



**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2020-21/05

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Additional commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Hazari Bagh Builders Pvt.Ltd., 104, LIC Colony, Vaishali Nagar, Ajmer-305001 Rajasthan
GSTIN of the applicant	:	08AAECH7175C1ZL
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	a. Classification of any goods or services or both; b. Applicability of a notification issued under provisions of this act;
Date of Personal Hearing through video conference	:	20-05-2020
Present for the applicant	:	Shri Pankaj Ghiya, (Authorised Representative)
Date of Ruling	:	30-06-2020

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.



• At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

- The issue raised by M/s Hazari Bagh Builders Pvt. Ltd., 104, LIC Colony, Vaishali Nagar, Ajmer-305001 Rajasthan (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a)(b) given as under:

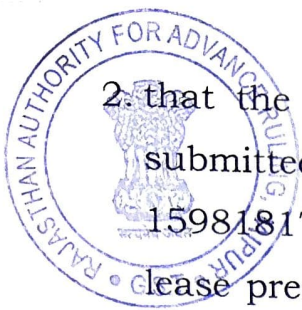
a. Classification of any goods or services or both;

b. Applicability of a notification issued under provisions of this act;

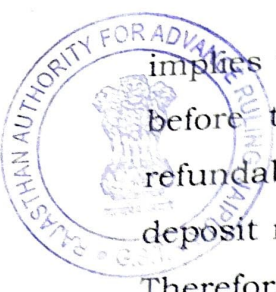
- Further, the applicant being a registered person (GSTIN is 08AAECH7175C1ZL) as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1. That the Rail land Development authority (hereinafter referred to as "RLDA"), a statutory authority under Ministry of Railway, Government of India having its office near Safdarjung Railway Station, MotiBagh-I, New Delhi issued a Request for proposal (RFP) (enclosed at Page 134 in the Lease Agreement Executed between RLDA and Hazari Bagh Builders Pvt. Ltd.) which was publicized by RLDA for grant of lease for residential & commercial development along with development of financial infrastructure on 6.84 Ha (approx.) of Railways land at Hazari Bagh, Ajmer for 99 years on 15.02.2018;

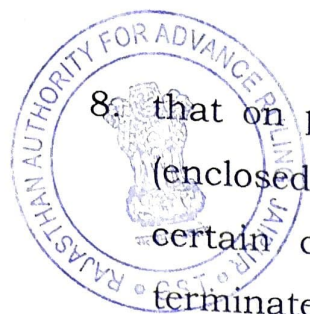


2. that the Applicant Company M/s. H.S. Mehta Infra Pvt. Ltd. Ajmer submitted the bids and their lead partnership for Plot A at Rs. 159818170.00 lease premium and for Plot B as Rs. 319074800.00 lease premium. It was mentioned in the financial bid Form-12 of both plot A and B that the applicable taxes / duty /GST, if any shall be payable extra by the bidder in addition to the above quoted / offered rates (lease premium and annual lease rent);
3. that after the bids were submitted the Letter of acceptance (LOA) (page 16-17 of lease agreement) was issued on 26.09.2018 by RLDA to the highest bidder i.e. the Applicant, of combined land parcels of two plots A and B having quoted combined lease premium of both plots as Rs. 478892970.00 with their letter No. 371 dated 26.09.2018. As per payment schedule of bid Form 12 it was requested by RLDA to the Applicant to Form a new SPV as per conditions mentioned in the bid and pay Rs. 158657105 towards the payment of first installments of lease premium along with interest as applicable with applicable GST if any or as applicable on the date of deposition of the said payments;
4. that the applicant M/s. H.S. Mehta Infra Pvt. Ltd. Ajmer as lead partner with consortium formed a new SPV as per bid conditions named Hazari Bagh Builders Pvt. Ltd. Ajmer and received its GST No. as 08AAECH7175C12L as mentioned at Page 52 of the lease agreement. New SPV M/s. Hazari Bagh Builders Pvt. Ltd. Ajmer deposited the amount of Rs. 158657105.00 by various RTGS as given as detail on page No. 3 of lease agreement enclosed herewith between the period of February, 2019;
5. that as per the terms of the Lease Agreement by way of Clause 26, certain conditions have been enlisted where the lease agreement can be terminated if the same are not fulfilled. Clause 26.3 clearly states that any amount paid before the execution of the Lease Agreement, is refundable in case of breach except the security bid submitted by the Applicant without prejudice to any other rights or remedies. This



implies that the amount which is paid in the month of February, 2019 before the execution of lease agreement i.e. 08.11.2019 is totally refundable and does not form part of the consideration and is only a deposit made for confirmation of contract and is in nature of Security. Therefore, it is not eligible to GST;

6. that as per the facts the Applicant Company is registered in the State of Rajasthan and having GSTIN in State of Rajasthan. The Applicant company has entered into a long term Lease Agreement of 99 years with RLDA for undertaking residential & commercial development along with development of financial infrastructure as on 08.11.2019. The Applicant Company paid a sum of Rs. 158657105.00 in parts by way of RTGS on separate days in the month of February, 2019 as Security deposit which, in case of breach is refundable after forfeiting the bid security deposited separately for both the Plots as per the terms of the lease agreement which is Rs. 3300000.00 for Plot A and of Rs. 5200000.00 for Plot B. The issue to be examined in the present case is whether the amount paid prior to 29.03.2019 in pursuance to the lease agreement of 99 years executed on 08.11.2019 are exempt from levy of GST or not;
7. that the transaction in question is between RLDA and the applicant company to whom the land is given for undertaking commercial development and financial infrastructure on a long term lease of 99 years vide a lease agreement. A certain amount has been paid by the Applicant Company before entering into the lease Agreement as Security Deposit. The Long term Lease Agreement has been entered into between the Applicant Company and RLDA on 08.11.2019. It is important to note here that the amount paid by the Applicant Company in the month of February, 2019 was neither an advance nor a lease premium but is in the form of Security and if the Lease agreement is not entered then as per clause 26 of the agreement such amount is refundable in full. The said amount payable was paid after the bid was confirmed but before the execution of Contract of lease;



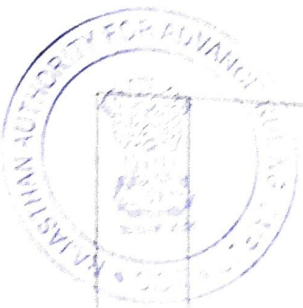
8. that on perusal of the Long term lease agreement dated 08.11.2019 (enclosed herewith and marked as **Annexure-1**) Clause 26 enlists certain conditions on breach of which the contract would stand terminated and the bid security paid by the Company would stand forfeited. However, it is to be noted that the amount otherwise paid to RLDA is fully refundable and the said arrangement is without prejudice to any other rights or remedies. It is quite clear that the amount which is paid without even executing the agreement could not possibly construct to be a premium paid for such lease agreement. The amount so paid is only to secure and confirm the execution of the contract;
9. that as per agreement clause 26 as mentioned at page 399 of lease agreement the bidder whose bid is accepted shall be required to fulfill the mentioned point i.e. (a) to (e) in clause 26. As per clause 26.3 failure to fulfill any of the conditions specified therein shall constitute a breach of bid submitted by the bidder in which case the full value of only the bid security shall stands forfeited without prejudice to any other rights or remedies;
10. that it can be stated that the payment against the lease agreement paid before 31.03.2019 as additional security. In the present case it is security on which no GST is applicable. As per clause 26.3 of the tender bid and lease agreement page 400 the said amount is refundable after forfeiting the security bid submitted by bidder during the bid in case of any default from (a) to (e) as mentioned on page 399 before execution of lease agreement. As agreement was executed on 08.11.2019 and paid amount before this date is totally refundable in case of any default by bidder after only forfeiting the bids security it should be exempted from GST;
11. that when the said amount is not a premium and only a security by way of which the contract is confirmed it cannot attract the liability of GST. The payment of premium would commence only after the said agreement has been entered into and not prior to that. Any amount



paid before entering into the contract and where no services are provided it cannot be considered as a premium. Such amount is only for confirmation by the parties to enter into the Long term lease Agreement. The said amount does not fall under the scope of consideration as there was neither any contract between the parties nor any services provided. Hence, such amount is beyond the scope of GST;

12. that in the alternate, without prejudice to the above contentions, even if the said amount is considered as "lease premium" it is to be pointed out here that the Government, Ministry of Finance by way of Notification No. 04/2019-Central Tax Rate date 29.03.2019 has exempted any upfront amount payable for grant of long term lease of thirty years. Certain conditions have been prescribed in the said Notification which have not been violated by the Applicant and hence is squarely covered under the said Notification and is exempt from any GST liability for the amount paid in lieu of the agreement executed on 08.11.2019. The said entry is reproduced hereunder for your kind perusal:

41B	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, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, 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.	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un- booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner – [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by
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The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:

[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).

any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project);

Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation.

The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.

13. that it is submitted here that the lease agreement has been entered into on 08.11.2019 and the said Notification covers any amount which becomes payable on or after 01.04.2019. In the present case as the



agreement has been executed on 08.11.2019, the lease premium in pursuance to such an agreement is squarely covered under the said Notification and is totally exempt from the levy of GST. It is again submitted here that neither the agreement was executed nor any services of lease were extended by RLDA in the form of possession to the applicant therefore the amount if paid as premium was in pursuance to an agreement executed after the exemption Notification came into effect;

14. that without prejudice to the above submissions, on perusal of the Long term lease Agreement, it can be seen that the Applicant is also involved in the development of infrastructure on the land given on long term lease by the RLDA. Along with the development of residential plots, the Applicant is also engaged in developing the roads, sewage system, laying of the street lights, etc. The said transaction and any upfront amount paid in this respect (whether in installments or otherwise) is exempt under the provisions of CGST Act, 2017 by virtue of Entry No. 41 under Notification No. 12/2017-Central Tax(rate) dated 28.06.2017. The said entry is reproduced hereunder for your kind perusal:

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
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15. that further as per Government of India, Ministry of Finance, Circular No. 101/20/2019-GST dated 30.04.2019 it has been clarified that GST



has been exempted on the upfront amount payable whether paid in installments or otherwise for long term lease of plots (of thirty years, or more) under Notification No. 12 /2017- Central Tax Rate, Serial No. 41 dated 28.06.2017. Upfront amount called as premium payable in respect of service by way of grant of long term lease (of 30 years or more) of plots for development of infrastructure for financial business provided by undertaking having 50% or more ownership of Central Government to the developers in financial business area. As such through this circular no GST is applicable on the RLDA land;

16. that it can therefore be seen on perusal of the Entries in the Notification and the nature of activity undertaken by the Applicant Company that the present transaction of long term lease is squarely covered under Entry No. 41 of Notification No. 12/2017-CT(R) dated 28.06.2017 and is exempt from GST from the very inception of CGST Act, 2017;

17. that therefore, in our considered view, no GST is applicable on the amount paid by the Applicant Company to RLDA and the said transaction is exempt from the levy of GST. In view of the aforesaid facts, legal provisions we are of the opinion on the queries that the amount paid earlier and payable in pursuance of long term lease between the Applicant Company and RLDA are not liable to GST.

B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

- i. Whether the Lease Agreement between the Applicant Company i.e. the Lessee and RLDA for a period of 99 years is exempt from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?
- ii. Whether the amount of Rs. 158657105.00 which is transferred by the Applicant Company as Security Deposit in pursuance to the tender and lease agreement dated 08.11.2019 is exempt under GST in view of



the Notification No. 04/2019-Central tax(rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax(rate) dated 28.06.2017?

- iii. Whether the amount of Rs. 158657105.00 deposited during February, 2019 is exempt under Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?

C. PERSONAL HEARING

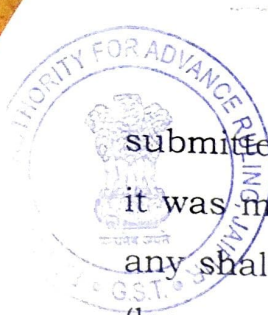
In the matter personal hearing through video conference was granted to the applicant on 20.05.2020. Shri Pankaj Ghiya, Advocate (Authorized Representative) of applicant appeared for PH. During the PH, he reiterated the submissions already made in the application. He also submitted additional submission through email on the same day and on 5.6.2020. He further requested that the case may be decided at the earliest.

D. COMMENTS OF THE JURISDICTIONAL OFFICER

Comments received from the Assistant Commissioner, Central Goods & Service Tax Division, Ajmer vide letter dated 12.5.2020 are reproduced as under: -

- 1) Whether the lease agreement between the applicant Company i.e. the lessee and RLDA for a period of ninety-nine years is exempt from levy of GST in view of Notification No.04/2019-Central Tax (Rate) dated 29.03.2019 or Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017?

Comments: The applicant company i.e. M/s. Hazari Bagh Builders Pvt. Ltd., Ajmer and RLDA (Rail Land Development Authority) have entered into a lease agreement as on 08.11.2019 for ninety-nine years for a land measuring 7.337 hectare for residential development. The applicant company has paid an amount of Rs. 15,86,57,105/- (First Installment of lease premium during February-2019 to the RLDA). In a financial bid



submitted by the applicant company in FORM-12 for both plots A and B, it was mentioned by the bidder that the applicable taxes/ duty/ GST, if any shall be payable extra in addition to the above quoted/ offered rates (lease premium and annual lease rent.)

As per Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, at Serial Number-41 (Heading No. 9972) it was mentioned as under "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 (30 years or more) lease of industrial plots, provided by the State Government Industrial Development Corporation or Undertakings to Industrial Units".

Ongoing through the above condition of aforesaid notification, it is viewed that payment of GST has not been exempted for the said premium payment as this payment was made as a part of lease agreement as per mutual understanding, further condition was also mentioned that "Lease of industrial plots, provided by the State Government Industrial Development Corporation or Undertakings to Industrial Units".

In this context, it is mentioned that RLDA has leased 7.337-hectare land to the applicant company i.e. M/s. Hazari Bagh Builders Pvt. Ltd., Ajmer, which do not fulfill the condition / definition of the said notification. Therefore, in view of this office reply for question No.1 is not affirmative.

2) Whether the amount of Rs. 15,86,57,105/- which is transferred by the applicant company as security deposit in pursuance to the tender and lease agreement dated 08.11.2019 is exempt under GST in view of Notification No.04/2019-Central Tax (Rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?

Comments: It is not correct contention that applicant company has transferred Rs. 15,86,57,105/- as security deposit in pursuance to the



tender and lease agreement dated 08.11.2019. Whereas, as per agreement dated 08.11.2019 made between RLDA and Applicant Company at page No. 3 (as per copy forwarded with the application of the applicant), it was clearly mentioned that (F) "The lessee/ selected bidder in compliance of the term and condition of the LOA has (a) paid to RLDA following amount towards the first installment of the lease premium as specified in the LOA/ schedule of payment in the following manner- Date 16.02.2019 to 22.02.2019 total Rs. 15,86,57,105/-".

Thus, the contention of the applicant company appears not correct, as it is not security deposit, but it is a part of lease premium, which is not exempted from levy of GST as per view of this office.

3) Whether the amount of Rs. 15,86,57,105/- deposited during February-2019 is exempt under Notification No.04/2019-Central Tax (Rate) dated 29.03.2019 or Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017?

Comments: As per Notification No.04/2019-Central Tax (Rate) dated 29.03.2019, the contents under 41B is reproduced as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
41B	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, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un- booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner -



completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:

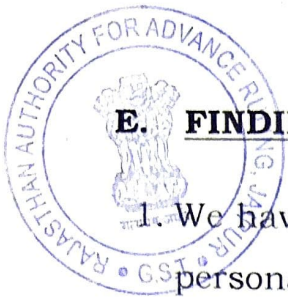
[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)

[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project);

Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation.

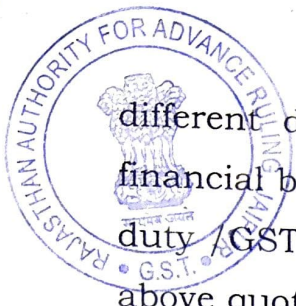
The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.

Therefore, the amount deposited by the applicant company i.e. M/s Hazari Bagh Builders Pvt. Ltd., Ajmer appears not exempted from the purview of GST. Thus, in view of this office, reply for question No.3 is not affirmative.



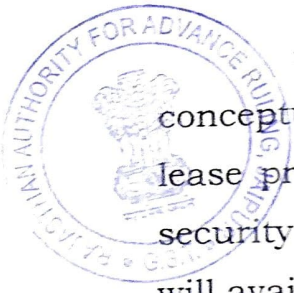
E. FINDINGS, ANALYSIS & CONCLUSION:

1. We have considered the submissions in their application and during the personal hearing made by the applicant, we find that the Rail Land Development Authority (hereinafter referred to as "RLDA"), New Delhi issued a Request for Proposal (RFP) vide RFP No. RLDA/RFP/CD/07 dated **15.02.2018** for residential development of 7.337 Ha (approx.) of Railways land at Hazari Bagh, Ajmer on lease for 99 years. The portion of 7.337 Ha land has two plots viz. Plot A of 2.25 Ha and Plot B of 5.08 Ha.
2. *The consortium of M/s H S.Mehta Infra Private Limited (Lead Member), M/s G.S. Build Estate Private Limited and M/s Sankalp Realmart Pvt. Ltd., 104, LIC Colony, Vaishali Nagar, Ajmer, Rajasthan 305001 (the 'Selected Bidder') was the successful bidder and was issued the Letter of Acceptance (the 'LoA') vide letter No. RLDA/2018/Residential/RFP/Hazari Bagh, Ajmer/371 Dated 26.09.2018 by RLDA.*
3. The selected Bidder has, in accordance with the LoA, promoted and incorporated the applicant i.e. M/s Hazari Bagh Builders Private Limited, Ajmer having GST No. 08AAECH7175C12L as a company under the provisions of the Companies Act, 2013.
4. Whereas, as per LoA, the amount of lease premium for both the plots is Rs. 15,98,18,170/- (Plot A) and Rs. 31,90,74,800/- (Plot-B). That, apart from the lease premium, the applicant will also have to deposit 'Annual lease rent' which is Rs. 2,00,000/- for both the plots, to be revised upwards by 15% every three years.
5. Whereas, as per LoA, the applicant has to deposit 1st installment of lease premium along with GST @ 18% (or as applicable) under reverse charge, within 60 days from the date of issue LoA (i.e. 26.09.2018).
6. The Applicant in accordance with the LoA, deposited Rs. 15,86,57,105/- as first installment of the lease premium to RLDA by various RTGS on



different dates from 16.02.19 to 22.02.19. It was mentioned in the financial bid Form-12, that, for both plot A and B; the applicable taxes / duty / GST, if any shall be payable extra by the bidder in addition to the above quoted / offered rates (lease premium and annual lease rent). The bid security amount for both the plots was Rs. 33,00,000/- for Plot A & Rs. 52,00,000/- for Plot B.

7. Whereas, as per LoA, the lease agreement can be terminated if attached conditions are not obliged by the applicant viz. non-payment of lease premium in prescribed duration as provided under Form-12.
8. We observe that, the applicant deposited Rs. 15,86,57,105/- as a first installment of the lease premium in the month of February, 2019. The applicant's contention that it is not a lease premium but only a security amount is not tenable on the ground that security of contract was ensured when Letter of acceptance (LoA) was issued on 26.09.2018 by RLDA to the highest bidder i.e. the Applicant. In post LoA, bid conditions mandated that the highest bidder will form a SPV and will deposit first installment. Further, the applicant himself in his submissions stated that as against bid security of both the plots, they deposited Rs. 33,00,000/- for Plot A and of Rs. 52,00,000/- for Plot B. Therefore, the contention that the money deposited is not a lease premium but a security amount is not rational and tenable. The first installment of the lease premium was made to the RLDA after LoA. Whereas the amount so paid to secure and confirm the execution of the contract was bid security amount (Rs. 33,00,000/- for Plot A & of Rs. 52,00,000/- for Plot B). Therefore, amount of Rs. 15,86,57,105/- is installment of lease premium.
9. Whereas, the applicant is contesting that as per clause 26.3 of the tender bid and lease agreement page number 400, the entire amount except security bid amount will get forfeited in case of any default on part of the applicant is also not valid on the ground that every agreement is de-novo in itself and conditions may vary from each other except the



conceptual facts and principles. The amount of Rs.15,86,57,105/- as lease premium was deposited after issuance of LoA and deposit of bid security amount i.e. the stage when it is confirmed that the applicant will avail leasing services of the plots from the RLDA.

Further, the 'Time of Supply of Services' for cases of Reverse Charge Mechanism, as defined in Section 13 (3) of CGST Act, 2017 is as under—

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: —

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or*
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:*

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

We observe that the LoA has clearly stipulated that the GST on lease premium will be deposited by the recipient of Services directly in Government account and in case, recipient of services is not registered in GST then the GST amount needs to be transferred to the RLDA. In the instant case, the applicant is a registered entity and therefore it is liable to pay the GST directly in government account under RCM. Further, as defined in above Section, the payment of Rs 15,86,57,105/- is due when the said amount is either shown in books of account of recipient or 60 days post-invoicing of the said amount made by the supplier; whichever is earlier. The applicant in pursuance to this has deposited first



installment of lease premium of Rs 15,86,57,105/- by various RTGS on different dates from 16.02.19 to 22.02.19.

In view of the facts of law as discussed above, we find that lease premium deposited by the applicant is a consideration towards leasing services supplied by RLDA to the applicant and thus liable to GST.

10. Whereas, while examining on functions of RLDA, we find that it is a statutory authority constituted under the Railways Act, 2005 with obligation, inter alia of development on Railway land for commercial use, entrusted to it by the Central Government for the purpose of generating revenue by non-tariff measures.

We observe that in background of its function, especially of generating revenue, RLDA is leasing the parcels of land and thus it is a rental or leasing service of land for commercial function. In a way, it is clear from facts that RLDA is supplying rental or leasing service involving own land. The said service is classifiable under HSN 997212 '*rental or leasing services involving own or leased non-residential property*'.

Further, the Services of HSN 997212 falls under Serial No. 16 (iii) of the Notification 11/2017- Central Tax (Rate) dated 28.06.2017 (as amended) and attracts GST @ 18% (SGST 9% + CGST 9%). The relevant extract of the said Notification is as under—

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
16	Heading 9972	(iii) Real estate services other than (i) and (ii) above.	9	-

11. Whereas, the Serial No. 5A of Notification 13/2017- Central Tax (Rate) dated 28.06.2017 (as amended) provides that 'supply of renting of immovable property' made by Central Government to a registered entity



is taxable under RCM i.e. the recipient of service is liable to pay GST.

The relevant portion of the said Notification is as under—

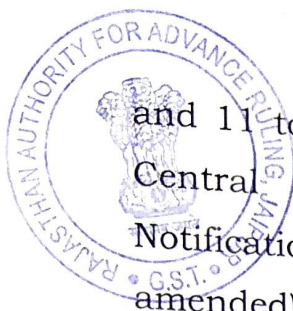
Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017.

Moreover, the Para 1(g) of the Notification 13/2017- Central Tax (Rate) dated 28.06.2017 (as amended) defines '*renting of immovable property*', which is as under—

(g) "*renting of immovable property*" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

We observe that, RLDA being the statutory authority of Government of India is providing services by way of renting of immovable property to a registered person (i.e. the applicant), and renting of immovable property includes leasing also, therefore the said services are falling under the purview of Reverse Charge Mechanism. The applicant being the recipient of service of leasing or renting of immovable property is liable to pay GST under RCM.

12. Whereas, to determine the rate of GST on supply made by RLDA to the applicant, we have to go through the above discussed Para 10



and 11 together i.e. Chapter heading 9972 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) with the Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (as amended). Thus, we find that, the leasing services supplied by the RLDA to the applicant falls under HSN 997212 attracting GST @ 18% (SGST 9% + CGST 9%).

13. The applicant has further made a contention that leasing services provides by RLDA to them is exempt from GST as provided under Serial No. 41B of Notification 12/2017- Central Tax (Rate) dated 28.06.2017 as amended vide Notification 04/2019-Central Tax (Rate) date 29.03.2019.

The relevant portion of the Notification 04/2019-Central Tax (Rate) date 29.03.2019 is as below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
41B	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, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner – [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long



	issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).	term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project); Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.
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We observe that amended Notification 04/2019- Central Tax (Rate) dated 29.03.2019 of the principal Notification 12/2017-CT (R) dated 28.06.2017 is not applicable in the present case due to the following reasons:-



a. The said notification was issued on dated 29.3.2019 and it clearly mentions that it will be applicable for upfront amount payable on or after 01.04.2019 but in the instant case the amount of Rs 15,86,57,105/- was deposited by the applicant during the month of Feb, 2019 which is prior to the applicable date 01.04.2019 of the said Notification.

b. Further, as discussed in the para 9 above the 'Time of Supply of Services' in cases of RCM viz. Section 13(3) of GST Act, 2017, which is applicable to applicant in the instant case is "Feb 2019" and as the applicant has deposited the lease premium in "Feb 2019" the GST liability, Time of Supply of Service and Point of taxation are applicable in Feb, 2019. Thus, the said Notification is not applicable in the instant case.

Thus, we find that the contention made by the applicant regarding applicability of Serial No. 41B of Notification 12/2017-CT (R) dated 28.06.2017 (as amended) is not tenable.

14. Whereas, the applicant has also made a contention for applicability of Serial No. 41 of Notification 12/2017-CT (R) dated 28.06.2017 (as amended) read with Circular No. 101/20/2019-GST dated 30.04.2019. The relevant entry of the Notification is reproduced here—

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	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 20 per cent. or more ownership of	NIL	NIL



Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area."		
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We find four essential conditions as discussed below:-

- *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;*
- *entity having 20 per cent. or more ownership of Central Government, State Government, Union territory;*
- *to developers in any industrial or financial business area*

We observe that, elements regarding long term lease (present lease is 99 years) and entity having 20% or more of ownership of Central Government are satisfied (RLDA being the statutory body of Government of India).

But, we find that, two other conditions namely, industrial plots or plots for development of infrastructure for financial business and that to award such lease to developers in any financial business area needs examination. We find that the RLDA is not awarding industrial plots to applicant but a portion of land over which some residential infrastructures are meant to be built. An industrial plot is the one in which developer is granted permission by competent authority be it Central Government/State Government in reference to some scheme of development. These plots are for a specific purpose and if plot-holders in future tries to engage in some other work or lease conditions of agreement are breached, then the developer has every right to eject that plot-holder. In the present case, RLDA is just providing a parcel of land which is in its ownership therefore; the lease of the same cannot be categorized as meeting condition of industrial plot and for the purpose of financial



business. RLDA has leased ordinary plots for residential purpose consequently the conditions of the said notification are not satisfied. Therefore, the said notification is not applicable in the instant case.

In view of the foregoing, we rule as follows: -

RULING

- i. The Lease Agreement between the Applicant Company i.e. the Lessee and RLDA for a period of 99 years is not exempted from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.
- ii. The amount of Rs. 158657105/- which is transferred by the Applicant/SPV in pursuance to the tender and lease agreement dated 08.11.2019 is not exempted under GST in view of the Notification No. 04/2019-Central tax(rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax(rate) dated 28.06.2017.
- iii. The amount of Rs. 158657105/- deposited during February, 2019 is not exempted from GST vide Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

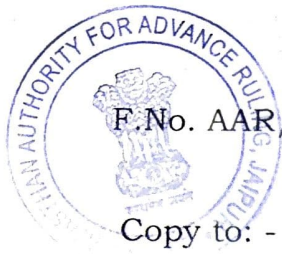

J.P. MEENA 30/06/2020
Member
(Central Tax)




HEMANT JAIN 30/6/20
Member
(State Tax)

SPEED POST

✓ M/s Hazari Bagh Builders Pvt.Ltd.,
104, LIC Colony, Vaishali Nagar,
Ajmer-305001 Rajasthan



F.No. AAR/Hazari Bagh/2019-20/29

Dated: 1/7/2020

Copy to: -

1. The Chief Commissioner CGST and Central Excise Jaipur Zone, Jaipur, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
2. The Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Commissioner, CGST and Central Excise Commissionerate Jaipur, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
4. The Assistant Commissioner, CGST Division, C.R. Building, Jaipur Road, Ajmer-305001 Rajasthan.

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