

## **SALE OF PLOT OF LAND WITH BASIC AMENITIES**

**In an Application filed before AAR under GST, Gujarat by Shree Dipesh Anilkumar Naik [2020 (6) TMI 448]**

Applicant is the owner of the land, who develops the land with an infrastructure such as Drainage line, Water line, Electricity line, Land levelling etc. as per the requirement of the approved Plan Passing Authority

### **Scope of Work**

- a. Forming land into layout after obtaining necessary plan approval from the Development Authority, get all other permission required to take up, commence and complete what would be the layout, comprised of individual sites.
- b. Levelling the land,
- c. Construction of boundary wall,
- d. construction of roads,
- e. laying of underground cables and water pipelines,
- f. laying of underground sewerage lines with sewer treatments plant,
- g. development of landscaped gardens, drainage system, water harvesting system,
- h. demarcation of individual plots,
- i. construction of overhead tanks,
- j. other infrastructure works.
- k. common amenities like garden, community hall, etc. are also offered in some schemes.

### **Use of Such Plots-**

Sale of such sites is done to end customers who may construct houses/villas in the plots

### **Consideration**

- a. The sellers charge the rates on super built-up basis and not the actual measure of the plot.
- b. The super built-up area includes the area used for common amenities, roads, water tank and other infrastructure on a proportionate basis.
- c. The seller is collecting charges towards the land as well as the common amenities, roads, water tank and other infrastructure on a proportionate basis.
- d. Such common amenities, roads, water tank and other infrastructure is an intrinsic part of the plot allotted to the buyer

### **Sale of Plot with Amenities is supply of Service**

Sale of such plotted development tantamount to rendering of service. This view has also been taken by the Supreme Court in the case of *M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC)*.

### **Conclusion by Advance Ruling Authority**

Activity of the sale of developed plots would be covered under the clause 'construction of a complex intended for sale to a buyer'. Thus, the said activity is covered under 'construction services' and GST is payable on the sale of developed plots in terms of CGST Act / Rules and relevant Notification issued time to time.

Where the nature of activity is that of ONLY sale of immovable property of plot, it is excluded from GST levy (Schedule-III)

### Author Analysis

1. There was no discussion on Composite Supply. Sale of Land is the Principal Supply and ancillary activity has been done to make the land saleable.
2. Merely certain amenities has been provided does not alter the fact that there is sale of land.
3. AAR contention that ***"Where the nature of activity is that of ONLY sale of immovable property of plot, it is excluded from GST levy"***. In our opinion there was only sale of plot of land. Without the basic and ancillary activities carried out by the applicant it was not possible to make the sale of the plot of the land to different people.

### Basic Amenities to Make the Land Saleable

Even if it is assumed the land could have been sold without basic amenities, the purchasers of the land could not have even approach their land as there is no common road. No constructions work can be done by the proposed land owner without the water which can only be done by laying of the pipelines.

### Obtaining Permission is not Permission for Construction of Villas

Further without obtaining the necessary permissions it was not possible for the Applicant to make available the basic amenities. Hence obtaining of the permissions from the local authority should not be construed as the permission obtained for the construction of villas. The purchasers of the plot of the land has to approach the Local Authority when they will construction their own houses or villas. Applicant has not obtained the permission for the construction of the purchasers houses and villas. Necessary permission was necessary so that the land can be sold in accordance with the local laws.

### Boundary Wall was merely for Identification Purpose

Without the construction of the boundary wall, it was not possible to make the land identifiable. Without proper demarcations, it may create dispute among the Land Purchasers.

Hence in our opinion the activity which has been done by the Applicant was necessary to make the sale of plot of land and same not to be construed as the construction activity falling within the ambit of Para 5(b) of the Schedule II read with Section 7 of the CGST Act, 2017

4. AAR have relied on the decision of the Supreme Court in the case of ***M/s Narne Construction P Ltd. reported at 2013 (29) STR 3 (SC). However it more important to look into the context. The context in which the term service has***

***been used in CGST Act, 2017 is different from the context used in the above Judgment***

Whenever you have to construe a statute or document you do not construe it according to mere ordinary general meaning of the words but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used- Captain Subhash Kumar vs Principal Officer, Mercantile Marine Deptt, AIR 1991 SC 1632

No words has an absolute meaning for no words can be defined as vacuo, or without reference to some context- Union of India vs Sankalchand, AIR 1977 SC2328

**Contact us:**

Rachit Agarwal

Chartered Accountant

Kolkata

Email: [rachitagarwal1@gmail.com](mailto:rachitagarwal1@gmail.com)

[Ph + 91 8697038828](tel:+918697038828)