GIB/KA/MAARQ SPACES /04.05.2020/AAAR-63

Appellate Advance Ruling Category : LEVY OF GST

State : Karnataka

Order No.: GIB/KA/MAARQ SPACES /04.05.2020/AAAR-63

Name of Entry :
MAARQ SPACES PRIVATE LIMITED

Date : 04-05-2020

Breif Issue :

FACTS OF THE CASE:

The Appellant is a Private Limited Company engaged in the business of property development. The Appellant has entered into a Joint Development Agreement (JDA) on 08/11/2017 with Land Owners for development of land into residential layout along with specifications and amenities. Cost of development shall be borne by Appellant. The consideration was agreed on revenue sharing basis in the ratio of 75% [for Land Owners] and 25% [for Developer / Appellant]. Pursuant to the JDA, the Appellant entered into an agreement with customers for sale of developed plots of land for consideration.

ISSUE OF THE CASE:

Whether the activity of development and sale of land attracts tax under GST?

If the answer to the above question is yes, for the purpose of taxable value, whether provision of Rule 31 can be made applicable in ascertaining the value of land and supply of service?

Decision of Advance Ruling Authority :

DECISION:

In the instant case there are two activities involved, viz: development of land and sale of plots. The transaction relating to the sale of land is not a supply of either goods or service under GST (entry 5 of Schedule III of the CGST Act refers). This activity of sale of land cannot be considered as an 'exempt supply' for the reason that the activity is not at all a supply and hence the question exempting it under Section 11 of the Act does not arise. On the other hand, the activity of development of land is a supply in terms of Section 7 of the CGST Act. A combination of two activities one of which is not a supply under GST cannot be said to be a composite supply - this contention of appellant cannot be agreed upon.

The landowner shall obtain all required licences, sanctions, consents, permissions, no-objections and such other orders as are required to procure the Sanctioned Plan. Further, in case the Appellant-Developer intends to modify the plans, the landowner shall obtain the required modifications to the sanctioned plan. The Appellant-Developer shall develop the project on the property subject to the obtaining of the sanctioned plan by the owners. Therefore, it is evident that the onus is on the landowner to comply with the provisions of Section 32 of the Karnataka Urban Development Authorities Act. It is the owner of the schedule property who agrees to transfer the ownership of the roads, drains, water supply mains, parks and open spaces, civic amenity areas to the Urban Development Authority. The Appellant-Developer has no role to play in obtaining the sanctions and in transfer of ownership. Therefore, this argument of the Appellant does not hold good.

While the Joint Development agreement is entered into for the two parties to jointly reap the benefits of the sale of the land to customers, there is a clear rendering of a service by the developer to the landowner in developing the land which belongs to the landowner. Therefore, the activity of developing the land is a supply of service by the Appellant.

The findings of the lower Authority on the question of taxability of the activity of development and sale of land and also the finding on the question relating to the value of supply is upheld - decision of AAR upheld.

The present appeal has been filed against the advance Ruling No. KAR/ADRG 119/2019 dated 30th Sept 2019