

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within thirty days from the date of communication of this ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed under Section 100 (3) of the GST Act, and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

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| Name of the applicant | M/s Primarc Projects Pvt Ltd |
| Address | 6A, Elgin Road, 2 nd Floor, Kolkata 700020 |
| GSTIN | 19AADCP8058P1ZK |
| Case Number | 10 of 2020 dated 06/07/2020 |
| ARN | AD190620001382K |
| Date of application | 06/70/2020 |
| Order number and date | 09/WBAAR/2020-21 dated 28/09/2020 |
| Applicant's representative heard | Mr Ayush Gupta, Authorized Representative |

1. Admissibility of the application

1.1 The applicant is the promoter of residential real estate project, supplying construction service in developing a residential housing project named "Akriti" (hereinafter the RREP) in Burdwan. The applicant wants to know whether Entry No. 3(v)(da) of Notification 11/2017 Central Tax (Rate) dated 28/06/2017 (hereinafter the Rate Notification), as amended time to time, applies to the works contract service received from the contractors.

1.2 Entry No. 3(v)(da) of the Rate Notification applies to works contract service other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) of Entry No. 3 for original work pertaining to low-cost houses up to a carpet area of 60 sqm per house in an affordable housing project, which has been given infrastructure status vide Notification No. 13/06/2009 INF dated 30/03/2017 of Department of Economic Affairs, Government of India (hereinafter AHP Notification).

1.3 The applicant refers to several rulings of the Maharashtra AAR, where the said authority has made no distinction between the promoter or the contractor while deciding the applicability of the above provisions of the Rate Notification. This authority agrees with the principle followed by the Maharashtra AAR that the

notification entry under discussion is qua the supply of service and not qua the person and, therefore, once a project qualifies as an affordable housing project (hereinafter AHP), the benefit of concessional rate of tax would be available in respect of the works contract service for the low-cost houses, irrespective of being supplied by the promoter or the contractor (Puranik Construction Pvt Ltd; Maharashtra AAR). The question is found admissible in that context under section 97(2)(b) of the GST Act.

1.4 The concerned officer from the revenue does not object to the admissibility of the application. The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The applicant submits that half of the total number of dwelling units being constructed measures less than 60 sqm of carpet area for each such unit. It is, therefore, an affordable housing project in terms of Notification No. 13/06/2009 INF dated 30/03/2017 of Department of Economic Affairs, Government of India. The works contract service provided for construction of the project is, therefore, taxable under Entry No. 3(v)(da) of the Rate Notification.

2.2 In the course of the personal hearing, the applicant submits (i) detailed written submission, (ii) project plan, (iii) certificate from the authorised engineer to prove carpet area measurement, (iv) registration certificate no. HIRA/P/PUR/2018/000003 from West Bengal Housing Industry Regulatory Authority (hereinafter WBHIRA), (v) the architect's certificate on commencement of construction, (vi) permission from the Burdwan Municipality, and (vii) the brochure containing floor plans and flat-wise specification of built-up area, submitted to WBHIRA and also at the time of the hearing.

3. Submission of the Revenue

3.1 The concerned officer from revenue argues that exercising reduced tax rate only to be applicable if the applicant fulfils two criteria (i) low-cost houses having carpet area up to 60sqm per apartment (ii) affordable houses in partnership.

4. Observations and findings of the Authority

4.1 Entry No. 3(v)(da) of the Rate Notification is related to the construction of low-cost apartments. Clause 4(xvi) of the Rate Notification defines an affordable residential apartment. It shall mean a residential apartment in a project which commences on or after 01/04/2019 or in an ongoing project in respect of which the promoter has not exercised the option to pay tax at the rate specified in (ie) or (if) of Entry No. 3, having carpet area not exceeding 60 sqm in metropolitan cities or 90 sqm in cities or towns other than metropolitan cities and for which the gross amount charged is not more than 45 lakh.

4.2 An ongoing project is defined in clause 4(xx) of the Rate Notification. It shall mean a project that satisfies all the following conditions:

(a) The Competent Authority has issued the certificate of commencement on or before 31/03/2019, and any of the professionals mentioned under the said clause shall certify that construction of the project started on or before 31/03/2019.

(b) If no commencement certificate is required, the certificate as above for starting the construction on or before 31/03/2019.

(c) The completion certificate had not been issued, or the first occupation of the project did not take place on or before 31/03/2019.

(d) The apartments being constructed were partly or wholly booked on or before 31/03/2019.

Explanation: For the purpose of clauses 4(xx) (a)&(b), the construction shall be considered to have started on or before 31/03/2019 if the earthwork for the site preparation for the project had been completed on or before 31/03/2019.

4.3 WBHIRA issued registration certificate on 19/07/2018 to the applicant for granting the permission of construction of housing project at Burdwan. The registration no is HIRA/P/PUR/2018/000003. The tenure of the registration spans over 19/09/2018 to 30/09/2022. The applicant has also obtained the building permit dated 24/07/2018 from the Burdwan Municipality. Both WBHIRA and Burdwan Municipality are competent authorities as prescribed under clause 4(xxv) of the Rate Notification. The building permit issued by the local authority, namely Burdwan Municipality, is the commencement certificate, as defined under clause 4(xxi) of the Rate Notification.

4.4 Sri Rajkumar Agarwal, a member of the Council of Architecture (Registration No. CA/94/17940), certifies that the earthwork for site preparation for the project was completed before 31/03/2019. Sri Agarwal further submits that out of 192 flats 120 are having carpet area of 60sqm or less per unit.

4.5 It is ascertained from the WBHIRA website that the project is under construction and the flats offered on sale are partly booked.

4.6 It may, therefore, be concluded from the above discussion that the flats having a carpet area of 60 sqm or less per unit in the RREP qualify as affordable residential apartments, provided the gross amount charged per unit does not exceed Rs 45 lakh and the promoter has not exercised the option to pay tax at the rate specified in (ie) or (if) of Entry No. 3. It now needs to be ascertained whether the RREP is an affordable housing project, which enjoys infrastructure status vide the AHP Notification.

4.7 Affordable housing has been defined in the AHP Notification as a housing project using at least 50% of FAR/FSI for dwelling units with a carpet area of not more than 60 sqm. The term 'carpet area' has been assigned the same meaning as in section 2(k) of the Real Estate (Regulation and Development) Act, 2016. It means the net usable floor area of an apartment, excluding the area covered by the external walls,

areas under services shafts, balcony or veranda and open terrace, but includes the area covered by the internal partition walls of the apartment.

4.8 The Floor Area Ratio (FAR), also known as the Floor Space Ratio (FSR) or the Floor Space Index (FSI), depicts the relationship between the total usable floor space in a building and the total area of the plot on which the building is constructed. In mathematical terms, $FAR = CA / LA$ where CA = Constructed area or built-up area, and LA = Land area.

4.9 According to the Project Plan submitted at the time of the hearing, FAR for the entire project is 2.749 after deducting from the total built-up area the common areas like lift-lobby, stair area etc. FAR for the affordable residential apartments in the project should, therefore, be at least 1.375. The total plot size being 5627 sqm, the built-up area for affordable residential apartments should at least be 7734 sqm. The built-up area for the affordable residential apartments, as identified by the architect, under the RREP is 7885 sqm (the calculation sheet is attached). The relevant FAR, therefore, comes out to be 1.401, which is 50.96% of the FAR for the project. The RREP, therefore, is an affordable housing project in terms of the AHP Notification.

4.10 Based on the above discussion, it is concluded that the works contract service for the construction of those dwelling units in the RREP that are affordable residential apartments in terms of clause 4(xvi) of the Rate Notification are taxable under Entry No. 3(v)(da) of the said notification, provided the applicant does not opt for paying tax at the rate specified in (ie) or (if) of Entry No. 3.

RULING

The works contract service for the construction of those dwelling units in the project named 'Akriti' (WBHIRA Registration No. HIRA/P/PUR/2018/000003) that are affordable residential apartments in terms of clause 4(xvi) of Notification 11/2017 Central Tax (Rate) dated 28/06/2017, as amended time to time, are taxable under Entry No. 3(v)(da) of the said notification, provided the applicant does not opt for paying tax at the rate specified in Entry No. 3(ie) or 3(if).

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling

