

2024 (84) G.S.T.L. 389 (A.A.R. - GST - U.P.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, UTTAR PRADESH

S/Shri Amit Kumar, Member (Central Tax) and Harilal Prajapati, Member (State Tax)

IN RE : REMARKABLE INDUSTRIES PVT. LTD.

Advance Ruling No. UP/ADRG/41/2023, dated 7-12-2023

Transfer of allotted land - Other miscellaneous service - Heading 9997 - Classification - Industrial plot was allotted to applicant by area industrial development authority under 99 lease deeds on payment of lump sum upfront premium and annual lease charges - Applicant wished to sell said land for certain consideration - Buyer has to pay transfer charges to area industrial development authority for permission for such sale - *HELD* : As per Section 7(1) of CGST Act, 2017 read with Schedule II benefits arising out land i.e. any lease, tenancy, easement, license to occupy land, letting out of a building including a commercial, industrial or residential complex of business or commerce are not be treated as transaction in immovable property but as supply of services for purpose of GST Act - Activity of assessee in nature of transfer one's leasehold rights, it does not amount to further sub-leasing as assessee right as per deed of sub-lease stands extinguished after assignment and neither it create fresh benefit from land - It is in nature of compensation for agreeing to do transfer of assessee's rights in favour of assignee - Thus, said service is classifiable under other miscellaneous service (SAC 9997 92) and is taxable at 18% GST under Sl. No. 35 of Notification No. 11/2017-C.T. - Section 9 read with Section 7 of Central Goods and Services Tax Act, 2017 - Section 9 read with Section 7 of Uttar Pradesh Goods and Services Tax Act, 2017. *[paras 13.7 and 14]*

Ruling in favour of department

DEPARTMENTAL CLARIFICATION CITED

CBDT-Circular No. 15/16, dated 13-10-2016 [Para 5.4]

NOTIFICATIONS CITED

Notification No. 11/2017-C.T., dated 28-6-2017 [Para]

Notification No. 12/2017-C.T., dated 28-6-2017 [Para }

REPRESENTED BY : Shri Praveen Sharma, Advocate, for the Assessee.

[Order]. - M/s. Remarkable Industries Private Limited, having registered office at Honda Prakash Honda Two Wheeler Service Centre, A-38, Vyapar Marg, Sector-8, Noida, Gautam Buddha Nagar, Uttar Pradesh - 201301 (hereinafter referred as "the applicant") having GSTIN-09AALCR128IQ1ZM, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with rule 104 of the CGST Rules, 2017 and Section 97 of UPGST Act, 2017 read with Rule 104 of the UPGST Rules, 2017 in Form GST ARA-01 (the application form

for Advance Ruling), discharging the fee of Rs. 5,000/-each under the CGST Act and the UPGST Act.

The applicant wish to Sell their industrial plot at A-38 Sector-8 Noida, to M/s. S.K. Industries, A-66 Sector-8, NOIDA, which was originally allotted to the appellant by Noida Authority under the 99 years lease deeds.

2. The applicant has sought advance ruling in respect of the following questions :

Under the GST provisions, whether activity relating to Sale/Transfer of leasehold Land and building and also to obtain permission for such sale would be taxable?

(a) In the instant case the GST as applicable on the upfront called premium amount as a cost of land and building?

(b) If answer Yes, then ITC will be eligible to buyer, may be further use against the supply of their manufactured products.

(c) Applicability of Notification No. 12/2017 Sl. No. 41 Heading 9972 One-time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long-term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to Industrial as GST Tax Nil. *The Plot was issued by the NOIDA authority on long-terms deed for 99 years.*

3. The question is about applicable GST rate under the provisions of CGST Act and liability to pay GST, hence is admissible under Section 97(2)(a) of the CGST Act, 2017. Further, as per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

4. Statement of relevant facts having a bearing on the question(s) raised :

The applicant wish to Sell their industrial plot at A-38 Sector-8 Noida, to M/s. S.K. Industries A-66 Sector-8, NOIDA, which is originally allotted by Noida Authority under the 99 years lease deeds.

Applicant through this application wish to get the clarification under Advance Ruling as follows :

1. Seller has been allotted an industrial plot by (New Okhla Industrial Development Authority) Noida on long-term lease for 99 years on payment of lump sum upfront premium and on annual lease charges *vide* lease deed dated 22-11-1983.

2. Seller intends to sell such industrial land-cum-building for certain consideration to some buyer. Buyer has to pay transfer charges to Noida for permission for such sale.

5. The applicant has submitted their interpretation of law as under-

5.1 At the outset it is important to note that immovable property like plot (industrial or residential) are of two kinds-one leasehold and other freehold. Lease hold property is that property where ownership is not transferred but property is allowed to be used for a certain period and in case of freehold, ownership is transferred on permanent basis.

5.2 Under GST, Section 9 of the CGST Act, 2017, tax is leviable on 'supply' of goods and services. Term 'supply' is explained under Section 7 of the CGST Act, 2017 as all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business except activities notified under Schedule-III of the CGST Act. Under Schedule-III, 'sale of land' has been specifically included. Thus, sale of land is not in the ambit of GST.

5.3 As per Schedule-(2)(a) of the CGST Act, 2017, lease of land activity is a supply of service. Long-term lease of land is also a kind of lease where lessee holds the possession of property for a long period.

5.4 Further, it is pertinent to mention here that under The Income-tax Act, 1961 as clarified by the Central Board of Direct Taxes *vide* Circular No. 35/16, dated 13-10-2016, long term lease of land constitutes character of 'deemed sale' meaning thereby it is a sale. In our opinion once long-term lease of land is treated as sale, no GST would be chargeable on such activity. Emphasis is relied upon :

Transfer of Property Act, 1882 - [53A. Part performance. - Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has in part performance of the contract, taken possession of the property or any part thereof or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed there for by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

It is a settled principle that the long-term lease shall be considered as transfer of property and has been adjudicated on similar principle. However, there is no specific provision in GST to deem long-term lease as sale. Hence, the whole issue is under dispute and pending in different courts of the country.

5.5 Further, to elaborate the issue it is also relevant to mention that under Notification No. 12/17-Central Tax (Rate), dated 28-6-2017, Sl. No. 41, leasing of industrial plot by Government Industrial Development Corporation or Undertakings to industrial units for a period of thirty years or more is exempted from GST. The transfer of industrial plot in current case is from one industrial unit (seller) to another industrial unit (buyer) intended for industrial purpose only. However, to affect such transfer, charges are to be paid to NOIDA authority in the form of transfer charges. Hence, in our opinion the above exemption would be available in the case of industrial plots.

6. The application for advance ruling was forwarded to the Central Jurisdictional GST Officer *vide* letter dated 26-9-2023 and 10-10-2023 to offer their comments/views/verification report on the matter. But no comments has been received.

7. The applicant was granted personal hearings on 27-10-2023 which was attended by Mr. Praveen Sharma Authorized Representative during which they reiterated the submissions made in the application of advance ruling.

Discussion and Finding

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/UPGST Act would be mentioned as being under the 'CGST Act'.

9. We have gone through the submissions made by the applicant and have examined the same. The applicant in the present application has sought advance ruling on following question/clarification -

Under the GST provisions, whether activity relating to sale/Transfer of leasehold Land and building and also to obtain permission for such sale would be taxable?

(a) In the instant case the GST as applicable on the upfront called premium amount as a cost of land and building.

(b) If answer Yes, then ITC will be eligible to buyer, may be further use against the supply of their manufactured products.

(c) Applicability of Notification No. 12/2017 Sl. No. 41 Heading 9972 One-time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long-term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to Industrial as GST Tax Nil. The Plot was issued by the NOIDA authority on long-terms deed for 99 years.

The applicant further wants to clarify that-

1. Seller has been allotted an industrial plot by (New Okhla Industrial Development Authority) Noida on long-term lease for 99 years on payment of lump sum upfront premium and on annual lease charges *vide* lease deed dated 29-11-1983.

2. Seller intends to sell such industrial land-cum-building for certain consideration to some buyer. Buyer has to pay transfer charges to Noida for permission for such sale.

10. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling is required-

(1) *Applicability of a notification issued under the provisions of this Act.*

At the outset, we do not admit question No. (b) being related to recipient of the service. The issue raised in the application, as question Nos. (a) and (c) related to the applicants squarely covered under section 97(2) of the CGST Act, 2017. We therefore, admit the application (regarding question Nos. (a) and (c) for consideration on merits.

11. On going through the documents provided by the party, the brief facts of the ease are as under :

(1) Lease was duly executed between original allottee M/s. PEC Equipment (A Partnership firm) and Noida (Development Authority) on 19-11-1983 and same was registered on 29-11-1983.

(2) M/s. PEC Equipment sold and transferred the said property in favour of Mr. Raman Manocha, Prop., of M/s. Bhawani Industries, by virtue of Transfer Deed and the same was duly registered on 18.08.1990.

(3) After the death of Mr. Raman Manocha, the property was transferred to his wife Smt. Namita Manocha *vide* letter dated 25-10-2016.

(4) Smt. Namita Manocha further sold and transferred the property in favour of M/s. Parkash Automobiles (A Partnership firm) by virtue of Transfer-cum-Sale deed and the same was registered on 30-12-2016.

(5) M/s. Prakash Automobiles wishes to transfer the property to M/s. Remarkable Industries Ltd. through its Transfer Memorandum No. NOIDA/IND/2022/4695, dated 16-6-2022. In this transfer-cum-sale deed, the transferee (M/s. Remarkable Industries Pvt. Ltd.) has paid the sum of Rs. 4,95,00,000/- in full and final payment of sale consideration. Hereafter the execution of Transfer-cum-Sale deed, the Transfer or aforesaid has ceased to be the owner of the said property and the Transferee has become sole and absolute owner of said property in question.

The Transferee is in liberty and entitled to hold and enjoy the said property in question for remaining period of 90 years and or extended/renewed period of lease by Noida.

(6) The Transferee is bound by the terms and conditions contained in the original lease dated 19-11-1983 subject to the modification made by the Noida Authority in the Transfer Memorandum.

(7) The terms and conditions mentioned in the Noida Authority's Transfer memorandum are as follows :

(a) Lease rent shall be payable as per prevailing policy of the Authority.

(b) That any other dues/arrears shall be recovered from the Transferee subject to interest applicable at the time of recovery of dues.

(c) The Transferee shall come into commercial production within One year from the date of transfer memorandum. In case of breach of terms and conditions, the lease/transfer deed will be cancelled/revoked and the possession shall be resumed by the Authority.

(d) That the Transferee shall be bound by the terms and conditions of lease deed executed between the lease and NOIDA on 19-11-1983 subject to changes mentioned in the transfer memorandum and otherwise, from time to time.

(e) The Transferee automatically would inherit all the assets and liabilities connected with the above property.

- (f) The Transferee shall be running the project of Engineering Works.
- (g) The transferee shall not rent out/sub-let the premises (partially/full)) without prior permission of the Authority.
- (h) That the Transferee shall be bound by the terms of allotment/ lease deed/transfer deed as they stand amended from time to time and shall also be bound by all the rules and regulations framed by the Authority in this regard.
- (i) That the Transferee may mortgage the property to any financial institution including banks without the permission from the Authority provided full payment towards premium intt. thereon one-time lease rent has been paid.
- (j) If there is any revision in the rate this will be applicable on the transferee.
- (k) If any unauthorized activity/construction is found, the allotment shall be cancelled without any notice.
- (l) Even after issue of this letter, the allottee shall be liable to pay the amount due to application of GST on the services rendered by NOIDA Authority.
- (8) As per Transfer-cum-sale deed, the land is transferred from M/s. Parkash Automobiles to M/s. Remarkable Industries Pvt. Ltd. and certificate has been issued on 24-6-2022.

12. The applicant i.e. M/s. Remarkable Industries Pvt. Ltd., A-38 Sector-8, Noida-201301 is a registered assessee under GSTIN No. 09AAICR128I Q1ZM. Now the applicant want to sell their industrial plot at A-38, Sector-8. Noida to M/s. S.K. Industries, A-66, Sector-8, Noida and transfer the leasehold rights for the remaining period. As per the Agreement to Sell, the applicant is to sell the property for Rs. 5,25,00,000/- to M/s. S.K. Industries. The applicant shall take permission from Noida Authority and execute sale deed/transfer deed thereafter.

13.1 Section 3(26) of the General Clauses Act, 1897 defines “immovable property” as to include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth. Applicability of the General Clauses Act, 1897 in the context of a Special Act like the CGST Act, 2017, however, is limited to areas where no express provisions are made under the said Special Act. Since the building is permanently attached to the land, thus land and building together become part of the same immovable property.

13.2 Scope of supply under Section 7(1) of the GST Act includes all forms of supply of goods and services, including a *sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made*. Section 7(1A) read with Schedule-II under the GST Act provides which of such supplies shall be treated as supply of goods or services. *Paragraph 2 of Schedule II provides that with respect to transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, letting out of a building including a commercial, industrial or residential complex for business or commerce is the supply of services.*

In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but as the supply of service for the purpose of the GST Act. The Deed, therefore, confers upon the applicant no better title to the

Demised Premises (the premises whose lease-hold right is to be transferred including land and building) to other than a service contract of lease. The applicant can, therefore, transfer to the assignee (M/s. S.K. Industries) only its right to receive the service of the lease for the remaining period after obtaining prior approval of the lessor (Noida Authority).

13.3 In the instant case, the applicant wants to sell industrial plot to *M/s. S.K. Industries* and transfer the lease rights with the approval of Noida Authority. The moment the lease right is to be transferred from the applicant to M/s. S.K. Industries, the party has provided *service of transferring the leasehold rights* and thus action of the applicant is very well covered under Paragraph 2 of Schedule II of CGST Act, 2017.

13.4 It is evident from the above discussion that the applicant, apart from the conditional possession of the Demised Premises enjoys no title or ownership, which is central to sale of any immovable property within the meaning of section 54 of the Transfer of Property Act, 1882. The applicant's interest in the benefits arising out of the Demised Premises is limited to *sub-leasing in terms of the Deed*, and he is capable of transferring the benefits only to that extent. The assignment, therefore, does not amount to *transfer of any benefit other than leasehold rights in terms of the Deed for the unexpired period of the lease and is no transfer of any immovable property in the context of the GST Act*.

13.5 The applicant's reference to the case laws where joint development right is treated as the sale of an immovable property needs to be distinguished. None of those cases is decided in the context of the GST Act, where the provisions of *paragraph 2 of Schedule II carve out certain benefits arising out of the land from the realm of immovable property and treat them as 'service' for the purpose of the GST Act*. The reference to the above case laws is, therefore, not relevant.

13.6 Exemption *vide* Entry No. 41 of Notification No. 12/2017-C.T., dated 28th June 2017 is also not applicable in the instant case. Entry No. 41 holds that one-time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long-term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units is exempted from service tax. The emphasis is on one-time upfront amount on industrial plots provided by State Government Industrial Development Corporations or Undertakings. Thus when land was given by Noida to M/s. PEC Equipment, for the first time for 99 years, for industrial use, the same may not be subject to GST. But the same is not applicable to subsequent transfer of leasehold rights. Here the seller *i.e.* M/s. Remarkable Industries is not a State Government Industrial Development Corporations or Undertakings and hence benefit of Entry No. 41 of exemption Notification is not admissible to the applicant as the condition of the said entry is not satisfied. Hence, Entry No. 41 of Notification No. 12/2017 is not applicable on the party.

Here it may be pointed out that the wordings in the said Notification, when clear, plain and unambiguous and only one meaning can be inferred, we are bound to give effect to the said meaning. We give due regard to the clear meaning of words and matter should be governed wholly by the language of the notification. We note the wordings of the Notification and its conditions imposed for satisfaction to merit entry in the said serial number. We cannot allow any scope for intendment. Thus as per Entry No. 41 of Notification No. 12/2017-C.T., dated 28th June 2017, exemption was limited to the Lease Agreement duly executed between original allottee M/s.

PEC Equipment A Partnership firm) and Noida (Development Authority) on 19-11-1983 and same was registered on 29-11-1983.

13.7 The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed stands extinguished. Neither does it create fresh benefit from land other than the leasehold right. It is like a compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee, it is a service classifiable under Other miscellaneous service (SAC 999792) and taxable @18% under Sl. No. 35 of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017.

14. In view of the above discussions, we, both the members unanimously rule as under :

RULING

Under the GST provisions, whether activity relating to sale/Transfer of leasehold Land and building and also to obtain permission for such sale would be taxable?

Question : (a) *In the instant case the GST as applicable on the upfront called premium amount as a cost of land and building.*

Answer : The activity of the applicant is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's right as per the Deed of sub-lease stands extinguished after assignment. Neither does it create fresh benefit from the land. *It is in nature of compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee.* It is a service classifiable under Other miscellaneous service (SAC 999792) and taxable @18% under Sl. No. 35 of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017.

Question : (b) *If answer Yes, then ITC will be eligible to buyer, may be further use against the supply of their manufactured products.*

Answer : Comment cannot be offered as it is related to recipient of service.

Question : (c) *Applicability of Notification No. 12/2017 Serial No. 41 Heading 9972 One-time upfront amount (called as premium, salami, cost price, development charges or by any other name) leviable in respect of the service, by way of granting long-term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to Industrial as GST Tax Nil. The Plot was issued by the NOIDA authority on long-terms deed for 99 years.*

Answer : Not applicable as discussed above.

15. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.