be transferred to the respective members. Consequently, it indicates that there shall be complete and total transfer of all rights in the property and the seller shall retain no rights in the transferred property.

- (iii) As per the MOU executed with GIDC, the land is to be transferred to GHB after 15 years, for which the process is already initiated. Therefore, it can be inferred that the initial transaction can be termed as pre-sale arrangement. Like in any executed sale transaction, there are two steps viz., Agreement to sale and actual sale through conveyance deed, by whatever name called, in the current transaction too, the activity of allotment of land initially, subject to permanent transfer after 15 years was one of the condition of sale/transfer of the land and not a separate transaction. Hence, it is clear that it is a sale/transfer of land and not leasing of the land.
- (iv) The transaction between GIDC and GHB was of 'Conditional sale of land' and the intention was not lease of land for earning rent income. Here it is significant to look at the substance of the transaction rather than just the legal form.
- (v) The said long term lease and sublease for the long term period is taxed under Gujarat Stamp Duty Act, 1958 at prevailing stamp duty rates equivalent to the sale of property (calculated on the 'Jantri value' of the land or consideration whichever is higher) treating the long term lease transaction as transfer of immovable property at the stamp duty amount. Consequently, it is construed that Stamp Duty is levied on the transaction and this is not a transaction registration or documentation procedure fee. The registration fees are paid separately for registration of the said transaction. Hence, it can be construed that the law treats the transaction of long term lease similar to the sale of property and consequently, the treatment under GST law should be similar to that of sale of property only. Considering the said transaction as supply of service and taxing the same would be a case of double taxation.
- (vi) Attention is drawn towards doctrine of part performance in English law. It is also known as 'equity of part-performance which is defined under section 53A of the Transfer of Property Act, 1882 and has been a decided principle under section 2(47) of the Income Tax Act, 1961.

Section 2(47) in The Income- Tax Act, 1961

" Transfer", in relation to a capital asset, includes,-

- (i) the sale, exchange or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment;]⁶ or]

(iva) the maturity or redemption of a zero coupon bond or

(v)⁷ any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1.- For the purposes of sub-clauses (v) and (vi)," immovable property" shall have the same meaning as in clause (d) of section 269UA;]

Explanation 2 – For the removal of doubts, it is hereby clarified that disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.

Transfer of Property Act, 1882

[53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2^{***}, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed there for by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

- (vii) It is a settled principle that the long term lease shall be considered as transfer of property and has been adjudicated on similar principle.
- (viii) Without prejudice to the above, the Contribution by members towards Development Cost of Bourse for the promotion of Exports of Gem and Jewellery would be exempt under Entry No.41(Heading 9972) of Notification No.12/2017-Central Tax(Rate) dated 28-6-2017:
 - (a) It is onetime upfront payment towards Infrastructure Development.
 - (b) The lease is for industrial development of infrastructure or finance business.
 - (c) The demised land is located in industrial or finance business area.

As per Gujarat Industrial Development Act, 1962 the definition of Industrial area or Industrial Estate is reproduced as follows:

Section 2(g)

'Industrial area' means any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated;

Section 2(h)

'Industrial estate' means any site selected by the State Government, where the Corporation builds factories and other buildings and makes them available for any industry or class of industries.

- (d) The demised premises is owned by GIDC which has been leased to GHB vide Principal lease executed between GIDC and GHB. This demised premises is developed by GHB from the funds received from the members to whom the land has been sub-leased in accordance with the plots allocated to each of the members.
- (ix) GHB is not a developer, but merely an SPV, which has been constituted for and on behalf of the members of Gems and Jewellery industry. The intention of Government is to provide a land to the business units, but it is not practically feasible for the Government to deal with each businessman separately. Consequently, just to facilitate the Government and businesses, GHB-as SPV has been incorporated.
- (x) In furtherance to point no.(9) above, it is to state here that the sub-lease of demised property by the GHB to its property members is in accordance with the terms and conditions set forth in principal deed with GIDC shall mutatis mutandis apply to sub-lease creating a deeming fiction as if the deed is being executed between GIDC and sub-lease. The purpose of the Government to promote the industry can endure and sustain only if intention of the legislature to exempt certain category of persons (State Government Industrial Development Corporations or undertakings or by any other entity having 20% or more ownership of Central Government, State Government, Union territory) from tax for a specific purpose is to be applied to other person with similar purpose as well. Pursuant to the above, the supplier of land for all purpose is deemed to be GIDC.
- (xi) The word 'lease' and/or 'sub-lease' mentioned in various agreements/documents in relation to these transactions are merely for the understanding of the common public. However, it does not reflect the true character or essence of the transaction. Consequently, the transaction is between businesses and the GIDC, wherein the GHB is merely a facilitator or 'collective voice' of entire business community holding/desirous of holding the land in this park.
- (xii) Taxing the contribution received from the property member would be akin to cascading effect where the funds received for the purpose of development of infrastructure from members would be taxed and

again when these funds would be utilized, GST shall be paid on the material that would be used for the said development purpose. This contribution received from the property members is the financial support to the Not-for profit company to develop the infrastructure of the Bourse and manage its affairs for the members.

- (xiii) Without prejudice to the above, the one-time infrastructure cost collected by GHB from its members being applied towards development of infrastructure cost for the members, the rule of doctrine of mutuality/principle of mutuality is applicable and since the infrastructure cost so collected is applied as contribution towards the project of developing Bourse. The doctrine of mutuality is established on the concept that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as supply and taxable.
- (xiv) The contribution towards infrastructure cost by the property members of GHB has been applied by the Company towards the Project and the same has never been recognized as revenue in the books of accounts of the Bourse. The contribution has been sitting as liabilities in the Balance Sheet while the infrastructure developed by application of these funds form part of the Fixed Assets in the Balance Sheet. Consequently, this is a reimbursement of expenses incurred by GHB for its property members.
- (xv) GHB submits that contribution received from the property members is for acquisition of access to the land and is not a rental, hence not perpetual in nature. Moreover, this is procurement of access to the immovable property supplied by GIDC by the property members of GHB to develop the premises for their own business purpose.
- (xvi) The indenture between GHB and its members is merely for allotment of Industrial plots/premises to grant occupancy rights of the land supplied by GIDC to the property member of the company.

5. GHB has submitted the copies of the following documents:

- (a) Registration Certificate issued to Gujarat Hira Bourse u/s. 12A of the Income Tax Act.
- (b) Memorandum & Articles of Association of Gujarat Hira Bourse along with license u/s. 25 of the Companies Act, 1956.
- (c) Section 7 of the CGST Act, 2017.
- (d) Relevant Extracts of the Finance Act, 2021.
- (e) Advance Ruling decision dated 22-4-2021 given by the Karnataka Advance Ruling Authority in the matter of M/s. Bowring Institute.
- (f) State of West Bengal & Others vs. Calcutta Club Limited and Chief Commissioner of Central Excise and Service & Others [2019(29) GSTL.545 (SC)].
- (g) Entry No.41 of the Notification No.12/2017-CGST (Rate) dated 28-6-2017 as amended from time to time.

(h) Extract of the Additional Agenda of the 22nd GST Council Meeting.

6. GHB has submitted the following:

i. Lease Deed between GIDC and GHB on 27-3-08 for Plot Nos.X2, X2A & X3 (totally admeasuring 2,30,970 sq. Mtrs. Land), known as DTA at Ichchapore, Surat, Gujarat. The cost of land has been worked out at Rs.225/- per sq.mtr. and accordingly the total cost of the land has been worked out to Rs.5,19,68,250/- and on payment of the said amount of Rs,5,19,68,250/-, the demised land has been leased to GHB for a term of 99 years computed from 22-4-04. As per the lease deed, the land is allotted on 'as it is where it is' basis for the purpose of setting up the Gem & Jewellery Park on the demised premises. GHB has also been given the mandate to sub lease parts of developed plots to the actual users and GHB shall make available to GIDC, a list of actual users of developed plots in the industrial park. GHB is also required to pay to the GIDC, an amount of Rs.277/- annually on or before the 31st day of March in each year towards rent of the demised land.

ii. Lease Deed between GIDC and GHB on 30-4-07 for Plot Nos.X3A (totally admeasuring 7,38,797 sq. Mtrs. Land, at Ichchapore, Surat, Gujarat. The cost of land has been worked out at Rs.225/- per sq.mtr. and accordingly the total cost of the land has been worked out to Rs.16,62,29,325/- and on payment of the said amount of Rs.16,62,29,325/-, the demised land has been leased to GHB for a term of 99 years computed from 22-4-04. As per the lease deed, the land is allotted on 'as it is where it is' basis for the purpose of setting up the Gem & Jewellery Park Special Economic Zone on the demised premises. GHB can also sub lease parcels of developed plots to the entrepreneurs for setting up their units in the SEZ/Industrial park. GHB is also required to pay to the GIDC, an amount of Rs.884/- annually on or before the 31st day of March in each year towards rent of the demised land.

(i) Allotment of Industrial plot/premises made between GHB and M/s. P. Hirani Exports LLP, Mumbai made on 1-6-21: A plot measuring 1680 square metres has been sub leased/allotted to M/s. P.Hirani Exports LLP, Mumbai by GHB in the Gem and Jewellery Park (referred to in Lease Deed detailed at (i) above and referred to as principal lease deed herein) for a price of Rs.45,57,553/-(Price Rs.2,712.83 per square metre) subject to the terms of the Principal lease) but not in any case beyond the period of principal lease deed. M/s P.Hirani Exports LLP is also required to pay an annual lease rent at the rate of Rs.2/- per square metre to GHB.

(ii) Allotment of Industrial plot/premises made between GHB and M/s. Sonani Jewels pvt.ltd., Surat made on 2-6-2021: A plot measuring 837 square metres has been sub leased/allotted to M/s. Sonani

Jewels pvt.ltd., Surat by GHB in the Gem and Jewellery Park (referred to in Lease Deed detailed at (ii) above and referred to as principal lease deed herein) for a price of Rs.1,00,10,500/-(Price Rs.11,960/- approx. per square metre) subject to the terms of the Principal lease) but not in any case beyond the period of principal lease deed. M/s Sonani Jewels pvt.ltd., Surat is also required to pay an annual lease rent at the rate of Rs.2/- per square metre to GHB.

7. Question on which Advance Ruling sought?

- a. Whether the contribution paid/payable by the members towards Development Cost of the Bourse amounts to supply liable to Goods and Service Tax?
- b. Whether the said Contribution by members towards Development Cost of Bourse for the promotion of Exports of Gem and Jewellery would be exempt under Entry No.41(Heading 9972) of Notification No.12/2017-Central Tax(Rate) dated 28-6-2017 (hereinafter referred to as the said Notification)?

41	<i>Heading 9972</i>	<i>One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.</i>	<i>NIL</i>	<i>NIL</i>
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- c. Once the captioned amendment to section 7(1) of the CGST Act, 2017 is notified by the Central Government, if the liability to pay tax shall accrue with retrospective effect from 1st July, 2017. Whether, interest would be payable on the accrued Tax liability for the said period from 1st July, 2017 upto the date on which the amendment is notified?

8. GHB has submitted photocopies of the letters dated 24-5-2021, 8-6-2021 and 1-7-2021 addressed to the Divisional Officer, GST, Divn-7, Range-15, Unit-57, Surat intimating the payment of tax paid along with interest under duress and protest on the amount of contribution which they have received from their members (being well known Gem and Jewellery exporters) towards development cost that includes building of roads, storm water drainage, water distribution network, sewage network, landscape infrastructure, cable network, ESR water tank, sump, pump house, control room, sub-station, minor bridge on canal, approach road, electrical and power installation and fittings and street light infrastructure, administrative cum custom house building, compound wall etc. GHB has informed that they have tendered payment of the tax and interest to the credit of the Government pursuant to the recently proposed imperative amendment to Section 7(1) of CGST Act, 2017. GHB has submitted copies of relevant challans along with the aforementioned letters.

Revenue's Submission

9. The Assistant Commissioner of State Tax, Unit-57, Surat vide letter dated 9-8-2021 has submitted as follows:

- (1) Whether the activity/service in respect of which an Advance Ruling has been sought is an ongoing activity or a proposed one?

Ans: The activity in respect of Advance Ruling sought is ongoing activity as the dealer has paid the tax of the transactions as per Section 7(1)(aa) of the CGST Act, 2017 which has been inserted vide Finance Act, 2021.

- (2) Report in terms of proviso to sub section (2) of Section 98 of the Act. Whether the questions/issues raised in the application are already pending or decided in any proceedings in the case of GHB.

Ans: No proceedings are initiated against the dealer.

- (3) Whether the application can be admitted for granting Advance Ruling? If not give reasons?

Ans: Yes.

- (4) Comments on Merits.

Ans: Section 7(1)(aa) is inserted through Finance Budget 2021 which has retrospective effect from 1-7-2017. The inserted subsection (aa) reads as follows:

'the activities or transactions, by a person, other than an individual to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.'

And also as per Circular No.101/20/2019-GST dated 30-4-2019 of Department of Revenue, Ministry of Finance, reads as follows:

Upfront amount(called as premium, salami, cost price, development charges or by any other name) payable in respect of service by the way of granting of long term lease(of thirty years or more) of industrial plots for development of infrastructure for financial business provided by State Government Industrial Development Corporations or undertakings or by other entity having 50% or more Ownership of Central Government, State Government, Union Territory to the Industrial Units or Developers in any industrial or Financial Business area is exempted from Tax as per SAC 9972.

It means that the Long Term Lease is granted by Government Authority is exempted from tax but if the lease is granted by other than the authority which is not mentioned in the above para is taxable under the GGST Act, 2017.

Personal Hearing

10. Shri Hardik Modh, Advocate, Shri Nitin Gheewale and Shri Arjun Akruwala appeared for the virtual hearing (Video Conferencing) on 12-8-2021 and reiterated the contents of the application.

FINDINGS

11. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

12. We have carefully considered all the submissions made by GHB and the Revenue.

13. We find the following facts emerging from the submissions made before us:

- i. **GIDC** has leased Plot X2,2A,3 to GHB at **Rs 225 per sqm**, for a period of 99 years, GHB to pay annual rent of Rs 277.
- ii. **GIDC** has leased Plot X3A to GHB at **Rs 225 per sqm**, for a period of 99 years, GHB to pay annual rent of Rs 884.
- iii. **GHB** has leased a plot to M/s P Hirani at **Rs 2712.83 per sqm**, for a total 1680 sqm, totalling the price to Rs Rs.45,57,553; with an annual lease rent at the rate of Rs.2 per sqm per annum. M/s Hirani shall reimburse expense to GHB, made for maintenance, upkeep, security service of officials and other administration of the Gem & Jewellery Park and for the common benefits, easements and infrastructural facilities like road, street lights etc.
- iv. **GHB** has leased a plot to M/s Sonani Jewels at **Rs 11,960 per sqm**, for a total of 837 sqm, totalling the price to Rs 1,00,10,500; with an annual lease rent at the rate of Rs.2 per sqm per annum. M/s Sonani shall reimburse expense to GHB, made for maintenance, upkeep, security service of officials and other administration of the Gem & Jewellery Park and for the common benefits, easements and infrastructural facilities like road, street lights etc.
- v. Vide subject application, GHB refers the amount of Rs 45,57,553 and Rs 1,00,10,500 as reflected at sr no iii & iv of this para as Development Cost received by its members/ applicants towards the infrastructure/ Development Cost of the Bourse and it is this amount for which Ruling has been sought by GHB. We, therefore, pronounce our Ruling regarding taxability on this specific amounts and not on the other considerations between GHB and its members/applicants.

13.1 We refer to the definition of Supply as per Section 7 CGST Act which reads 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, license, rental, **lease** or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business**;

13.2 We also refer clause 2 (a) of Schedule II which read as follows :

ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES'

2 (a) any lease, tenancy, easement, licence to occupy land is a supply of services

13.3 Further, as per the inclusive definition of business, as per Section 2(17) CGST Act, Business includes-

- a. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, **whether or not it is for a pecuniary benefit;**
- b. any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- c. any activity or transaction in the nature of sub-clause(a), whether or not there is volume, frequency, continuity or regularity of such transaction.....
- e. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;.....

14. We note that GHB is incorporated under the Section 25 of the erstwhile Companies Act, now Section 8 of Companies Act, 2013 (CIN U91110GJ2000NPL039065). As per the GST scheme of law, with specific reference to Section 2(17)(a),(e) CGST Act, we find that the activity by GHB to its members, whether or not it is for pecuniary benefit, falls within the definition of 'business'.

15. On careful reading of the copies of the two deeds entered between GHB and GIDC, it is forthcoming that the deeds pertain to leasing of subject plots by GIDC to GHB for a period of 99 years and it is not sale of land. GHB's contention that it has paid stamp duty on lease deed does not change the scope of supply of service into sale of land. The supply is Leasing services in present case. The procedure of registration of purchase of land and applicable stamp duties is different from the procedure of lease of land. Further, we note that GHB is aware of this fact that subject activity is leasing service because GHB itself argues for the applicability of entry 41 to said Notification, wherein the description of services is long term leasing of plots for thirty years or more.

16. We draw our attention to Entry No. 41 of Notification No. 12/2017-CT (R) dated 28-6-17 which reads as follows:

Sr.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (percent)	Condition
41	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.”;	NIL	NIL

		<i>Explanation.- For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.”.</i>		
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16.1 On reading the words of the said entry of Notification, we find that the exemption is available for subject leasing of plots by GIDC to GHB for the period of 99 years. The description of services, in subject matter, may be read as long term leasing services of the subject plots by GIDC to GHB (Developer).

16.2 We find that subject entry 41 to said Notification provides exemption for providing said services by GIDC to GHB (developer). In this regard, we find no merit in the contention of GHB, that GIDC has supplied services to industrial units, such as M/s. P. Hirani Exports LLP and M/s. Sonani Jewels Pvt. Ltd. for it is on record that GIDC has provided subject services to GHB and not to industrial units. It is also on record that GHB has supplied subject leasing services to industrial units such as M/s. P. Hirani Exports LLP and M/s. Sonani Jewels Pvt. Ltd. Now that GHB is not a State Government Industrial Development Corporations or Undertakings, *also that GHB is not having 50 per cent. or more ownership of Central Government, State Government, Union territory*, we find no merit to extend the scope of exemption granted vide Entry No. 41 to the said Notification to consideration received by GHB. The gist of the findings is condensed into the tabular form as follows:

Sl. No.	Gist of Sr. No. 41 of Not. No. 12/201-CT)R)	Service provider	Service Recipient	Eligibility to exemption
1	Long term leasing of plot by State industrial development corporation	GIDC	GHB(developer)	<ul style="list-style-type: none"> i. GIDC is state industrial development corporation. ii. GHB is developer. iii. Service is long term leasing of plot for 99 years. iv. Consideration exempted.
2		GHB	Industrial units	<ul style="list-style-type: none"> i. GHB is not State industrial development corporation/ undertaking/ entity having 50 % or more ownership of Central Government, State Government, Union territory. ii. Condition of Notification not satisfied. iii. Thereby exemption cannot be granted to GHB.

16.3 The Wording in the said Notification, when clear, plain and unambiguous and only one meaning can be inferred, we are bound to give effect to the said meaning. We give due regard to the clear meaning of words and matter should be governed wholly by the language of the notification. We note the wordings of the Notification and its conditions imposed for satisfaction to merit entry in the

said serial number. We cannot allow any scope for intendment. We find that our view of strict interpretation of the wordings of the said notification is in compliance to the Supreme Court Judgements as follows:

- **2015 (324) E.L.T. 656 (S.C.) [para 31]**
- **2011 (265) E.L.T. 14 (S.C.) [para 10]**
- **1989 (40) E.L.T. 239 (S.C.) [para 11].**
- **1978(2) ELT(J350)(SC) [para 5]**
- **CCE1995 (77) ELT474 (SC) [para 16].**

17. We hold that GHB is not State industrial development corporation and thereby cannot claim eligibility to exemption on consideration received from its applicants.

18. Further, We, *suo-moto*, examine the GST scheme of law in detail and find it worth mentioning the entry No. 77 to Notification No. 12/2017-CT (R) dated 28-6-17 in this regard, which is reproduced as follows :

77	Heading 9995	<p>Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -</p> <p>(a) as a trade union;</p> <p>(b) for the provision of carrying out any activity which is exempt from the levy of Goods and Service Tax; or</p> <p>(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.</p>	Nil	Nil
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18.1 Here, we note that as GIDC supply of subject service to GHB is exempted, thereby vide sr no 77 to said Notification, GHB supply of subject service to its members will be exempted **if** GHB was receiving consideration from the units limited to reimbursement of charges of what GHB paid to GIDC. However, we note that GHB acquired the lease of the plot from GIDC at the cost of **Rs. 225 per Sqm** whereas GHB leased the plot to the members, such as, M/s. P. Hirani Exports at the cost of **Rs. 2712.83 per Sqm** and to M/s. Soni Jewels **at Rs.11960 per Sqm**. It is on record that this amount recovered by GHB from its members is not in the nature of reimbursement of charges of the amount which GHB paid to GIDC as GHB has recovered the charges from its applicants/members over and above the rate which it paid to GIDC. Thus we find no merit to entertain the entry 77 of said Notification to GHB. We find that, the competent authority, has laid down this path to exemption vide said entry 77 to said Notification to GHB in this regard, which has not been satisfied by GHB.

19. We note that GHB has sought Ruling on interest applicability vide its Question No 3. On reading of Section 97(2) CGST Act, we find no explicit

mention in the statutory provisions that Question on interest applicability may be raised before the Authority. However, we do not want to pass a Ruling without a comment on this issue. The liability to interest is automatic and arises by the operation of the statutory and mandatory provisions of the law. We hold that interest liability is a statutory liability which accrues automatically.

20. We note that GHB has cited **M/s Calcutta club ltd case law**. We note that said case law revolves the concept of 'unincorporated association' as mentioned in explanation 3(a) to section 65(B)(44) of Finance Act, 1994, i.e., this case law pertains to the service tax era. Whereas GHB is an incorporated company with CIN U91110GJ2000NPL039065.

20.1 The present case presented before us for pronouncing the Ruling pertains to the GST era wherein we are to pronounce our Ruling based on the CGST Act, enacted by the competent legislature. We find that in GST despite Section 7(1)(aa) was inserted vide Finance Act 2021, with effect from 1-7-2017, the pre Budget 2021 status of Section 7 CGST Act and post budget 2021 status of Section 7 CGST Act with insertion of clause (aa) in Section 7(1) CGST Act remained the same, with no new provision in effect suddenly inserted, but the same position of law continued as it was prior to the insertion of Section 7(1)(aa) CGST Act, with effect from 1-7-2017. Our thought process is explained as follows:

- a. Firstly, GHB is not an unincorporated association.
- b. GHB is a Not for profit Company incorporated under erstwhile Section 25 of Companies Act, now section 8 of Companies Act, 2013.
- c. As per Section 7(1)(a) CGST Act, Supply includes all forms of supply of services, including lease, for consideration by a **person** in the course or furtherance of business.
- d. Person, as per Section 2(84) CGST Act, includes, inter alia, a Company; an association of persons or a body of individuals, whether incorporated or not, in India or outside India.
- e. Business, as per section 2(17) CGST Act, inter alia, includes-
 - (a) *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
 - (e) *provision by a club, association, society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.*
- f. Thus, from the conjoint reading of the provisions of GST law, in our present case, Supply includes leasing of plots by GHB (a person) to its members, either for a subscription or any other consideration.

g. further, what we find is, Supply of services even by unincorporated association to its members for consideration is supply under GST Scheme of law, as enacted by Competent legislature. Thus GHB reliance on Service tax era case law is misplaced in the subject matter. Even if we want to delve into the provision Section 7(1)(aa) CGST Act, which reads as: *the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration is Supply*. So what we find is, with this new insertion of clause (aa), the Pre Budget 2021 status of section 7(1) and post budget status of Section 7(1) CGST Act has not undergone change, but the said provision of law has been fortified and clarified even further.

21. We note that GHB has cited Karnataka Advance Ruling of M/s. Bowring Institute. As per Section 103, CGST Act, the cited Ruling shall be binding only on the applicant who had sought it and it's concerned officer. Further, the facts of Bowring case are not similar to the subject matter as M/s Bowring is not supplying leasing of plot services.

22. In Conspectus of aforementioned findings, we pass the Ruling:

RULING

- a. The subject consideration paid by industrial units to GHB is liable to GST.
The Subject activity by GHB is Supply of Service.
- b. The consideration paid to GHB is not exempt under entry 41 to said Notification.
- c. Liability to GST arises from 1-7-2017. Thereby Statutory Interest is payable. This issue has been expounded at paragraph 17 of subject Ruling.

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member(C)