BEFORE THE APPELLAT AUTHORITY FOR ADVANCE RULING IN GOODS AND SERVICES TAX, IN THE STATE OF HARYANA,PANCHKULA

Appeal Case No.:HAAAR/2020-21/02 **Dated:04.06.2021**

GSTIN of the Applicant	06AADCA9093PIZ1
Name	**M/s Ashiana Housing Ltd.,**
Address/Registered Address provided while obtaining user ID	M/ s Ashiana Housing Ltd., 8th Floor, Block-1, Vatika Business Park, Sohna Road, Sector-49, Gurugram, Haryana
Present for the Applicant	**Ms. Priyanka Singhla, Advocate**

Order under Section 101 of Central Goods and Services Tax Act,2017 / Haryana Good and Services Tax Act, 2017

The present appeal has been filed under Section 100 (1) of Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act,2017 (hereinafter referred to as CGST Act/ HGST Act, respectively)by M/s Ashiana Housing Ltd. (hereinafter referred to as the" Appellant") against the Advance Ruling No. HAR/HAAR/R/2018-19/26 dated22.11.2018.

A copy of order dated 22.11.2018 of the Advance Ruling Authority was received from the appellant on 04.03.2020 and the appeal has been filed on 29.06.2020 which is within time in terms of COVID Extension granted vide Notification 35/2020-C.T. dated 3.04.2020 issued under Section 168A of the CGST Act 2017.

Brief facts of the case:

The Appellant M/s. Ashiana Housing Ltd. is registered under GST in Gurugram and is a State administered taxpayer. They are engaged in the construction of residential complexes and have entered into a *'development agreement'* with a Landowner M/s. Universe Heights (India) Private Limited Gurugram for construction of a Group Housing colony. The Landowner is the licensee of Department of Town and Country Planning, Haryana (hereinafter referred to as DTCP)for the development of a Group Housing colony and the conditions of the license require the Landowner to pay the External Development Charges and Infrastructure Development Charges to the Haryana Urban Development Authority/ Department of Town and Country Planning.

Under the conditions of agreement entered by the Appellant with Landowner, all ancillary and incidental rights , benefits, interests, easements, privileges appurtenant thereto and have accordingly entered into *'Flat Buyer agreements'* with prospective buyers. The Appellant is paying GST in respect of construction service being provided to the flat buyers on the consideration received under such agreements when agreements have been entered into before the receipt of Completion Certificate.

As per the Flat Buyer Agreement ibid, the flat buyer agrees to pay the 'External Development Charges' (EDC) and 'Infrastructural Development Charges' (IDC).

The Applicant had requested for Advance Ruling on the question:

"Whether the 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?"

After notice and opportunity, the Advance Ruling Authority passed the impugned order wherein the authority ruled,

"The amount of statutory charges i.e. External Development Charges and Infrastructure 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".

Being aggrieved with the impugned order the appellant M/s Ashiana Housing Ltd. had filed the present appeal.

Pleadings of the Appellant:

The Appellant has cited the following as the 2grounds for preferring of present appeal:-

A. The impugned order has been passed in gross contravention of statutory provisions and principles of natural justice.

B. The amount of EDC and IDC shall not be inlcuded in value of supply made by the appellant.

Briefly, the Appellant has corroborated the grounds as under: -

A. **The impugned order has been passed in gross contravention of statutory provisions and principles of natural justice**

1. As per Section 98(6) mandates that the advance ruling shall be pronounced within 90 days from the date of receipt of application. In this case, the PH was held on 23.10.2018.The order was received on 04.03.2020 via email and on 23.03.2020 via Registered post as mentioned after one and half year of date of pronouncement of the order dated 22.11.2018.So, the impugned order had been passed in gross contravention of statutory provisions and the principles of natural justice.

B. **The amount of EDC and IDC is not includible in value of supply made by the appellant**

1. The Appellant is liable to pay the amount of EDC and IDC in terms of the HDRUA ACT. These are mandatorily to be paid by the Appellant and to be used by the authorities for development of state. The Appellant recovered these amounts from the Buyers in terms of the HDURA Act only. These amounts are not for supply of any service by the Appellant, but only recovery of statutory charges. Such charges are not for supply of services by the Appellant and therefore do not form part of the transaction value for the purposes of Section 15(1)of the CGST Act.

2. Section 15(2) refers to any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier. These taxes, duties, cesses, fees and

charges are those, which are levied on the underlying transaction, i.e. supply of deemed construction services by the supplier. These do not refer to each and every charge, which is incidentally related with supply of services. It has to be read as to mean only those which are levied on the supply of services. In the instant case, the EDC and IDC are not levied on the transaction of supply of services. These charges are mandatorily recovered from a developer holding license under HDRUA Act as a condition of the license. Thus, these charges are not covered with the purview of Section 15(2)(a of the CGST Act.

The appellant also submitted following case-laws in their support:-

i) Decision of Hon'ble Supreme Court in Anand Swarup Mahesh Kumar V. Commissioner of Sales Tax, 1980(46) STC 477 (SC)

ii) Hon'ble CESTAT Order No.A/30739/2019 dated 16.09.2019 in GMR Hyderabad International Airport Limited V. Commissioner

Record of Personal Hearing:

Ms. Priyanka Singhla, Advocate is attended the PH on 24.03.2021 through *webex* on behalf of the appellant M/ s Ashiana Housing Ltd. She reiterated the grounds already mentioned in the memorandum of the Appeal.

Discussion and Finding

We have considered the material on record including the appellant's grounds, submissions, statutory provisions etc. In terms of Section 101(1) of the Act, this Appellate Authority is mandated to pass such order as it thinks fit, confirming or modifying the ruling appealed against.

We now proceed to record our discussions and findings.

The Advance Ruling Authority has held the EDC and IDC charges as inclusive in the Value on the ground that provisions of the Sub Section 15(2) are very clear that all other taxes than applicable under the GST Law (viz. the CGST Act, SGST Acts, UTGST Act and IGST Act) form part of the Taxable Value under GST. Law is very unambiguous on this issue and same is specifically covered under the GST Laws.

"Section 15. Value of Taxable Supply.—

(1)....

(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;*

The Appellant is not pleading that these charges are under CGST Act, but are payable in terms of the HDRUA ACT. His plea is on the analogy that the **User Development Fee' (UDF)** charged from the passengers under the 'Build Own Operate Transfer (BOOT) Scheme be excluded from the Assessable Value as the CESTAT's Final Order A/30739/2019 Dated 16.09.2019 in the case of GMR Hyderabad International Airport Ltd. v Commissioner wherein the Hon'ble

CESTAT has held that the **'User Development Fee' (UDF)** charged from the passengers by the assessee for development, design, financing, construction, commissioning, maintenance, operation and maintenance of Green Field International Airport constructed by them under 'Build Own Operate Transfer (BOOT) Scheme under an agreement and also authorized to collect such charges by the Ministry of Civil Aviation of the Government of India, are not liable to Service Tax under the category of Airport services. Appeal against the said Tribunal order filed by the department is still pending in Supreme Court.

Notwithstanding that and irrespective of the outcome of matter , it is to impress upon that in the GST regime the issue of chargeability or valuation on such taxes, duties, cesses, fees and charges levied under any law for the time being in force is no longer a matter of subjective-interpretation as in erstwhile Service tax law. Moreover, the EDC and IDC charges are not under any sort of 'Build Own Operate Transfer (BOOT) Scheme.To avoid any ambiguities there is specific Section 15 of CGST Act which authorises the inclusion of such fee or Charges or Levies etc in the value of Supply of Service. In the instant case as the EDC and IDC charges levied under the HDRUA Act therefore by virtue of said provisions of the GST law, form a 'consideration' for the construction service provided in respect of the flats. The said Tribunal Judgement is therefore not applicable in the GST regime and in the instant case of the appellant.

The applicant has also relied upon the Hon'ble Supreme Court's decision in the matter of Commissioner vs. Super Synotex (India) Ltd, *2014 (301)ELT273(SC)*has been incorrectly relied by the Appellant. In this case Hon'ble Apex Court has held that Value Added Tax (VAT) is not added to the taxable Value. In GST era concept of SGST/ CGST/ IGST has replaced the VAT. Using the corollary, while arriving at the taxable value , the SGST/CGST/IGST is not added to the Value. In fact same is set-off with input credit of IGST/CGST/SGST along the supply chain to avoid the cascading effect of tax. It is thus clear that the decision relied upon by the Applicant is not applicable to the facts of the case. Any statutory charges have been held clearly inclusive in the Value of the supply of Services in terms of Section 15(2)(a) ibid.

Similarly, the other Supreme court decision in Anand Swarup Mahesh Kumar V. Commissioner of Sales Tax, 1980(46) STC 477 (SC) has been incorrectly relied upon in the appeal. In that case the market fee levied by the Market Committee of agriculture produce market has been held to be not includable in the Value for charging VAT. The commission charged has, however, been held as includable.

Hon'ble Supreme Court has held that where seller or the commission agent, who so ever is liable to pay the market fee, is entitled statutorily to realize it from the purchaser by law. The tax or fee realized by him from the purchaser cannot be treated as part of the turnover for purposes of levy of sales tax. Whereas, as to the commission paid by the purchaser, Hon'ble court held that the same is not a tax or fee payable to a Government or statutory body which is not a party to the contract of sale. The commission is actually the profit of the dealer who in this case happens to be a commission agent and should, therefore, necessarily be considered as 'consideration' for the sale of goods.

In the Appellant's case however the under relevant law viz. the HDRUA (Haryana Development and Regulation of Urban Areas) Act 1975, the External Development and Infrastructure Development charges are meant to meet,

respectively, the cost of external development work to be carried out in respect of an individual infrastructure project viz. a colony, and the cost on developing infrastructure projects development in the State.

As per the Act, it is charged *'per square metres of the gross area and of the covered area of all the floors in case of flats proposed to be developed by him into a colony'*. Further it is to be paid *'in two equal installments. The first installment shall be deposited within 60 days from the date of the grant of the license and the second installment to be deposited within six months from the date of grant of license'*. It is not related to the sale of the flats.

Similarly for the EDC the Licensee has *'to pay proportionate development charges if the external development works as defined in clause (g) of section 2 are to be carried out by the Government or any other local authority. The proportion in which and the time within which, such payment is to be made, shall be determined by the Director.'* Also the *"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.* It is also not related to the sale of the flats.

Both are not related with the number of flats to be constructed/sold or are to be paid even if the some/all flats kept for personal use. Since, the *'External Development'* and *'Infrastructure Development'* do contribute to the value of the flats, the charges for these beyond doubt form a constituent of the value of the construction service provided to the flat owners by the Appellant. The GST shall be applicable, as also provided under Section 15(2) supra.

In view of the above discussions and findings, we dismiss the appeal and upheld the Advance Ruling dated 22.11.2018 as the same does not suffer from any infirmity or illegality.

(Shekhar Vidyarthi)
Member (SGST)

(Suresh Kishnani)
Member (CGST)

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2. Assistant Commissioner, CGST, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).