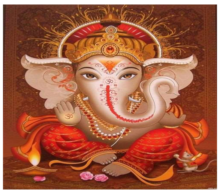


CASE STUDT-DEC 05- GOODS AND SERVICES ACT, 2017

QUESTION: *Mr. Anil had a vacant land. Mr. Bhushan approached him with a proposal to commercially exploit the said land. They both entered into Joint Development Agreement (JDA), wherein Mr. Anil agreed to be consenting party while selling the land to prospective purchasers and Mr. Bhushan decided to develop land, locate the perspective buyers and sale the project after development.*

As consideration for land, developer to allot 10 units to land owner for free of cost.

Both Mr. Anil and Mr. Bhushan decided that the perspective buyer be asked to pay for land value and construct value separately. Payment towards land value will be directly credited to Mr. Anil (land owner) account and payment towards constructions in Mr. Bhsuan (developer) account.

Post 01/07/2017 both of them raised issues regarding GST liabilities. Answer below mention queries;

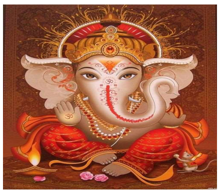
1. *Whether actual deduction of land value can be taken?*
2. *If actual deduction of land is not allowed, then Mr. Bhushan (developer) ending up paying GST on land value forms 40% of the total consideration, whereas deemed deduction for land only 33% amount of consideration. In this case Mr. Bhushan opined that as the excess GST levied is a tax on hand, the same should be recovered from landowners. He wants to understand the legal validity of his opinion.*
3. *In case of allotment of free units to landowner, when tax to be paid?*

FCS DEEPAK P. SINGH

(B.Sc., LLB, FCS, AIII, CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



ANSWER

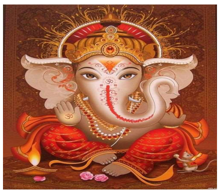
1. *Please Entry No. 49 of List II (State List) specified in the Seventh Schedule of the Constitution of India empowers the State Governments to levy tax on land. Therefore, power to levy tax on land and use of land is exclusively vests with the concerned State Governments. From above discussion, the Service Tax is not levied on the land and use of land, being a Central Tax.*

   Since GST is jointly levied by the Central and the State Governments and hence for the purpose of calculating GST liability, a deduction towards land value is allowed from total consideration received from the buyer.

   Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017 *specifies tax rate for construction services. The said notification prescribes a deduction for land value as follows;*

> *"**2. In case of supply of service** specified in column (3) of the entry at item (i); sub-item (b),sub-item(c),sub-item(d),sub-item(da)and sub-item(db) of item(iv); sub-item (b), sub-item(c) , sub-item(d) and sub-item(da) of item(v) and sub -item(c) of item (vi) against serial no. 3 of the Table above: involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.*
>
> *Explanation. – For the purposes of paragraph 2, "total amount" means the sum total of, - (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be.*

FCS DEEPAK P. SINGH
(B.Sc., LLB, FCS, AIII, CRMP)
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com



PLEASE NOTE THAT *from the above explanation means that if supply of service involves transfer of land, then value of land shall be deducted from the total liability. For the purposed of this deduction, it shall be deemed that the value is 1/3rd of the total consideration.*

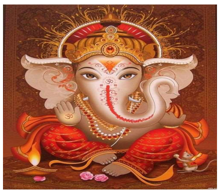
In this case, please note that if in total consideration the value of land is not involved then total consideration is liable to be taxed under GST and hence the consideration of construction of project as credited or to be credited in the account of Mr. Bhushan (the developer) as agreed between them will liable to be tax @applicable GST rates without giving deduction of land value.

In M/s. S.I. Property (Kerala) Pvt. Ltd. As reported Order No. C No. IV/16/12/2017-CCO(TVM) dated 19-09-2017*, Thiruvananthapuram Zone has given opinion that deemed deduction is irrespective of the Actual Value of land. It also states that deemed deduction is not available for units transferred to the landowner by the developer.*

In the case of M/s. Larsen & Toubro Limited Vs. State of Karnataka as reported in 2013 VIL-03-SC-LB *it was held that a developer is a work contractor. Therefore, one view may be taken that developer is a works contractor for buyer and GST at the rate @as applicable can be discharged on the consideration towards the value of the Work Contract (The Construction Value).*

In this case we can take reliance of wordings of the Constitution and decision of the Apex Court in Larsen & Toubro case, GST at the rate (as applicable) or @18% as given in the question can be discharged on the value of construction specially in case of Joint Development Agreement, where developer does not create any charge over the land value.

FCS DEEPAK P. SINGH
(B.Sc., LLB, FCS, AIII, CRMP)
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com



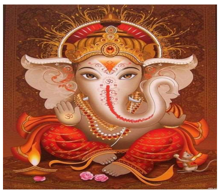
2. *The second issue is that if actual deduction of land is not allowed then, Mr. Bhushan (Developer) will end up paying GST on land value as land value forms 40% of total consideration whereas deemed deduction for land is only 33% amount of Total Consideration.*

   We know that indirect taxes have indirect incidence and implications. Tax department is jot person specific, it is supply specific. So as long as the supply is taxed, it is relevant who discharges and who bears it. Therefore, the supplier or the recipient may be agreement, mutually decide that who will bear tax.

   Resultantly, the issued faced by Mr. Bhushan (Developer) is subjective in nature. Generally, the developer is liable to discharge all the taxes and bear the tax cost. Assuming the same in Mr. Bhushan (Developer)'s case, he cannot claim GST paid on land as the agreement casts liability to bear taxes on him as developer.

   The above view is supported by the judgement of the Apex Court in case of Rajinder Bali Vs. Sabh Infrastructure Limited [RFA 355/2017 &CM No. 13404/2017(Stay) dated 05-03-2018.

FCS DEEPAK P. SINGH
(B.Sc., LLB, FCS, AIII, CRMP)
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com



3. *The third issue faced by Mr. Bhushan (Developer) is that in case of allotment of free units to the landowner, when to pat GST?*

   Unit 25/01/2018, there was no clarity on this aspect. The developer is required to pay the GST at the time of transfer of land in the JDA and hence heavy burden was there in both the contracting parties.

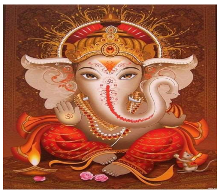
   After 25/01/2018 the Government through Notification no. 4/2018-CGST(Rate) for the purpose of defining or rather differing the time of supply in barter transactions (Construction Services in exchange of TDRs).

   The said notification says that time of supply in such cases will be the date of allotment of units to the landowner or the date on which rights in such units are transferred to the landowner.

   So, Mr. Bhushan (Developer) will pay tax on the date of allotment of free units to the landowner (Mr. Anil) subject to the fact that person supplying the development rights is registered under GST.

DISCLAIMER: *the article presented here is only for sharing knowledge and information with the readers. The views are personal, shall not be considered as advice. In case of necessity do consult with tax professional.*

FCS DEEPAK P. SINGH
(B.Sc., LLB, FCS, AIII, CRMP)
Mobile No. +91 9920830041
Email ID: cs.deepakpsingh@gmail.com



FCS DEEPAK P. SINGH

(B.Sc., LLB, FCS, AIII, CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com