



Sale of Developed Plot- Developers on the Fence

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Industry was keenly awaiting the decisions of the 47th GST Council meeting which took place after a long six-month gap from the previous meet. The response to the GST Council recommendations has been a mixed one. A much-debated issue being- **Circular No. 177/08/ 2022 dated August 03, 2022 (“Circular”)** which essentially clarified the ‘Taxability on sale of developed plots’, amongst others.

Section 7 of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) defines the scope of ‘supply’ to encompass ‘*all forms of supply of goods or services or both*’. However, the said Section carves out an exception under Schedule III of the CGST Act prescribing the activities that are neither treated as supply of goods nor services and kept outside the ambit of GST which *inter-alia* includes ‘sale of land’.

Usually, developers possess a land bank which is upgraded with some basic infrastructure such as drainage lines, land levelling, electricity, lights, and common roads as per the statutory approvals received from the local authorities. These value addition works are primarily undertaken so that a barren plot of land becomes marketable. Simultaneously, the plotting activity is undertaken on the said land, which is then sold to various customers - either before, during or after development of land. Sale of land being exclusively outside the scope of GST, industry has been plagued with doubts in respect of applicability of GST on sale of developed plots. If GST is applicable, then the next question arises on its valuation – which has been a subject of debate due to several contradicting advance rulings on the said issue.

In a prominent case of **Gujarat AAAR in case of Dipesh Anilkumar Naik**, it was ruled that the activity of sale of developed plots would be covered under the category of “*construction of civil structure or a part thereof, intended for sale to a buyer*” and treated as a taxable service attracting GST@18%. There have been various rulings on this issue, some in consonance with the Gujarat AAAR and a few in contradiction of the same- such as in the case of **Dharmic Living Private Limited, PPD Living Spaces Private Limited (Kerala) and Shantilal Real Estate Services (Goa)** wherein it has been ruled that sale of developed plot/ land i.e. sale after development would be encompassed under Schedule III of the CGST Act and not liable for GST.

Unfamiliarly, a speculative Ruling was pronounced by the Madhya Pradesh AAAR in the case of **Bhopal Smart City Development Corporation Limited** which ruled that the said activity is liable to GST@18% and went a step further to determine the value of such supply as the total amount charged **less** 1/3rd deduction towards value of land (deemed deduction—in terms of Explanation 2 of the Rate Notification).

The applicability of GST in the said Ruling was derived basis the analogy of Entry 5(b) of Schedule II of the CGST Act which provides that “*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*” shall be treated as supply of service and leviable to GST @18%

in terms of the Rate Notification under SAC 9954. Further, the term “construction” *per-se* has been defined under Explanation to Entry 5(b) of Schedule II which provides that the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure.

Having stated the above, it certainly seems out of order to levy GST under the said Entry as development of a plot does not consist of any additions/alterations/replacements of any existing civil structure/complex/building, but it merely is a sale of land with some basic infrastructure to make the land habitable.

It is important to note here that Explanation 2 of the Rate Notification clearly makes a reference to the specific entries wherein the said Explanation would be applicable. Those specific entries clearly pertain to construction of building/complex/civil structure- which is not the activity in case of land development. Therefore, reference of Explanation 2 of the Rate Notification for the deeming 1/3rd deduction towards value of land is confusing in this case. Also, on a more practical note, the value of land is much higher for the sale of developed plots than that of the cost of development services. Given the said context, the aforesaid AAAR created quite a stir in the industry as the Gujarat High Court has ruled in the judgement of ***Munjaal Manishbhai Bhatt Vs UOI*** that 1/3rd deduction towards land is not mandatory and shall be applied where the value of land is not ascertainable in light of the settled principle that levy of tax on land is unconstitutional.

Basis the recommendations of the 47th GST Council meeting, the Ministry of Finance recently issued the Circular and clarified that barren land sold after development activities shall be considered as sale of land to be covered under Sr. No. 5 of Schedule III of the CGST Act and outside the purview of GST. Given the above clarification, the ambiguity regarding sale of plot after completion of development activities has been put to rest.

However, there still continue to persist several ambiguities such as the determining factor to decide whether development activities have been concluded or not. As an illustration, in the state of Maharashtra, there is no statutory requirement of issuance of completion certificate in case of land development activity unlike that in case of building construction. Given this background, it is debatable if one can take the benefit of Explanation to Entry 5(b) to infer that an architect/chartered engineer’s certificate would suffice as a competent authority for determining the completion of development. Also, the applicability of GST on sale of plot where agreement is executed before/during the development of land and the valuation thereof remains unclarified.

Therefore, despite the clarification issued by the Government, the taxability on developed plots is still a puzzle - given the varied misgivings circumvented around it.

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