


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2021/35
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/15)

Date : 22.12.2021

Name and address of the appellant	:	Shree Dipesh Anilkumar Naik, C/16, Kishore Park Society, Behind St.Xavier's School, Ghoddod Road, Surat-395007. (Gujarat)
GSTIN of the appellant	:	Unregistered PAN-ACNPN3475F
Advance Ruling No. and Date	:	GUJ/GAAR/R/2020/11 dated 19.05.2020
Date of appeal	:	31.08.2020
Date of Personal Hearing	:	10.11.2020 and 09.12.2021
Present for the appellant	:	Shri Avinash Poddar

The appellant Shree Dipesh Anilkumar Naik, C/16, Kishore Park Society, Behind St.Xavier's School, Ghoddod Road, Surat-395007(Gujarat) has submitted that he is a farmer having a vacant land outside the municipal area of town for which he has got necessary approvals from the Plan Passing Authority(the Jilla Panchayat) as per which the seller of land was required to develop the primary amenities like sewerage and drainage line, water line, electricity line, land leveling for road, pipe line facilities for drinking water, street lights, telephone line etc. He would then sell the individual plots to different buyers without any construction on the same but by providing the primary amenities as mentioned above, which are mandatory requirements of the approved Plan Passing Authority (the Jilla Panchayat). The appellant had filed an application for Advance Ruling on the above matter with the Gujarat Advance Ruling Authority asking the following question seeking Advance Ruling:

“Whether GST is applicable on sale of plot of land for which, as per the requirement of approval by the respective authority (the Jilla Panchayat), primary amenities such as, Drainage line, water line, electricity line, land leveling etc. are to be provided by the applicant?”

2. The Gujarat Authority for Advance Ruling (hereinafter referred to as 'GAAR') has ruled that GST is applicable on sale of plot of land for which, as per approval of the respective authority (the Jilla Panchayat), primary amenities such as, Drainage line, water line, electricity line, land leveling etc. are to be provided by the applicant, on the following grounds:

- (i) Entry 5 of Schedule-III of the CGST Act covers sale of land which is excluded from GST and reads as under:

“5. Sale of land and, subject to clause(b) of paragraph 5 of Schedule-II, sale of building.”

- (ii) The applicant, who is the owner of the land, develops the land with infrastructure such as Drainage line, Water line, Electricity line, Land leveling etc. as per the requirement of the approved Plan Passing

Authority (the Jilla Panchayat). After this development of land, they will not do any construction but will sell developed land as plots.

- (iii) Generally, in the activity of plot development, the activities such as leveling the land, construction of boundary wall, construction of roads, laying of underground cables and water pipelines, laying of underground sewerage lines with sewer treatment plant, development of landscaped gardens, drainage system, water harvesting system, demarcation of individual plots, construction of overhead tanks, other infrastructure works and further amenities like garden, community hall etc. are also offered in some schemes. Sale of such sites is done to end customers who may construct houses/villas in the plots.
- (iv) The sellers charge the rate on super built-up basis which includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis. Thus, in effect the seller is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis and all these are an intrinsic part of the plot allotted to the buyer. Thus, sale of developed plot is not equivalent to sale of land but is a different transaction which tantamount to rendering of service. This view has also been taken by the Supreme Court in the case of M/s. Narne Construction pvt.ltd. reported at 2013(29) STR 3 (SC).
- (v) In the present case, the applicant is the owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land leveling etc. as per the requirement of the approved Plan Passing Authority (Jilla Panchayat). After this development of the land, he sells developed land as plots. His sales price includes the cost of the land as well as the cost of common amenities, Drainage line, Water line, Electricity line, Land leveling charges etc. on a proportionate basis.
- (vi) Schedule II of the CGST Act, 2017 pertains to activities or transactions to be treated as 'supply of goods or supply of services'. As per clause 5(b) of the Schedule-II of the CGST Act, 2017, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer is a 'Supply of service' and, hence, is liable to the Goods and Services Tax(GST).
- (vii) The activity of sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer'. Thus, the said activity is covered under 'construction services' and GST is payable on the sale of developed plots in terms of CGST Act/Rules and relevant Notification issued from time to time.

3. Aggrieved with the aforesaid ruling, the appellant has filed the present appeal on 31.08.2020 and has submitted the statement of facts as under:

- (i) The appellant is a farmer engaged in agricultural activities and has proposed business activities on a vacant land that he is having. The land is situated outside the municipal area of town and the appellant is having all the necessary approvals for the proposed project from the plan passing authority i.e. the Jilla Panchayat.
- (ii) As per point no. 6 of the conditions stated in the Plan approval letter, the appellant is mandatorily required as a condition for passing the plan to construct/develop the basic common facilities

like drainage, water line, electricity line, road, compound wall, etc. and the cost shall be borne by the appellant or as per the mutual decision of the stakeholders.

- (iii) Since the appellant wants to sell the vacant land by dividing the concerned land into multiple plots to individual buyers, but to comply with the above mentioned condition of Jilla Panchayat, the appellant has entered into a contract to sell the land to individual buyers without any construction or development on the same but with a mandatory condition that the buyers of the land will construct the common facilities, as instructed by the plan passing authority, by creating their own association of persons of which all the plot holders shall be members.
- (iv) The appellant proposes to enter into an agreement with the buyer of plot prior to selling the same which provides that the common facilities such as drainage, water line, electricity line, road, compound wall, etc. shall be constructed by the willing buyers on their own by way of creating an Association of Persons or some other artificial judicial person.
- (v) The sale of land by the appellant will be a conditional sale to the individual buyers and it will be mere sale of plot of land and nothing beyond that.
- (vi) Now the liability to construct the common facilities as per the agreement will be on the purchasers of land by creating their own ACP or by way of any other constitution. Thus, the issue in the present case relates to, "Whether the above transaction of selling mere land by the seller will fall under paragraph 5 of schedule III of the CGST Act?"
- (vii) The Authority of Advance Ruling in its order dated 19.05.2020 has ruled that sale of such plotted development tantamount to rendering service and therefore does not fall under paragraph 5 of Schedule-III of the CGST Act, 2017 since the appellant, as the owner of land, develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land leveling etc. as per requirement of the approved plan passing authority(i.e. Jilla panchayat) and is engaged in selling developed plot of land.
- (viii) The appellant has stated that the liability to construct the common facilities as per agreement shall be on the purchaser of land by way of creating their own AOP or by way of any other constitution.

4. The appellant has submitted the grounds of appeal as under:

- (i) Their representative Dr. Avinash Poddar, Advocate during the course of hearing reiterated the submissions given in the application and argued that as per the agreement, the common facilities will not be sold to the plot holders and the appellant will not develop the same. On this, the Advance Ruling Authority had asked to submit a detailed written submission mentioning the facts but due to Covid 19, the representative asked for some time for the submission of the detailed written submission.
- (ii) Due to Covid-19 situation, Hon'ble Supreme Court has issued an

order dated 23rd March, 2020 declaring that the period from 15th March, 2020 till further orders, shall not be taken into consideration for counting the period of limitation under any general or special laws.

- (iii) Notification No.35/2020-Central Tax dated 03.04.2020 has extended the due date of compliance which falls during the period from 20.03.2020 to 29.06.2020 to the 30th day of June, 2020 (which also includes filing of appeal).
- (iv) The appellant had requested the Advance Ruling Authority during hearing on 19.03.2020 to grant them time till everything gets normal considering the pandemic of covid-19. They have also attached copy of their letter dated 23.03.2020.
- (v) Since the anomaly lasted till 30.06.2020, the concerned authorities without accepting the facts and pandemic situation, issued order on 19.05.2020 which is bad in law and violative of principles of natural justice and also violative of directions issued by Ministry of Health. The appellant has therefore, requested to set aside and quash the impugned order of the authority for advance rulings, merely on this ground.
- (vi) The learned authority has erred in its order that since appellant is the owner of the land and develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land leveling etc. as per requirement of the approved plan passing authority, he is engaged in selling developed lands and that sale of such plotted development tantamount to rendering service and thus does not fall under paragraph 5 of schedule III of the CGST Act.
- (vii) The nature of supply is dealt-with in Section 7 of the CGST Act as under:

Section 7 of CGST Act: Scope of Supply

(1) **“supply”** includes—

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

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

- (a) activities or transactions specified in **Schedule III**; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

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

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

As per Section 8 of CGST Act:

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Schedule-III Paragraph 5 of CGST Act states:

As per entry 5 of the Schedule III relating to ‘Activities or transactions which shall be treated neither as a supply of goods nor a supply of services which reads as under:

“Sale of land and, subject to clause(b) of paragraph 5 of Schedule II, sale of building.”

The appellant has stated that on combined reading of the above provisions it is understood that, sale of land is excluded from the scope of ‘supply’ under Entry No.5 of Schedule III.

Further, the appellant submits that expressions ‘composite supply’ and ‘principal supply’ have been defined under sub-section (30) & (90) of Section 2 as under:

(a)Section 2(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

(b)Section 2(90) “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

- (viii) As per the plan passing authority, common amenities such as Drainage, Water line, Electricity line, Road, Compound Wall, etc. are mandated to be carried out by the appellant and all the cost of the execution of the project subsequent to the receipt of the sanctioned plan, including costs like drainage, water line, electricity line, road, compound wall, etc. shall be borne by the appellant.
- (ix) It has been clearly stated in the Sale deed that the appellant shall not recover these costs from the owners of the plots and Plot owners can just use the amenities provided by the appellant, and ownership of the same shall not get transferred; that even if it is presumed that the common facilities are developed by the appellant, then also it is certainly getting covered in the ambit of composite supply because the development of common facilities is

mandated by the plan passing authority as a condition and such facilities are provided in conjunction with sale of land; that since the appellant is a seller of land and Principal supply obviously is sale of land because both the buyer and seller has the intention of purchasing and selling land, the common facilities developed on it is squarely falling under the transaction of 'sale of land' and hence the entire supply of land is a Composite Supply therefore it is neither supply of goods nor supply of services. Copy of Sale deed is attached.

- (x) Where transaction or activity involves supply of two or more supplies and one of which is principal supply i.e., a supply which constitutes the predominant element when compared to other supplies and in such situation, each supply will not be treated as separate supply, but become single supply one is called predominant supply, and other supplies become incidental or ancillary to the predominant supply i.e. in the present case, supply of land is the predominant supply.
- (xi) Appellant has relied upon the following judicial precedent as well, in this regard wherein the said view has been upheld and has attached copy of said case law:

“The Authority for Advance Ruling (AAR), Karnataka, in the case of Maarq Spaces pvt.ltd. (Order No.KAR ADRG/199/2019) has said that where merely land development activities are undertaken under a JDA, the same are likely to be taxed under GST, however where development of land is naturally bundled with sale of land and sale is the principal supply in the bundled transaction, the transaction may be construed as composite supply not liable to GST.

- (xii) The proposed activity of the seller of land includes selling of exclusive plot to individual buyers with a condition to construct common facilities by the buyers by creating their own AOP of which all the Plot holders shall be members. Hence, there is no justification in charging GST where no construction or services took place on sale of land as it falls under paragraph 5 of Schedule III of the CGST Act as the seller is selling only land without any construction on the same.

5. The appellant has submitted additional submission on 12.11.2020 wherein he has stated that they filed appeal on 31.08.2020 against GAAR's order No.GUJ/GAAR/2020/11 and personal hearing in the matter was held on 10.11.2020 wherein the appellant, as per his request, was granted liberty to submit additional submission. The appellant has submitted as under:

- (i) The transaction undertaken by the appellant involves two supplies i.e. (a) Sale of land and (b) Development and provision of common facilities like drainage, electricity line, compound wall, etc. only because it is mandated by the plan passing authority; that since the transaction has two or more supplies, the supply is in nature of bundled supply.
- (ii) In any bundled supply, the taxability and the rate of tax is decided on the basis of the predominant item in that bundled supply,

which, in this case, is the sale of land and therefore the development of basic common facilities are the ancillary supply; that the developmental activity is integral to the sale of land because it is mandated by the plan passing authority.

- (iii) As per Section 7(2) of CGST Act, 2017, activities or transaction specified in Schedule-III of the Act shall be treated neither as supply of goods or supply of services and the prominent and dominant supply being the sale of land in the present case which falls under Entry 5 of Schedule-III of the Act, the said supply will not attract Tax as it is neither supply of Goods nor Supply of services.
- (iv) They have submitted that as per the relevant page of the Sale deed, it is clearly specified that the buyer of plot can use common roads etc. surrounding the plot and that the appellant is not charging any consideration for such allowance; that the appellant is also not recovering the cost of development of basic amenities, as mandated to be provided, from the buyer; that, therefore, it is clear from the sale deed that value of sale of land does not include the cost of construction of any of the common facilities hence, charging of tax on the value of sale of land is not correct as per law.
- (v) The transaction and intention of the transaction in the present case was to sell the plot of land and not provide any construction service; that the proportion and the cost of construction/development in such kind of project is not exponential/higher in comparison to the total project value and not more than approximately 30%-35% of the area out of total area is being utilised for such common facilities like drainage, approach roads etc, therefore, even if the appellant presumes and accepts the contention that it is a construction activity, then also levying tax on the total value seems to be highly unjustifiable and illegal.
- (vi) The appellant has concluded his submission by stating that the prime activity in the present case is of sale of Land which is squarely covered under Entry 5 of Schedule-III and therefore, order of the Authority of Advance Ruling needs to be set aside.

6. There has been change in one of the two Members of this authority consequent upon the transfer and posting of the Chief Commissioner, Gujarat Goods and Services Tax, after Personal Hearing has been held in this case. The appellant was therefore asked whether they require fresh hearing or not. The appellant vide their mail dated 02.12.21 informed that they would like to be heard again. Accordingly, personal hearing in the matter was held on 09.12.21 wherein the appellant requested time for making additional submission in the matter. The appellant submitted additional written submissions vide mail dated 17.12.2021 wherein he reiterated his earlier written submissions and also added as below:

The intention of the legislature is clear regarding exclusion of land from the purview of GST and accordingly, it is beyond doubt that there is no GST on sale of land per se by excluding sale of land from the definition of supply; the sale of plot is after carrying out the development activities or providing amenities such as like drainage, electricity line,

compound wall, etc. This development work does not get transferred to the buyer of the plot of land. The development work is common amenity, which is to be enjoyed by people at large who own the adjacent parcel of land as well as all such persons who have the right for the same. Thus, in this case, the subject matter of sale is land only and not the development work done; The development of land is not akin to construction of a complex or building. The concept of obtaining a completion certificate is applicable to the construction of a complex or building and not to development of a land so far as GST is concerned. Therefore, it is immaterial whether any money is received by the applicant from prospective buyers before development of plot is completed and a completion certificate is received by the applicant from the appropriate authority; that in the case of M/s. Bhopal Smart City Development Corporation Ltd., the Hon'ble Madhya Pradesh Authority of Advance Ruling vide its order No. 16/2021 dated 22.11.2021 held that no GST is payable on sale of developed land where development work is limited to providing common amenities. The AAR held that since there is no development work after sale of developed land and no advance from the customer for undertaking development activities is taken, it does not constitute a supply within the meaning of Section 7 of the GST laws and therefore GST is not applicable on such sale.

The appellant reiterated that in present case it is sale of land which is squarely covered under Entry 5 of the Schedule III and therefore, order of the Authority of Advance Ruling needs to be set aside.

FINDINGS: -

7. We have considered the submissions made by the appellant in the appeal filed by them, their contentions during the course of personal hearing, the additional submissions given by the appellant after the personal hearing as well as evidences available on record. We have also gone through the Ruling given by the GAAR.

8. The appellant, in their application for Advance Ruling had asked the GAAR whether GST was applicable on sale of plot of land for which, as per the requirement of approved plan by the respective authority (the Jilla Panchayat), primary amenities such as, Drainage line, water line, electricity line, land leveling etc. are to be provided by the appellant. GAAR vide their Advance Ruling No.GUJ/GAAR/R/2020/11 dated 19.05.2020 had ruled that GST was applicable on the same. The appellant has challenged the said order by filing this appeal against the aforementioned order of GAAR.

9. Further, as per the submission of the appellant, they had filed the appeal against the order of the Authority for Advance Ruling(AAR) bearing No.GUJ/GAAR/R/2020/11 dated 19.05.2020, on 31.08.2020. The appellant has made a reference to Notification No. 35/2020-Central Tax dated 03.04.2020 which provides for extension of time limit for compliance (including filing of appeal) whose due date falls between 20.03.2020 to 29.06.2020 till 30.06.2020, they have not mentioned as to when they have received the aforementioned order of GAAR. As per the provisions of Notification No.35/2020-Central Tax dated 03.04.2020 as

amended vide Notification No.55/2020 dated 27.06.2020, the time limit in respect of the appeals which were due for filing between 20.03.2020 and 30.08.2020 were extended upto 31.08.2020. The appellant has filed the appeal on 31.08.2020 and therefore the appeal is filed on time.

10. As per the appellant's submission, the appellant, who is a farmer, is having all the necessary approvals for a proposed project on the vacant land (that he is having outside the municipal limits) from the plan passing authority i.e. the Jilla Panchayat and as per approved plan, the appellant is mandatorily required to construct/develop the basic common facilities like drainage, water line, electricity line, road, compound wall, etc. and the cost shall be borne by the appellant or as per the mutual decision of the stakeholders; that the appellant wants to sell the vacant land by dividing it into multiple plots to individual buyers, but to comply with the above mentioned condition of Jilla Panchayat, they are proposing to enter into a contract/agreement to sell the land to individual buyers with a mandatory condition that the buyers of the land will construct the common facilities such as drainage, water line, electricity line, road, compound wall, etc., as instructed by the plan passing authority, by creating their own association of persons(AOP) of which all the plot holders shall be members; that the sale of land by the appellant will be a conditional sale to the individual buyers and it will be mere sale of plot of land and the liability to construct the common facilities as per the agreement will be on the purchasers of land by creating their own AOP or by way of any other constitution.

11. Further, on going through the submissions of the appellant, we find that although the appellant has time and again referred to the plan approval obtained by them from the plan approving authority i.e. the Jilla Panchayat as well as to the various pages of the sale deed which they have made with the individual buyers of their plots of land, they have submitted neither the copy of the approved plan from the plan approval authority i.e. the Jilla Panchayat, nor the sale deed/agreement/contract which they have made or are proposing to make with the individual buyers of their plots of land. In fact, on going through the copy of sale deed (marked as Annexure-VII) which the appellant has submitted along with their additional submission dated 10.11.2020 (received in this office on 12.11.2020), it is found that the said sale deed does not pertain to the appellant but pertains to sale of developed land between Shri Manishbhai Bhavaniprasad Agrawal and Shri Denishbhai Dhanrajbhai Shah, both partners of Swami Developers(the sellers) and Shri Nevil Bharatbhai Doctor(the purchaser) which is not in any way related to the appellant. Therefore, the said documents/papers submitted by the appellant as well as those parts of the submissions of the appellant that are based on the clauses of the attached sale deed, cannot be relied upon in the present case. In view of the above, the discussion/decision in respect to the issue in hand will be solely based on the submissions of the appellant, the available records and merits of the case.

12. We find that the appellant in written submission dated 17.12.2021 has made contradictory submissions wherein it has been stated that the sale of plot is after carrying out the development activities or providing amenities such as like drainage, electricity line, compound wall etc. Further adding that it is immaterial whether any money is received by the applicant from the prospective buyers before development of plot is

completed and a completion certificate is received by the applicant from the appropriate authority.

The appellant has approached the Authority for Advance Ruling for advance ruling in respect of the question as to whether GST was applicable on sale of plot of land for which, as per the requirement of approved plan by the respective authority (the Jilla Panchayat), primary amenities such as, Drainage line, water line, electricity line, land leveling etc. are to be provided by the appellant. The present issue therefore is of sale of plot before the development of plot is completed and completion certificate is received by the appellant from the appropriate authority.

13. From the aforementioned submissions of the appellant as well as from the available records of the case, we find as under:

- (i) It is submitted by the appellant that as per the plan passing authority, common facilities such as Drainage, Water line, Electricity line, Road, Compound Wall, etc. are mandated to be carried out by the appellant and all the cost of the execution of the project subsequent to the receipt of the sanctioned plan, including costs like drainage, water line, electricity line, road, compound wall, etc. shall be borne by the appellant. Therefore, as per the conditions laid down by the plan passing authority, it is mandatory on the part of the appellant to provide all the aforementioned common facilities to the buyers of these plots.
- (ii) The appellant proposes to enter into an agreement with the buyers of plot, prior to selling the same, which provides that the common facilities such as drainage, water line, electricity line, road, compound wall, etc. shall be constructed by the willing buyers on their own by way of creating an Association of Persons(AOP) or some other artificial judicial person. Thus, in order to comply with the said condition of Jilla Panchayat, the appellant is compelling the buyers to form another entity (Association of Persons or some other artificial judicial person) to develop these common facilities which appears to be contrary to the conditions mandated by the plan passing authority as per which, the aforementioned facilities are to be invariably developed by the appellant only, before selling the plots to their buyers.
- (iii) On the one hand, the appellant is claiming that he will neither charge anything from the buyers towards development of the common facilities nor charge anything towards allowing the buyers to use such common facilities whereas on the other hand, the appellant is compelling the buyers to make payment for development of such common facilities (through an agreement) to another entity (Association of Persons or some other artificial judicial person) which would carry out the work of development of such common facilities, which otherwise were required to be developed/provided by the appellant. Thus, it appears that this is not a simple agreement of sale of land but a conditional agreement of sale wherein the buyers are required to do several other things, apart from making payment for land to the appellant.
- (iv) The appellant in his application for Advance Ruling has asked 'Whether GST is applicable on sale of plot of land for which, as per the requirement of approval by the respective Authority (i.e. Jilla

Panchayat), primary amenities such as Drainage line, water line, electricity line, land leveling etc. are to be provided by the applicant? In the appeal filed by them, the appellant has stated that the present case relates to 'Whether the above transaction of selling mere land by the seller will fall under paragraph 5 of Schedule III of the CGST Act.

13.1 Amid all the contradictions that are found in the submissions of the appellant, one thing that looks apparently clear from a plain reading of their submissions is that the said transaction appears to involve dividing of the vacant land into multiple plots, construction or development of common facilities such as drainage, water line, electricity line, road, compound wall, etc. and selling of such developed plots of land, along with common facilities as mentioned above, by the appellant to the individual buyers. Further, even if, it is assumed (as submitted by the appellant) that the common facilities are to be developed by the individual buyers by forming an Association of Persons (AOP), that the entire expense of the development of the common facilities mentioned hereinabove is to be borne only by the appellant or that no amount is charged by them from the buyers for utilizing the aforementioned common facilities, no evidence has been submitted by the appellant which proves that the price charged by the appellant for individual plots sold to the individual buyers does not include the price of the common facilities which the individual buyers are entitled to enjoy or use. It is also not understood as to what is the compulsion on the part of the appellant to force the individual buyers to develop the common facilities by forming an Association of persons (AOP) and that all the individual buyers should invariably become members of the AOP, when the plan passing authority itself mandates that the development of common facilities is required to be done by the appellant, prior to sale of the plots. As per normal trade/business practice of sale of plots, flats etc., the sellers charge the rate on super built-up basis and not the actual measure of the plot and the super built-up area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis and all these are an intrinsic part of the plot allotted to the buyer. Therefore, in absence of any evidence/proof having been submitted by the appellant to support their contention that the common facilities are to be developed by the individual buyers by forming an AOP and that the entire expense of the development of the common facilities mentioned hereinabove is to be borne only by the appellant (which they are not charging or taking from the individual buyers), we have no option but to believe that the rate/amount charged by the appellant from the individual buyers of their plots includes the amount spent towards the construction of common facilities, irrespective of the fact as to whether the common facilities were developed by the appellant or the individual buyers through formation of an AOP. Further, irrespective of the fact as to whether the appellant develops the common facilities and then sells the plots of land OR makes an agreement with the buyers of the plots of land mandating them to develop the common facilities by forming an AOP or some other artificial judicial person, it will still be considered a sale of developed land only, since the plan approval authority clearly mandates development of common facilities in the land, prior to its sale. Even otherwise, such charges are to be included in the value of supply as per the provisions of the CGST Act, 2017. In this regard, a reference is required to be made to the definition of 'consideration' as appearing at Section 2(31) of the CGST Act, 2017 and Section 15 of the CGST Act, 2017 which covers the valuation aspect of taxable supply.

13.2 As per Section 2(31) of the CGST Act, 2017, “consideration” in relation to the supply of goods or services or both includes: (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government but excludes a deposit given in respect of the supply of goods or services or both unless the supplier applies such deposit as consideration for the said supply;”

13.3 Section 15 of the CGST Act, 2017 reads as under:

Section 15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

13.4 As can be seen from the above, the only thing that gets excluded from the value of supply of services or supply of goods are the discounts as per 3(a) and 3(b) of Section 15 of the CGST Act, 2017. Thus, even if it is assumed that the common facilities in the plot of the appellant are to be developed by their individual buyers by forming an AOP on behalf of the appellant, the said expense will undoubtedly be included in the value of supply as per the provisions of Section 15(b) which reads as under:

“(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;”

13.5 Further, Section 7 of the CGST Act, 2017 covers ‘Scope of supply’. As per clause 2(a) of Section 7, activities or transactions specified in Schedule-III of the CGST Act, 2017 shall be treated neither as a supply of goods nor a supply of services. Entry No.5 of Schedule-III of the CGST Act, 2017 reads as under:

“5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

Relevant portion of paragraph 5 of Schedule-II of the CGST Act, 2017 reads as under:

“5. Supply of services

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

(a) renting of immovable property;

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

13.6 From the above, it is clear that when the transaction involves mere sale of land, the said transaction will be out of the scope of supply and will be squarely covered under Entry No.5 of Schedule-III which covers activities or transactions which shall be treated neither as a supply of goods nor supply of services. However, in view of the common facilities being developed/being got developed by the appellant, this activity will be squarely covered under the scope of taxable service i.e. ‘*construction of civil structure or a part thereof, intended for sale to a buyer.*’ under clause(b) of paragraph 5 of Schedule-II of the CGST Act, 2017. Thus, in view of the above facts, the sale of developed land by the appellant will not fall under Entry No.5 of Schedule-III of the CGST Act, 2017.

14. The appellant has further submitted that even if it is presumed that the common facilities are developed by the appellant, then also it is certainly getting covered in the ambit of composite supply; that the transaction undertaken by the appellant involves two supplies i.e. (a) Sale of land and (b) Development and provision of common facilities like drainage, electricity line, compound wall, etc. only because it is mandated by the plan passing authority. The appellant has stated that the common facilities developed on it is squarely falling under the transaction of ‘sale of land’ and hence the entire supply of land being a Composite Supply, is neither supply of goods nor supply of services and in such cases, the taxability and the rate of tax is decided on the basis of the predominant item in that supply, which, in this case, is the sale of land and therefore the development of basic common facilities are the ancillary supply. The appellant has concluded his submission by stating that the prime activity in the present case is of sale of Land which is squarely covered under Entry 5 of Schedule-III and therefore, order of the Authority of Advance Ruling needs to be set aside.

14.1 To look into the aspect of 'composite supply' as submitted by the appellant, we will be required to refer to the definition of 'Composite Supply' as appearing in Section 2(30) of the CGST Act, 2017. Section 2(30) of the CGST Act, 2017 reads as under:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.—Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Further, definition of principal supply as per Section 2(90) of the CGST Act, 2017 reads as under:

"(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;"

14.2 From the above, it can be seen that for being a composite supply, all the following conditions are required to be necessarily satisfied:

- (i) The said supply should be made by a taxable person.
- (ii) It should consist of two or more taxable supplies of goods or services or both or any combination thereof.
- (iii) They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business.
- (iv) One of the supplies must be a principal supply.

14.3 Comparing the above conditions to the issue in hand, we find as under:

- (i) As per the submission of the appellant, the appellant is a farmer and is not registered under the GST law, hence, he is not a taxable person. Therefore, the first condition itself is not satisfied.
- (ii) As submitted by the appellant, the transaction undertaken by the appellant involves two supplies: (a) sale of land and (b) Development and provision of common facilities like drainage, electricity line, compound wall etc. as mandated by the planning authority. Transaction involving only mere sale of land will be covered under Entry No.5 of Schedule-III of the CGST Act, 2017 which is neither a supply of goods nor supply of services whereas Development and provision of common facilities like drainage, electricity line, compound wall etc. fall under Entry 5(b) of Schedule-II of the CGST Act, 2017 i.e. 'Construction of Civil Structure or parts thereof intended for sale to a buyer' and is a supply of taxable service. Therefore, since there is only one supply of taxable service involved in the said transaction (the other being neither a supply of service nor supply of goods), this condition is also not satisfied.

- (iii) Since there is only one supply of service involved in the aforementioned transaction, the question of being naturally bundled or supplied in conjunction with each other does not arise. Hence this condition is also not satisfied.
- (iv) Since there is only one supply of service involved in the aforementioned transaction, there is no principal supply or ancillary supply. Hence, this condition is also not satisfied.

In view of the above, since none of the above conditions have been satisfied, we conclude that the aforementioned supply, as submitted by the appellant, cannot and does not constitute a 'composite supply'.

15. We find that the plotted development is a scheme which involves forming land into layout after obtaining necessary plan approval from the Development Authority, getting all other permission required to take up, commence and complete what would be the layout, comprised of individual sites. In the activity of plot development, the activities such as leveling the land, construction of boundary wall, construction of roads, laying of underground cables and water pipelines, laying of underground sewerage lines with sewer treatment plant, development of landscaped gardens, drainage system, water harvesting system, demarcation of individual plots, construction of overhead tanks, other infrastructure works and further amenities like garden, community hall etc. are also offered in some schemes. Sale of such sites is done to end customers who may construct houses/villas in the plots. The sellers charge the rate on super built-up basis and not the actual measure of the plot. The super built-up area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis. Thus, in effect, the seller is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis and all these are an intrinsic part of the plot allotted to the buyer. The above facts clearly indicate that sale of developed plot is not equivalent to sale of land but is a different transaction. Sale of such plotted development tantamount to supply/rendering of service. This view has also been taken by the Supreme Court in the case of M/s. Narne Construction pvt.ltd. reported at 2013(29) STR 3 (SC).

15.1 In the present case, the appellant is the owner of the land, who develops the land/gets the land developed with an infrastructure such as Drainage line, Water line, Electricity line, Land leveling etc. as per the requirement of the approved Plan Passing Authority (Jilla Panchayat) and thereafter, sells such developed land as plots. The appellant's sales price includes the cost of the land as well as the cost of common amenities as mentioned above, on a proportionate basis. Schedule II of the CGST Act, 2017 pertains to activities or transactions to be treated as 'supply of goods or supply of services'. As per clause 5(b) of the Schedule-II of the CGST Act, 2017, 'construction of civil structure or a part thereof, intended for sale to a buyer' is a 'Supply of service' and, hence, is liable to the Goods and Services Tax(GST). Thus, the activity of sale of developed plots would be covered under the clause "construction of civil structure or a part thereof, intended for sale to a buyer". Thus, the said activity is not covered under Entry No.5 of Schedule-III of the CGST Act, 2017 as contended by the appellant, but it is a supply of taxable service involving 'construction of civil structure or a part thereof, intended for sale to a buyer' falling under the head 'Construction services' appearing at Sr.No.3 of Notification No.11/2017-Central Tax (Rate) dated

28.06.2017 (as amended from time to time) and GST at the rate of 18% is payable on the sale of developed plots in terms of CGST Act, 2017 and Rules thereunder.

16. We find that the appellant has relied upon Order No.KAR ADRG/199/2019 issued by the Authority for Advance Ruling(AAR), Karnataka in the case of Maarq Spaces pvt.ltd to support their contention. We also find that the appellant has also relied upon Order No. 16/2021 dated 22.11.2021 issued by the Authority for Advance Ruling (AAR), Madhya Pradesh in the case of M/s. Bhopal Smart City Development Corporation Ltd., in support of their contention. In this regard, we have to emphasize here that decisions of Advance Ruling Authorities cannot be relied upon by the appellant, since, as per the provisions of Section 103 of the CGST Act, 2017, the Advance Ruling pronounced by the Advance Ruling Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section(2) of Section 97 for Advance Ruling and the concerned officer or the jurisdictional officer in respect of the applicant.

17. We also find that the appellant in written submission dated 17.12.2021 has made contradictory submissions wherein it has been stated that the sale of plot is after carrying out the development activities or providing amenities such as like drainage, electricity line, compound wall etc. Further adding that it is immaterial whether any money is received by the applicant from the prospective buyers before development of plot is completed and a completion certificate is received by the applicant from the appropriate authority.

18. In view of foregoing, we confirm the Advance Ruling No. GUJ/GAAR/R/11/2020 dated 19.05.2020 to the extent it has been appealed before us and hold that –

The transaction/activity of the appellant is not covered under Entry No.5 of Schedule-III of the CGST Act, 2017 as it is a sale of developed plots and is a supply of taxable service falling under the head 'Construction services' appearing at Sr.No.3 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time) issued under the CGST Act, 2017 and is liable to GST at 18%, for the reasons discussed hereinabove.

19. The appeal filed by Shree Dipesh Anilkumar Naik, C/16, Kishore Park Society, Behind St. Xavier's School, Ghoddod Road, Surat-395007. (Gujarat), is rejected.

(Milind Torawane)
Member

(Seema Arora)
Member

Place: Ahmedabad
Date: 22.12.2021.