

GIB/RJ/GREENTECH MEGA/28.05.2019/AAR-472

Advance Ruling Category : LEVY OF GST

State : Rajasthan

Order No.: GIB/RJ/GREENTECH MEGA/28.05.2019/AAR-472

Name of Entry :
GREENTECH MEGA FOOD PARK PVT. LTD.

Date : 28-05-2019

Breif Issue :

FACTS AND ISSUE OF THE CASE:

In this case applicant got approval from the Ministry of Foods Processing Industries, Government of India ("MoFPI") to set up a Mega Food Park at Village Roopangarh, Ajmer, Rajasthan. Memorandum of Agreement has been entered into between the President of India acting through the Director, MoFPI and the Applicant Company.

In terms of the said MOA, the applicant responsible for establishing the Food Park, including design, engineering procurement, financing, construction and operation of the Food Park in accordance with the provisions of MOA read with the scheme guidelines.

That as part of the development or setting up of the Foods Park, the Applicant company has identified / developed certain individual plots on the project site for the purpose of transferring the plots for a lease of 99 years and setting up of industrial units inter alia manufacturing of food and related products as well as food processing activities in accordance with the Scheme Guidelines.

That the applicant Company wishes to enter into lease agreements with several lessees for a total period of 99 years for separate industrial units situated at Greentech Mega Food Park, Village Roopangarh in Ajmer (Rajasthan) for a consideration towards booking and allotment of developed plot. The entrepreneurs can pay either immediately or within a mutually agreed upon period along with interest.

ISSUE OF THE CASE:

Whether the Lease Agreement between the Applicant Company i.e. the lessor and the Lessee for a period of 99 years is a Sale of immovable property and outside GST and is exempt from levy of GST?

If the present transaction of giving land on lease of 99 years is taxable under GST, then at what rate and what HSN Code is applicable?

Decision of Advance Ruling Authority :**DECISION:**

The agreement made between the applicant and the lessee for long term of 99 years is for lease agreement with many restrictions and has no right to further sale the allotted plot. In the sale deed purchaser becomes the absolute owner of the plot and is not dependent on the lessor for renewal or extension of the lease period - the stamp duty charged by the Registration and Stamp department of the state govt. varies from one state to another.

Leasing of a private property (land, building etc.) are classifiable under HSN 997212 heading "Rental or leasing services involving own or leased non-residential property" attracting GST @18% (SGST 9% + CGST 9%) of Annexure to Notification No. 11/2017 dated 28.06.2017.