

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2023/13
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/52A)

Date: - 31.03.2023

Name and address of the applicant	:	Yogendra Bansidhar Bhatt				
		<table><tr><th><u>Registered Address</u></th><th><u>Correspondence Address</u></th></tr><tr><td>Diamond Bungalows Khanpur- Sevasi Road, Khanpur Vadodara-391101 Gujarat.</td><td>Avdhoot Hospital Floor No. 25-A, Geetanjali Society. Jetalpur Road, Chikuwadi Vadodara-390007 Gujarat</td></tr></table>	<u>Registered Address</u>	<u>Correspondence Address</u>	Diamond Bungalows Khanpur- Sevasi Road, Khanpur Vadodara-391101 Gujarat.	Avdhoot Hospital Floor No. 25-A, Geetanjali Society. Jetalpur Road, Chikuwadi Vadodara-390007 Gujarat
<u>Registered Address</u>	<u>Correspondence Address</u>					
Diamond Bungalows Khanpur- Sevasi Road, Khanpur Vadodara-391101 Gujarat.	Avdhoot Hospital Floor No. 25-A, Geetanjali Society. Jetalpur Road, Chikuwadi Vadodara-390007 Gujarat					
GSTIN of the applicant	:	Unregistered. Temporary registration no. 242200000570ARA				
Date of application	:	04.11.2022				
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a)(b)(e)(g)				
Date of Personal Hearing	:	28.02.2023				
Present for the applicant	:	Dr. Yogendra B Bhatt and Shri Ankur Sandesara.				

Brief facts:

Shri Yogendra Bansidhar Bhatt, Avdhoot Hospital, Floor No. 25-A, Geetanjali Society. Jetalpur Road, Chikuwadi, Vadodara-390007 [for short – ‘applicant’] is not registered under GST.

2. The applicant is residing at Diamond Bungalows, Khanpur, Vadodara and is a member of Diamond Bungalows. The developer of Diamond Bungalows is M/s. Vaibhav Corporation Pvt Ltd, who is now planning to sell their developed plot no.4 to the applicant for a consideration charging GST.

3. Aggrieved by the decision of the developer proposing to charge the GST, the applicant is before us seeking a clarification as to whether GST is applicable on developed plot. The applicant believes that GST is not applicable on



land or any type of developed plot. This belief is based on the clarification issued by CBEC vide its circular no. 177/09/2022 dated 3.8.2022, wherein under point no. 14.3 it was stated as follows:

14. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST

14.1 Representation has been received requesting for clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc.

14.2 As per Sl no. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.

14.3 Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

14.4 However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

4. The applicant has enclosed a letter dated 25.5.2021 from M/s. Vaibhav Corporation P Ltd wherein the developer has along with balance payment sought a sum of Rs. 24.12 lacs towards GST @ 18%. Further, the applicant has also enclosed the copy of opinion on taxability of developed plots rendered by M/s. Prakash Chandra Jain and Company dated 27.9.2022, wherein *inter alia* the firm has opined as under:

"Basis the recommendations of the 47th GST Council meeting, the Ministry of Finance recently issued the Circular & clarified that land sold after development activities shall be considered as sale of land to be covered under Sr. No. 5 of Schedule III of 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."

5. Vide the aforesaid application, the applicant has sought advance ruling on the below mentioned question viz

1. Is GST applicable on land or any developed plot ?

2. If GST is applicable for both construction of individual bungalow and on proportionate share to common amenities ?

3. How much GST paid by Vaibhav Corporation P Ltd for construction of following plot of Diamond Bungalow. Where builder has different GST policies applied for different members of Diamond Bungalows.



The total sales consideration was inclusive of GST ie 12% of sales consideration [2/3 value of GST on sales consideration) [sic]

4. How much Builder has paid for GST proportionate to common amenities for all Diamond Bungalow plot where we are supposed to pay 25 lacs as GST ?

5. Is there any scam for GST payment by the Builder in the era of discrepancy in amount received for different plots where builder are supposed to pay GST for both construction and against the payment for common amenities ? [sic]

6. Personal hearing was granted on 28.2.2023 wherein Dr. Yogendra B Bhatt and Shri Ankur Sandesara appeared and reiterated the facts as stated in the application.

Discussion and findings

7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 provisions under the GGST Act.

8. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. Prima facie we find that the questions posed before us seeking ruling are cryptic and difficult to comprehend.

10. Before delving on to the aforementioned question, it would be prudent to reproduce the relevant provisions in vogue for the sake of ease of reference viz.

****Section 95. Definitions of Advance Ruling.-***

In this Chapter, unless the context otherwise requires,-

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority¹ [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100² [or



of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(c) "applicant" means any person registered or desirous of obtaining registration under this Act;

Section 97. Application for advance ruling.-

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Section 98. Procedure on receipt of application.-

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

Section 103. Applicability of advance ruling. -

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only-

- (a) on the applicant who had sought it in respect of any matter referred to in sub section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

11. As is evident, the application is filed by the applicant seeking a ruling primarily on whether the Developer can charge GST for developing a plot. Thus, in this case, the applicant as a recipient of supply is seeking a ruling on levability of GST on the supply made by the developer.



12. Thus, the applicant in the present proceeding is neither a supplier of the goods/service nor is the ruling sought on Input Tax Credit in respect of the supply received by the applicant, who as is mentioned *supra* is a recipient of the supply.

13. A conjoint reading of the sections 95(a) and (c), 97 and 103 of the CGST Act, 2017, depicts that advance ruling means a decision by the AAR to an applicant on matters or on questions specified under 97(2) *ibid* in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; that an applicant, means any person registered or desirous of obtaining registration under this Act; that such an applicant, may make an application in the prescribed form with appropriate fee, stating the question on which the said ruling is sought. The questions on which the ruling is sought is however, restricted to the 7[seven] issues listed in section 97(2), *ibid*. Further, in terms of section 103, such a ruling shall be binding only on the applicant and on the concerned officer or the jurisdictional officer, in respect of the applicant.

14. We find that [a] the applicant before us is not the supplier of the service and [b] that the ruling sought is not for admissibility of input tax credit in respect of supply received by the applicant. In fact it is the supplier who may seek an advance ruling in the matter. This being the factual matrix, we find that the applicant before us has no locus standi in seeking a ruling in the facts of the present case.

15. In the light of the foregoing, we rule as under:

RULING

The aforementioned application stands rejected in terms of section 98(2) of the CGST Act, 2017 read with sections 95(a), (c), and 103 of the CGST Act, 2017 .

(MILIND KAVATKAR)
MEMBER (SGST)

(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 31/03/2023

