

INFORMATION MEMORANDUM :

The Gujarat AAR holds that sale of developed plots is the supply of services as per Schedule II of the CGST Act, 2016 and is liable to levy of GST.

Shree Dipesh Anilkumar Naik

Advance Ruling no. GUJ/GAAR/R/2020/11

Order dated 19th May, 2020

Sale of developed plot is a supply of service for CGST Act

Facts of the case :

1. The Applicant owns a vacant land. He was desirous of carrying out plotting activity with amenities and infrastructure. The Applicant obtained the necessary approvals for the proposed plotting and the infrastructure on the said land from the competent authority.
2. As per the competent authority, the Applicant was mandatorily required to develop primary amenities on the said land such as sewerage and drainage

line, water line, electricity line, land levelling for road, street lights, pipeline facilities for drinking water, telephone line, etc.

3. The Applicant decided to sell the individual plots to different buyers without any construction on the same but by providing primary amenities.

Question before AAR :

Whether GST is applicable on sale of plot along with the amenities as approved by the competent authority?

AAR Finding :

The AAR held that the Applicant develops the land by providing infrastructure such as drainage line, water line, electricity line, land levelling, etc. The said amenities provided as per the requirement of the approved plan passing authority. After development of the land, the Applicant sells developed land as plots to the end customers who may construct houses / villas on the said plots.

The Applicant charges rate on super built up basis and not the actual measurement of the plot. The super built up area includes the area used for common amenities, roads, water tanks, etc. The infrastructure / amenities form an intrinsic part of the plot allotted to the buyer. In effect, the seller is collecting charges towards the land as well as common amenities and infrastructure on a proportionate basis.



Not supply of service =
Schedule III Entry 5



Sale of Plot
Supply of service =
Schedule II Entry 5(b)

Thus, the sale of such plotted development is supply of services. Reliance was placed on the decision in the case of *Narne Construction P. Ltd.*¹.

Rule Applied :

Schedule III of the CGST Act:

Entry 5 - **Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of building is not supply of service.

Clause 5(b) of 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".

AAR Held :

The activity of the sale of developed plots would be covered under the clause 5(b) of Schedule II 'construction of a complex intended for sale to a buyer'. Since, the said activity is covered under 'construction services' GST is payable on the sale of developed plots.

¹ 2013 (2) TMI 298 (SC)

Acelegal Analysis :

Apex Court decision :

AAR has relied heavily on the decision of the Apex Court in the case of *Narne Construction (P.) Ltd. v. UOI (supra)*. In this case, the question before the Apex Court was whether the assessee was offering any “service” to the buyers within the meaning of Consumer Protection Act, 1986?

The assessee there had invited buyers to purchase the land divided into plots. The sale was restricted only to buyers who become members on payment of fees. On agreement with the buyer, the assessee would provide them development facilities and provision of infrastructure. The sale of plots was made during the development stage. On these facts, the Court held that the assessee was offering services to the buyers.

Facts of AAR decision v. Apex Court decision :

In the case before AAR, there is no discussion regarding the stage of collection of money and sale of plots by the Developer. If the Applicant is selling the plot after the development of work and amenities i.e. finished product then there should be no GST as it is sale of immovable property. If the service of development of amenities is being provided after sale of plot to the buyer, then possibly GST would arise. More so, if the agreement with the buyer quantifies the consideration for such development activity.

Conclusion :

It appears that this argument of stage of sale was not taken before the AAR. Accordingly, it will be very important for AAAR to deal with this argument by considering facts of both these cases.

Acelegal

Email id : bharat@acelegal.net
Telephone : 022-27812781 / 82
Website : www.acelegal.net.in

Mumbai : D-201, 2nd Floor, Vashi Station Complex, Navi Mumbai – 400 703

Delhi : B-27, Front Block, Sagar Apartments, 6-Tilak Marg, New Delhi – 110 001.

Disclaimer :

This information Memorandum is meant solely for the purpose of information. Acelegal do not take any responsibility of decision taken by any person based on the information provided through this memorandum. Please obtain professional advice before relying on this information memorandum for any actual transaction. Without prior permission of Acelegal, this memorandum may not be quoted in whole or in part or otherwise referred to in any documents.