GIB/KA/MAARQ SPACES /30.09.2019/AAR-471

Advance Ruling Category : LEVY OF GST

State : Karnataka

Order No.: GIB/KA/MAARQ SPACES /30.09.2019/AAR-471

Name of Entry :
MAARQ SPACES PRIVATE LIMITED

Date : 30-09-2019

Breif Issue :

FACTS AND ISSUE OF THE CASE:

In this case the Applicant is a Private limited Company, registered under the Goods and Services Act, 2017, engaged in the business of property development. The Applicant submitted that he has entered into a Joint Development Agreement on 08/ 11/2017 with Landowners for development of land into residential layout along with specifications and amenities. The consideration was agreed on revenue sharing basis in the ratio of 75% for Landowner and Agreement Holder and 25% for Applicant. Cost of the development shall be borne by Applicant. Pursuant to JDA, Applicant had entered into an agreement with customers for sale of developed plots for consideration.

ISSUE OF THE CASE:

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

If the answer to the question no. 1 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:

On the basis of provisions of the agreement it would be in order to conclude that activities undertaken by the applicant are not qualified to be covered under entry number 5 of Schedule III of the said Act. Thus the activities undertaken by the applicant amount to a supply of service - the activities undertaken by the applicant, as envisaged in the agreement placed before the Authority, amount to a supply of service to the landowners and are liable to be taxed appropriately under the provisions of the CGST/KSGST Acts.

Consideration for a service is the total value that the service provider gets in the deal and not what the service provider expends for the provisioning of the service. The total gain to the

applicant or the total amount accruing to the applicant for the services is 25% of the amount at which the plots are sold. It has already been emphasised and held that the applicant has no right in the title of the land and therefore the applicant cannot be considered as the sellers of the plots. Their role is limited to aiding and assisting the landowners in the sale of the plots. They are only service providers in the whole process, be it development of the raw land into residential plots or their sale after the development. Therefore the entire amount received by them is liable to be taxed.

Thus, Rule 31 applies in the instant case and the value of the supply is equal to the total amount received by the applicant, which is equal to 25% of the market value of each plot.

For further reference check the appellate advance rulling order no. KAR/AAAR/Appeal-19/2020-21 dated 4th may 2020