GST

A PRACTICAL APPROACH – CONSTRUCTION SECTOR

DATE : 14.05.2022

CA VAISHALI KHARDE

(VAISHALI B KHARDE AND COMPANY)

OVERVIEW

Pre-GST Vs Post GST

Trans-1

ITC Reversal

Time of Supply

Change in rate

TO DISCUSS

1. Outward Supply
2. Input Tax Credit (ITC)
3. Joint Development Agreement
4. Transferable Development Rights
5. Affordable housing scheme
6. Antiprofiteering Applicability
7. E-Invoice Applicability

TRANSITION

Before 30th June 2017

- VAT’
- Service Tax

From 1st July 2017

- GST with ITC

After 1st April 2019

- GST without ITC
- GST with ITC

PATH TOWARD GST RATES

Before 30.6.2010

- No ST

Before 01.07.2017 (Pre-GST)

- Service Tax ranges from 3.09 to 4.5%
- VAT @ 1%

From 01.07.2017 to 31.03.2019

- GST 12% (with ITC)

From 01.04.2019 onwards

- GST @1% or 5% (without ITC)
- Stamp duty @ 6% or 7%

NATURE OF SUPPLY

- Supply of under constructed Property – Residential or Commercial (Pre OC) to the Customer
- Supply of constructed Property (Post OC) to the Customer
- Allotment of Flats to Landowner
- Transfer of DR
- Supply of Plot
- Supply of Land

1. Supply of under constructed Property – Residential or Commercial (Pre OC) to the Customer

1.1.A Rate of Tax

GST RATE APPLICABILITY - SUMMARY

Particulars	Up to 31.03.2019	From 01.04.2019
• GST Rate	• 8% or 12% (after 1/3rd land deduction)	• 1% or 5% (after 1/3rd land deduction)
• Charge	• Forward Charge	• Forward Charge
• TOS – Flats	• TOS - Section 13	• TOS -Section 13
• Value	• Value of Flat (–) 1/3rd	• Value of Flat (–) 1/3rd
• Project Type	• NA	• RREP and REP

RATE OF TAX

Pre-GST	• 4.5% Service Tax • 1% VAT
01.07.2017 to 31.03.2019	• 12% with ITC (1/3 Land Deduction) - supply before completion • 8% with ITC (1/3 Land Deduction) -for units qualifying Affordable Housing
On or after 01.04.2019	• 1% without ITC for AHS • 5% without ITC for residential properties other than AHS in RREP • 12% with ITC for commercial properties in REP Project

RATE OF TAX FROM 01.04.2019

Conditions for 1% and 5%

- ITC not available
- Requirement to procure 80% inputs and input services from registered vendors
- Maintain project-wise account of inward supplies from registered and unregistered supplier
- Declaring ITC not availed as ineligible credit in GSTR 3B [Row No. 4 (D)(2)]
- Developer has to pay tax in case of JDA

RATE OF TAX FROM 01.04.2019

Applicability of Rate of Tax

- Classification of project

Types of Project (Not. No.3/2019

- RREP – RREP mean a REP in which the carpet area of the commercial apartments is **not more than 15%** of the total carpet area of all the apartments in the REP
- REP – Section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 (16
- of 2016);

1.2. Value

VALUE

Value

- *Value for Construction Service =*
  - *Value of Constructed Unit (–) 1/3rd Land Deduction*

VALUE – SECTION 15 OF THE CGST ACT

- *(1) The value of a supply of goods or services or both shall be the transaction value, which is the* ***price actually paid or payable*** *for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

VALUE – SECTION 15 OF THE CGST ACT

- *"15(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner* ***as may be prescribed****."*

- *Section 2(87) "prescribed" means prescribed by rules made under this Act on the recommendations of the Council;*

VALUE – SECTION 15 OF THE CGST ACT

Prescribed BY

Rules?

Notification ?

LEGAL PRONOUNCEMENTS

Citation	Decision
MUJAAL MANISHBHAI [CIV. APPL. 1350/2021 – GUJ. HC]	The Hon'ble Gujarat High Court held **1/3rd deduction of Land as ultra virus.** Hon'ble Court has read down the impugned para 2 of Notification No. 11/2017 and held that application of such mandatory uniform rate of deduction **is discriminatory, arbitrary and violative of Article 14 of the Constitution of India**. *When such detailed statutory mechanism for determination of value is available then the impugned deeming fiction cannot be justified on the basis that it is meant to curb avoidance of tax when in fact such fiction is leading to arbitrary consequences.*

LEGAL PRONOUNCEMENTS

Citation	Decision
MUJAAL MANISHBHAI [CIV. APPL. 1350/2021 – GUJ. HC]	*Therefore, even in a case where the value of supply of goods or services or both cannot be determined under sub-section (1),* ***then the same can be determined in the prescribed manner.*** *The valuation rules framed pursuant to Section 15(4) are contained in the Rules 27 to 31 of the CGST Rules. Rule 27 deals with instances where consideration is not wholly in the form of money. Rule 28 deals with cases where the transaction is with a related person. Rule 29 is with regard to goods supplied or received through an agent. These rules are not relevant for the present writ applications. However* ***Rule 30 and 31 resply of the GST Rules are relevant.***

LEGAL PRONOUNCEMENTS

Citation	Decision
Suresh Kumar Bansal [2016-TIOL-1077-HC-DEL-ST]	The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract… Levying a tax on … land would clearly intrude into the legislative field reserved for the States under List II of the Seventh Schedule of the Constitution of India.”

1.3. Time of Supply

TOS – SECTION 13 OF THE CGST ACT

- *(2) The time of supply of services shall be the earliest of the following dates, namely:—*
  - *(a) **the date of issue of invoice** by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2) of~~ section 31 or **the date of receipt of payment, whichever is ea**rlier; or*
  - *(b) the date of provision of service, if the invoice is not issued within the **period prescribed under ~~sub-section (2) of~~ section 31 or the date of receipt of payment, whichever is earlier; or***
  - *(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

TOS – SECTION 13 OF THE CGST ACT

Pre-GST	Post GST
(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the **completion of an event in terms of a contract,** which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;	(4) In case of continuous supply of goods, where successive **statements of accounts or successive payments are involved,** the invoice shall be issued before or at the time each such **statement is issued or, as the case may be, each such payment is received.**

1.4 Key Highlights

KEY HIGHLIGHTS

Whether 1/3rd deduction of Land is ultra virus? If yes then whether refund of excess payment of GST available?

GST Authorities during GST Audit recovering interest on the basis of Architect Certificate? What is statements of accounts or successive payments?

2. Input Tax Credit (ITC)

ITC REVERSAL METHODOLOGY

Before 1st July 2017

- No ITC on Input
- ITC with resect to Input service was available

On or after 1st July 2017

- ITC of input, input services and capital goods was made available
- ITC on Input in stock

On or after 1.04.2019

- Rate prescribed without ITC
- ITC on commercial construction is available.

ITC REVERSAL METHODOLOGY

Before 1st July 2017

- No specific methodology
- Alembic LTD. [2019 (29) G.S.T.L. 625 (Guj.)

On or after 1st July 2017 to 1st April 2019

- No specific methodology
- Monthly reversal on the basis of turnover (Rule 42 and 43

After 1.04.2019

- ROD is issued 1st April 2019 to have area-based reversal

2.1 Reversal of ITC

SCENARIOS

- Negative List (Section 17(5))
- Supply of Completed unit
- Transition of Old rate to New Rate
- Reversal towards exempted supply

SCENARIOS

Completion Certificate

- As on the date of CC and/or September of the Subsequent Year

Ongoing project opted for New Scheme

- Up to September 2019

Common ITC in case of REP Project

- On or after 1st April 2019 –(REP)

LEGAL PROVISION

- *1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be* ***entitled to take credit of input tax charged on any supply of goods or services or both*** *to him which are used or* ***intended to be used in the course or furtherance of his business*** *and the said amount shall be credited to the electronic credit ledger of such person.*
- * ITC with respect to Sales Office

CONDITIONS FOR ITC AVAILMENT

Section 16 of the CGST Act	Possession of a tax invoice *(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;* has received the goods or services or both *(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;* Tax charged in respect of such supply has been actually paid to the Government, he has furnished the return under section 39

REVERSAL OF ITC

Section 17 (1) of the CGST Act – Goods and Services used partly for business and partly for other purpose	Reversal to the extent of - Restricted to so much of the input tax as is attributable to the purposes of his business
Section 17 (2) of the CGST Act - Taxable supplies including zero rated supply and Exempt Supply	Reversal to the extent of exempt supply
Section 17(5) of the CGST Act	Negative list

EXEMPT SUPPLIES

- *Sale after receipt of completion certificate*

- *Sale of land*

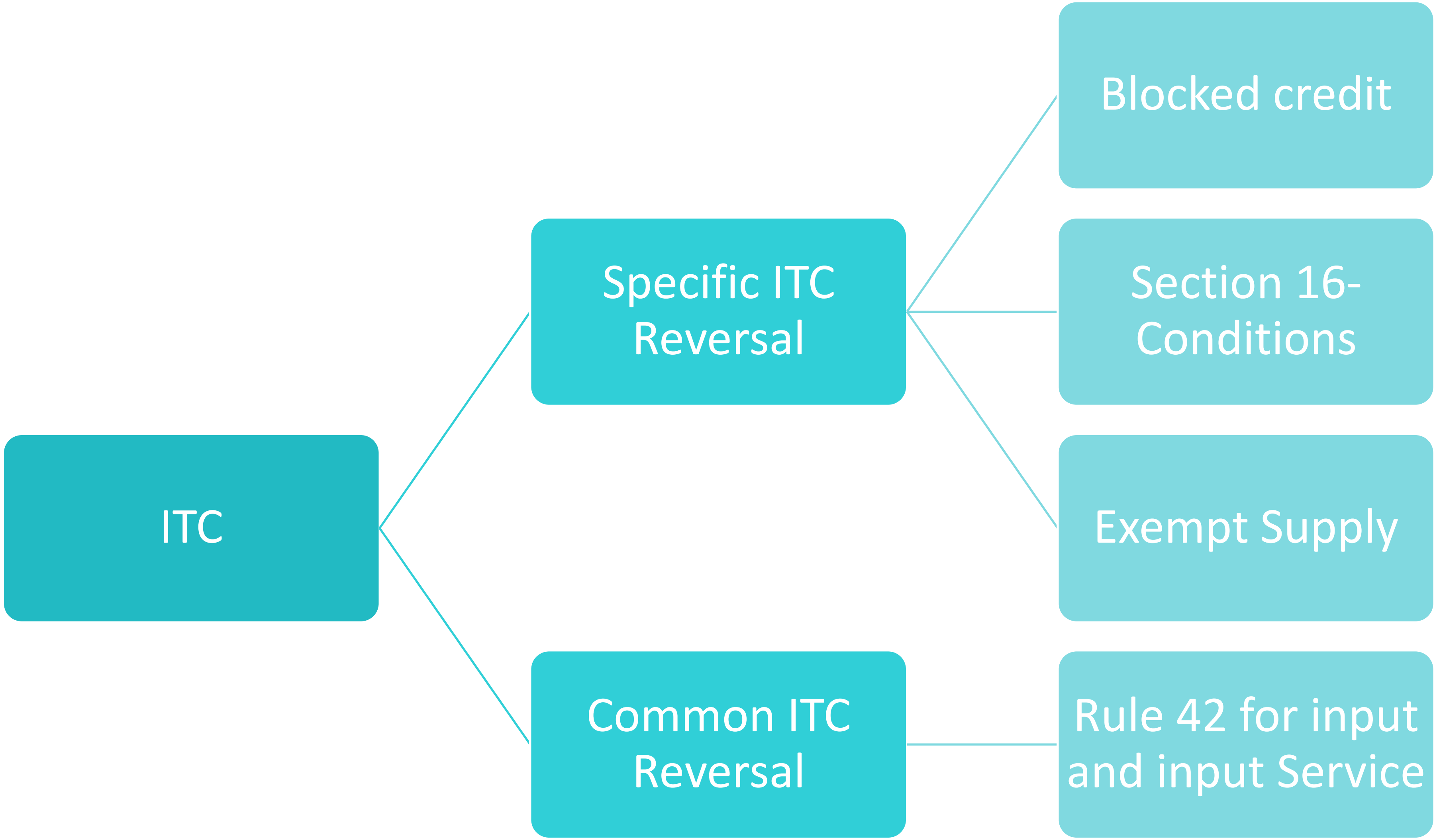
- *Transactions in securities*

- *Other*

ITC COMPRISES OF``

Nature	ITC Availability
Used for Taxable Supply	Yes
Exclusively used for other than business	No
Exclusively used for Exempt	No
Included in Blocked List [Section 17 (5)]	No
ITC used partly of taxable supply and exempt Supply	Partly available

ITC COMPRISES OF``



RULE 42 METHODOLOGY INPUT AND INPUT SERVICE

Computation of Common ITC	
T	Total ITC for tax period
T1	Exclusively used for other than business
T2	Exclusively used for Exempt
T3	ITC of 17(5)
C1=T- (T1+T2+T3)	Common ITC +Specific ITC related to taxable supply

RULE 42 METHODOLOGY INPUT AND INPUT SERVICE

Computation of Reversal of ITC with respect to Exempt Supply	
T4	ITC Exclusively used for other than exempt supply
C2= C1- T4	Common ITC used for taxable and exempt supply

*Explanation Added: Value of T4 is ‘zero’ for construction phase (i.e. all ITC is treated as common ITC) up to the point of Completion.

RULE 42 METHODOLOGY INPUT AND INPUT SERVICE

- **Formula**

The amount attributable to exempt supply (D1) =

$$D1 = \frac{\text{Aggregate carpet area of the apartments sold after CC or Exempt (E)}}{\text{Aggregate carpet area of the apartments in the project (F)}} * C2$$

ISSUES WITH RESPECT TO INPUT TAX CREDIT

Project Completed in between 1st July 2017 to 31st March 2019

- Whether ITC reversal will trigger?
- What is the methodology for reversal?
- Whether Transitional ITC is required to be reversed?

Project Completed on or after 1st April 2019

- Ongoing project opted for Old GST rate
- Ongoing project opted for New GST rate
- New Project after 1st April 2019

2.2 Key Highlights

ISSUES WITH RESPECT TO INPUT TAX CREDIT

When liable to be reversed?

- Monthly?
- CC?
- September?

Reversal on the date of completion of building in a project

ROD is Retrospective or Prospective.

3. Joint Development Agreement

LEVY

01.07.2017 to 31.03.2019

On or after 01.04.2019

WHAT IS JDA

Landowner

- Supply of Land

Developer

- Construction Service

JDA

3.1 GST Applicability on Transfer of Development Right

TO DISCUSS

Landowner

- Transfer of Development Right

KEY ISSUES

Levy?

Value?

TOS?

GST RATE APPLICABILITY – TDR AND/OR DR

Particulars	Up to 31.03.2019	From 01.04.2019
GST Rate	18%	18%
GST Applicability	Not. No. 11/2017-CT (R)	Not. No. 11/2017-CT (R)
Charge	Forward Charge	Reverse Charge
TOS	Sec 13- Noti.4/2018-CT (R)	Not. No. 06/2019-CT (R)
Value	Transaction Value	Not. No. 04/2019-CT (R)

LEGAL PROVISION –UP TO 31.03.2019

Notification 4/2018 =CT (Rate)

*In exercise of the powers conferred **by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017),** the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :-*

- *(a) registered persons who **supply development rights to a developer, builder, construction** company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and*
- *(b) registered persons **who supply construction service of complex, building** or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,*
- *as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).*

LEGAL PROVISION

Notification 4/2018
=CT (Rate)

Special procedure for certain processes.

- *148. The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be* ***prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons****.*

LEGAL PROVISION – AFTER 01.04.2019.

Notification 4/2019 =CT (Rate) – Exemption of DR

- *"Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly,* ***except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier****.*

LEGAL PROVISION – AFTER 01.04.2019 – EXEMPTION WRT TDR

GST payable on TDR or FSI (including additional FSI) or both for construction of the project]

x

(carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)”

LEGAL PROVISION – AFTER 01.04.2019 -TAXABILITY WRT TDR

Notification 4/2019 =CT (Rate) – Taxability of DR

- *Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain unbooked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner*
- *Provided further that tax payable in terms of the first proviso hereinabove shall not exceed* ***0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation”***

LEGAL PROVISION – AFTER 01.04.2019. - TAXABILITY WRT TDR

[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein]

x

(carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project)

LEGAL PROVISION – AFTER 01.04.2019 - TOS

Not. No. 6/2019 specifies the liability to pay GST on:

(a)the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(c) the upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relatable to construction of residential apartments in the project; and

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI)

shall arise on the date of issuance of completion ***certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier****:"*

3.2 GST Applicability supply of Construction Service to the Landowner

TO DISCUSS

Developer

- Construction Service

CONSTRUCTION SERVICE FROM DEVELOPER PERSPECTIVE

01.07.2017 to 31.03.2019

- Levy – Not Specifically included

On or after 01.04.2019

- Developer has to pay tax in case of JDA
- Notification 3/2019-CT(R)

GST RATE APPLICABILITY – ALLOTMENT OF FLAT TO LANDOWNER

Particulars	Up to 31.03.2019	From 01.04.2019
GST Rate	12% (after 1/3rd land deduction)	12% (after 1/3rd land deduction)
Coverage	Not specifically covered	Not. No. 03/2019-CT (R)
Charge	Forward Charge	Forward Charge
TOS – Flats	Sec 13- Noti.4/2018-CT (R)	At the time of CC or OC
Value	Transaction Value	Not. No. 03/2019-CT (R)

LEGAL PROVISION – ON OR AFTER 01.04.2019

Notification 3/2019 =CT (Rate)

- *Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -*

(i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner- promoter, and

(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner- promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer- promoter.

LEGAL PROVISION – ON OR AFTER 01.04.2019

Notification 3/2019 =CT (Rate)

- ***Explanation. -***
- *(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,*
- *(ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.*

LEGAL PROVISION – ON OR AFTER 01.04.2019

Notification 3/2019 =CT (Rate) – Value

- Not. 3/2019 statess that:
- *"2A. Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be* ***deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right*** *or FSI (including additional FSI)* ***is transferred to the promoter****, less the value of transfer of land, if any, as prescribed in paragraph 2 above."*

3.3 Key Highlights

KEY HIGHLIGHTS

Levy

- Construction Service?

Value

- Transaction Value Vs Noti. No. 03/2019 CT (R)

TOS

- Not. No. 06/2019 –CT (R)
- On the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

Other

- What is the treatment if Flat allotted after OC?

4. Transferable Development Rights

LEGAL PROVISION - NOT. NO. 03/2019-CT (R)

No	Description	GST Rate
Chapter 9972	*i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land*	*Nil*
	(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item [(i), (ia), (ib), (ic), (id), (ie) and (if)] 67 . Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	
	(iii) Real estate services other than (i) and (ii) above.	*9%*

LEGAL PROVISION - NOT. NO. 11/2017-CT (R)

- FAQ dated 7th May 2019 issued by CBIC as under:
- ***Q. 28***
- *Whether the GST is leviable on the output supply of Transferrable Development rights by a developer (usually evidenced by TDR Certificate issued by the authorities). If yes, under which entry and at what rate?*
- ***Ans***
- *Yes, GST is payable on transfer of development rights by a developer to another developer or promoter or to any other person under reverse charge mechanism @ 18% with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972).*

Levy ?

LEGAL PROVISION – LEVY OF GST

Article 366 (12-A) of the Constitution of India

- *Goods and service tax (‘GST)” means any tax on supply of goods, or services or both* ***except taxes on the supply of alcoholic liquor for human consumption****.*

LEGAL PROVISION

- Transfer of Immovable Property
  - Immovable Property?
  - Goods?
  - Service?

IMPACT FROM LANDOWNER PERSPECTIVE

Transaction

- Supply of Land Vs Transfer of Development Rights

Key Legal Provision

Goods - Section 2 (52)

*"Goods" means every kind of **movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply*

IMPACT FROM LANDOWNER PERSPECTIVE

Not Defined

- Movable Property
- Immovable Property

IMPACT FROM LANDOWNER PERSPECTIVE

Immovable Property

- Section 3 of the General Clauses Act, 1987 *"Immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.*
- Section 2(6) of the Registration Act, 1908 defines "immovable property" to include '*land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or* ***any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.***

IMPACT FROM LANDOWNER PERSPECTIVE

Key Legal Provision

- “Services” **means anything other than goods**, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- ***Explanation.*** — For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;

LEGAL PRONOUNCEMENT

Citation	Decision
Chheda Housing Development Corporation vs. Bibijan Shaikh [2007 (3) MhLJ 402]	It was held that transferable development rights are benefits arising from land and hence should be treated as an immovable property.
Shakti Insulated Wires Limited v. JCIT	1.1 It was held that the developmental rights are embedded in the ownership of land only. These were valuable rights inherent in the ownership of land and therefore shall be considered immovable in nature.

IMPACT FROM LANDOWNER PERSPECTIVE

SCHEDULE III

- Activities Or Transactions Which Shall Be Treated Neither As A Supply Of Goods Nor A Supply Of Services

*5. **Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

IMPACT FROM LANDOWNER PERSPECTIVE

Land

- Not Defined
- Section 2(14) of The Maharashtra Regional and Town Planning Act, 1966 *“land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;”*

LEGAL PRONOUNCEMENT

Citation	Decision
Hon'ble Bombay High Court in the case of Provident investment Co. Ltd vs Commissioner of income tax – AIR 1954 Bom 95	A sale or transfer presupposes the existence of the property which is sold or transferred. It presupposes **the transfer from one person to another of the right in the property.**
Guwahati High Court in the case of Nagen Hazarika vs Manorama Sharma – AIR 2007 Gau 62	the expression 'title' is a broad expression in law which cannot always be understood as akin to ownership. It conveys different **forms of a right to a property which can include right to possess such property.**

5. Affordable housing scheme

GST RATE FOR AHS

Affordable Residential Apartments (ARA)

Supply of under-Construction unit – 1%

Works Contract 12%

Other than Affordable Residential Apartments

Supply of under-Construction unit – 5%

Works Contract 18%

GST RATE FOR WCS

Affordable Residential Apartments (ARA)

- Works contract for specified affordable residential apartments are entitled to concessional rate of GST @ 12%

Conditional

- If the conditions as prescribed in the notifications are not satisfied then Developer is required to pay differential GST under RCM.

CONCESSIONAL GST RATE OF 1% FOR FLAT SUPPLY AND 12% FOR WCS

Sr.	Project	Definition of Affordable	Conditions
1.	New	Clause xvi (a) of Paragraph 4 of Not. No. 3/2019 -CT (R)	1. Applicable to **works contract** supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments **2. Carpet area** not more than 60/90 sq. m. and gross value is up to **Rs. 45 lakhs** 3. Carpet area of the affordable residential apartments should not be less than 50 % of total carpet area of all apartments in the project

CONCESSIONAL GST RATE OF 1% FOR FLAT SUPPLY AND 12% FOR WCS

Sr.	Project	Definition of Affordable	Conditions
2.	Old – New	As Above	Same as Sr. 1
		Sr. No. v (da) of N/n 1/2018 CT(R) dated 25.01.2018 DEA vide F. No. 13/6/2009	1. Applicable to **works contract** by way of construction, erection, commissioning or installation of original works 2. Low cost houses upto carpet area of **60 sq. mtrs.** **3.** **50%** of FAR/FSI is being used for dwelling units with carpet area of not more than 60 sq.m. 4. Part of an affordable housing project having **infrastructure status** as defined in the Department of Economic Affairs (DEA) vide F. No. 13/6/2009-INF Notification.

CONCESSIONAL GST RATE OF 1% FOR FLAT SUPPLY AND 12% FOR WCS

Sr.	Project	Definition of Affordable	Conditions
3.	Old to Old	Sr. No. v (da) of N/n 1/2018 CT(R) dated 25.01.2018 DEA vide F.No. 13/6/2009	1. Applicable to works contract by way of construction, erection, commissioning or installation of original works **2.** **Low cost houses** upto carpet area of 60 sq. mtrs **3.** **50%** of FAR/FSI is being used for dwelling units with carpet area of not more than 60 sq.m. 4. Part of an affordable housing project having **infrastructure status** as defined in the Department of Economic Affairs (DEA) vide F. No. 13/6/2009-INF Notification.

6. Antiprofiteering Applicability

GST RATE APPLICABILITY – TDR

Antiprofiteering Applicability (Section 171)

-Ongoing Project

- New project

-New Rate

IMPACT FROM LANDOWNER PERSPECTIVE

Section 171 of the CGST Act

- *171. (1) Any reduction in rate of tax on any supply of goods or services or both or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*

LEGAL PRONOUNCEMENTS

Citation	Decision
M/s Pyramid Infratech Pvt. Ltd [TS-455-NAA-2018-NT]	*Referring to Rule 133(3)(a) of CGST Rules, 2017, directs* ***refund/reduction in price to be realized from buyers of flats commensurate with benefit of ITC received along with interest at 18%,*** *while stating that benefit of ITC accruing subsequent to present investigation period (i.e. post February 28, 2018) shall also be passed on; Further, holds Respondent liable for penalty u/s 122 of CGST Act, 2017 and directs Commissioner of State Tax, Haryana to ensure that amount profiteered by Respondent is passed on to all the buyers: .*

LEGAL PRONOUNCEMENTS

Citation	Decision
Pyramid Infratech Pvt. Ltd. v. Union of India - 2018 (19) G.S.T.L. J159 (Del.)]	*The National Anti-Profiteering Authority in its impugned order had held that since the agreement with buyers clearly indicated that they were liable to pay all taxes as applicable, the builder-respondent was liable to extend benefit of excess Input Tax Credit which was available to him, to the buyer-applicants under Section 171 of Central Goods and Services Tax Act, 2017 which deals with not only passing on benefit of reduction in tax rate but also with passing on benefit of Input Tax Credit.* *It was further held that denial of benefit of Input Tax Credit to buyers of flats by realizing more price and compelling them to pay more GST than required by issuing incorrect tax invoices amounts to an offence under Section 122(1)(i) of Central Goods and Services Tax Act, 2017 and hence, penalty is imposable.*

7. E-Invoice Applicability

APPLICABILITY

1st October 2020

- E-Invoicing is mandatory for business having turnover above 500 Cr

1st January 2021

- E-invoicing is mandatory for business having turnover more than 100 cr

1st April 2021

- E-invoicing is mandatory for business having turnover more than 50 cr

1st April 2022

- E-invoicing is mandatory for business having turnover more than 20 cr

LEGAL PROVISION

Section 2 (66)

- “invoice” or “tax invoice” means the tax invoice referred to in section 31;

Section 31 – Tax invoice

- A registered person supplying taxable goods/ taxable services shall.. issue tax invoice
- *(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:*
- *Provided that the Government may, on the recommendations of the Council, by notification, (a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;*

LEGAL PROVISION

Rule 48 - Manner of issuing invoice

- *4) The invoice shall be prepared by **such class of registered persons** as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01 after** obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.*
- *Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.*

LEGAL PROVISION

Rule 48 - Manner of issuing invoice read with Not. No. 68/2019 -CT

- *"(4) The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in* ***FORM GST INV-01*** *after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.*
- ***5) Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.***
- ***(6) The provisions of sub-rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub-rule (4).".***

LEGAL PROVISION

Rule 48 - Manner of issuing invoice read with Not. No. 70/2019 -CT

- *G.S.R. …..(E).- In exercise of the powers conferred by sub-rule (4) to rule 48 of the Central Goods and Services Tax Rules, 2017, the Government, on the recommendations of the Council, hereby notifies registered person, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice in terms of sub-rule (4) of rule 48 of the said rules* ***in respect of supply of goods or services or both to a registered person.***
- *3. This notification shall come into force from the 1st day of April, 2020.*

KEY HIGHLIGHTS – CONSTRUCTION INDUSTRY PERSPECTIVE

Applicability of E-Invoice

B2B Vs B2C

B2B Vs Persons Registered under GST

ATTENTION !

Challenges

Way Forward

Challenges

- GST Applicability in case of Cancellation of flats
- Levy of GST on Transfer of Development Rights (TDR)
- Compliance w.r.t E-way Bill
- Fate of Affordable Housing Scheme (AHS)

Way Forward

Regular tracking of numerous changes will help to mitigate the risk of litigation

GST cost optimization will help for reduction of cost

Revisit GST implication w.r.t JDA

Business may share their GST concerns as a Representation before the GST council or Chamber of Commerce!

THANK YOU

Firm

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