

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

**BEFORE THE BENCH OF**

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)  
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AABCP0569M123 (ARN: AD271218000 330P)
Legal Name of Applicant	Puranik Construction Pvt. Ltd.
Registered Address/Address provided while obtaining user id	Puranik One, Kanchan Pushp, Kavesar, Ghodbunder Road, Thane(w) - 400615
Details of application	GST-ARA, Application No. 99 Dated 13.12.2018
Concerned officer	State Tax Officer (THA-VAT-C-015) Thane.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	<b>Service provision</b>
B Description (in brief)	The Applicant in the course of its business enters into a Civil Construction Contract with the Developer for construction of residential premises as per the floor plans, designs, etc. given by the Developer.
Issue/s on which advance ruling required	(ii) applicability of a notification issued under the provisions of the Act.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

**PROCEEDINGS**

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Puranik Construction Pvt. Ltd., the applicant, seeking an advance ruling in respect of the following question:-

*The question / issue before Your Honor is eligibility of Notification 01/2018-Central Tax (Rate) dated 25.01.2018 which provides for concessional rate of GST @ 12% on supply of works contract service in respect of Original Works pertaining to construction of a Low Cost House in an AHP.*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

**02. FACTS AND CONTENTION - AS PER THE APPLICANT**

2.1 M/s Puranik Construction Pvt. Ltd., engaged in the business of civil construction of residential premises as a Contractor have filed the present Application in respect of a proposed Civil Construction Contracts to be entered into with a Developer, namely, Puranik Builders Limited for construction of a



residential project located at Nerul, Navi Mumbai. The said Project is a residential project will be comprising of 135 buildings (having FSI utilization of Sq. Mts. 322505) all having residential flats/units having carpet area of up to or less than 60 Sq. Mts. (i.e. Low Cost House (LCH)) except for 26 buildings (having FSI utilization of Sq. Mts. 63348) wherein commercial shops may be constructed on the ground floor (FSI utilization of 4928.11 Sq. Mts.). They have submitted that out of the total FSI utilization, only 1.5% of the total FSI is being used towards commercial construction (i.e. 4298 Sq. Mts. / 322505 Sq. Mts.) and balance 98.5% is used towards construction of flats/units having carpet area of 60 Sq. Mts. or less. According to them since more than 50% of FSI is utilized towards construction of LCH the Project would qualify as an 'Affordable Housing Project' (AHP) which has been given Infrastructure status under the Notification F. No. 13/6/2009-INF dated 30.03.2017 issued by Department of Economic Affairs (DEA Notification).

2.2 With respect to the Goods and Services Tax, they have submitted that, for the said project, they are eligible for concessional rate of GST i.e. 12% in terms of the Notification 01/2018-Central Tax (Rate) dated 25.01.2018 [(v) (da)], and the Developer, therefore, would be charging GST @ 8% (post applying 1/3" land deduction) on sale of flats / units in the project.

2.3 They have submitted that it is likely that two Civil construction contracts will be given to them by the Developer as under:-

**Contract I (109 buildings - Pure residential)**

Where the Applicant will be awarded a Construction contract of 109 buildings wherein all the flats/units will have residential carpet area of 60 Sq. Mts. or less and there will be no commercial construction.

**Contract II (26 Buildings - Residential and Commercial construction)**

Where the Applicant will be awarded a Construction contract of 26 buildings wherein all the flats/units will have residential carpet area of 60 Sq. Mts. or less and there will be commercial construction of units on the ground floor. They have stated that in this scenario it is also possible that they will get one contract for construction of residential portion in the 26 buildings and another contract for construction of commercial portion in the said 26 buildings.

2.4 The proposed contracts would include civil work for construction of substructure for buildings (Flats / Units); Shuttering and Mivan Work; RCC Concrete work (incl. supply of concrete); Supply of Reinforcement steel; Masonry work and Scaffolding and plastering work.

2.5 They have submitted that theirs is a composite supply of works contract by way of original works whereby LCH upto a carpet area of 60 sq. mts will be constructed in an Affordable Housing Project. They have reproduced the definition of the term '*Works contract*' and the term '*Affordable Housing*' as defined under the DEA Notification and have stated that all conditions under the above said Entry (v) (da) is satisfied by them and that the subject housing project can be considered as having infrastructure status as defined in the DEA Notification.

2.6 They have also cited the ruling of the Maharashtra AAR in case of *Prajapati Developers (TS-404-AAR 2018-NT)* and CBEC clarification F. No. 354/52/2018-TRU to support their contention that once the condition of more than 50% FSI being used for the construction of units less than 60 Sq. Mts. is fulfilled, the project would be considered as an AHP having Infrastructure status as per the DEA Notification and no other Certificate for any authority is required for the same.

2.7 They have further submitted that entry (v) (da), no-where restricts the benefit to a 'Developer' only. According to them the benefit is available to any person who is supplying the works contract services pertaining to Low Cost Houses in an AHP. The Notification entry is qua the supply of service and not qua the person and therefore once a project qualifies as an AHP, the benefit of concessional rate of tax would be available in respect of works contract services pertaining to Low Cost Houses, irrespective of it being supplied by the Developer or the Contractor.

2.8 They have also cited the decision of the Maharashtra AAR in the case of *Shree Construction (TS-444 AAR-NT-2018)* wherein it was held that the benefit of 12% rate was also available to the sub-contractor supplying services to the main contractor who in turn is providing works contract services for original works pertaining to Railways and have contended that the ratio laid down in the above Ruling squarely also applies in their case.



2.9 However in respect of the contract for construction of residential and commercial units in the project, they have submitted that since the Principal Supply i.e. pre-dominant supply is of the works contract service in respect of the construction of LCH in an AHP, such Contract should be taxed as per the rate and provisions applicable to the Principal Supply and since the principal supply is of the construction of LCHs, entire Contract would be eligible for the concessional rate of tax i.e. 12% in terms of Notification 01/2018 Central Tax (Rate) dated 25.01.2018.

2.10 They have also submitted an Architect Certificate to support their contentions that more than 50% of the FSI in the project will be used towards construction of units having RERA carpet area upto 60 sq.mtrs & have also produced N.A. Order of Neral project to support their contention that the Project is a housing project.

### **03. CONTENTION – AS PER THE CONCERNED OFFICER**

3.1 The jurisdictional office has submitted that in the subject project 98.5% of the total FSI of the project is being consumed for the construction of Low-Cost House and therefore the project would qualify as an AHP as per the DEA Notification.

3.2 Citing the decision of the Maharashtra AAR in case of Prajapati Developers, the jurisdictional office has supported the applicant's contention in respect of concessional rate of GST @12% in their case, on supply of works contract service in respect of Original Works pertaining to construction of a Low Cost House in an AHP and has stated that for the remaining commercial units no concession should be given.

### **04. HEARING**

4.1 The Preliminary hearing in the matter was held on 10.01.2019, Sh. Gourav Sogani from ELP, Advocate & Solicitors appeared and requested for admission of the application. During hearing Jurisdictional Officer Sh. Sandeep Patil, State Tax Officer (THA-VAT-C-015) Thane appeared and stated that they would be making submissions in due course.

4.2 The application was admitted and called for final hearing on 07.02.2019, Sh. Harsh Shah, and Sh. Gourav Sogani from ELP, Advocate & Solicitors appeared, made oral and written submissions. Jurisdictional Officer Sh. Sandeep Patil, State Tax Officer (THA-VAT-C-015) Thane also appeared and submitted the response of the jurisdictional office.

### **05. OBSERVATIONS**

5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office. The only issue that is before us is whether the construction services proposed to be provided by the applicant under the subject project will qualify for the reduced CGST rate of 12% (6% each of CGST & SGST), as provided in Sr. No. 3 - item (v) - sub item (da) of Notification No. 01/2018-CT (Rate) dated 25.01.2018.

5.2 We find that the question posed by the applicant is with respect to a proposed housing project which they will enter into with a Developer, namely, Puranik Builders Limited for construction of a residential project located at Nerul, Navi Mumbai. The applicant has submitted that the total FSI consumed in the said project is 322505 sq.mtrs out of which 98.5% sq mtrs. of FSI will be consumed for flats having carpet area below 60 sq mtrs. Therefore, whilst submitting

Architect's Certificate in support, they have opined that their project falls under the definition of "Affordable Housing" as mentioned in notification issued by Government of India, Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017.

5.3 As per Sr. No. 3, column 3, item (v) sub-item (da) of Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018, *low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017 will attract tax rate of 12 % (6% each of CGST & SGST.)*

5.4 This clause will be applicable to the applicant if the project undertaken by them is *an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.*

5.5 Department of Economic Affairs' notification issued vide F. No. 13/6/2009-INF, dated the 30th March,2017 has included Affordable Housing under the column "Infrastructure sub sector" against the category of Social and Commercial Infrastructure and has further defined "*Affordable Housing*" as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters and "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

5.6 One of the recommendations made by the GST Council in its 25th meeting held on 18th January 2018 at Delhi was to extend the concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under notification No. 13/06/2009 dated 30<sup>th</sup> March, 2009. The said notification of Department of Economic Affairs provides infrastructure status to Affordable Housing. The recommendation of the Council would extend the concessional rate to construction of flats/ houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also. The GST Council has also observed that "It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc attract GST of 18% or 28%. As against this, *most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land).* As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats." The GST Council has also mentioned that

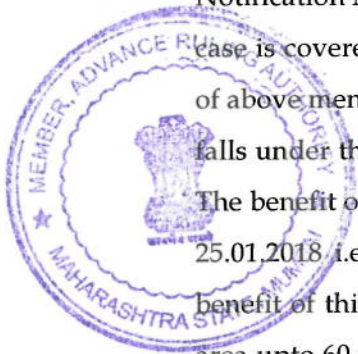


the builders/ developers are expected to follow the principles laid down under Section 171 of the GST Act (Anti-Profiteering Rules) scrupulously.

5.7 In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI vide their letter no. CREDAI/MoF/2018/14 dated 19<sup>th</sup> March, 2018, the Government vide F.No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7<sup>th</sup> May, 2018 has clarified that “Low cost houses up to a carpet area of 60 .square metres per house in an affordable housing project, which has been given infrastructure status under notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). *Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/ developer as per the definition of affordable housing given in the above mentioned notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.*”

5.8 From a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 01/2018-Central Tax (Rate) and facts on record, we find that that the applicant's case is covered under the tax rate of 12%, under Heading 9954 (Construction Services), (v) (da) of above mentioned Notification No. 11/2017, as amended since the project undertaken by them falls under the definition of “Affordable Housing” as also claimed by them in their application. The benefit of reduced rate would be available to them only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued and the benefit of this reduced rate would be applicable in case of only those flats which are of carpet area upto 60 sq mtrs., in this scheme, which is covered in the category of affordable housing. In case of other flats which have carpet area more than 60 sq.mtrs. or commercial units, the applicant would be required to pay GST at normal applicable rate, since the benefit of reduced rate is only for residential units of carpet area less that 60 sq.mts.

5.9 We have discussed the issue in detail in our order passed in the case of Prajapati Constructions and find that the subject issue is similar but with a slight variation i.e. in Prajapati Constructions, it was the developer who had raised the question and in the subject case it is the contractor providing composite supply to the developer, who is raising the question. We agree with the applicant's submission that entry (v) (da) of Notification 01/2018, mentioned above, nowhere restricts the benefit to a 'Developer' only. The Notification entry is qua the supply of service and not qua the person and therefore once a project qualifies as an AHP, the benefit of concessional rate of tax would be available in respect of works contract services pertaining to Low Cost Houses, irrespective of it being supplied by the Developer or the Contractor. In the



subject case the project qualifies as an AHP, and the benefit of concessional rate of tax would thus be available to the applicant.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

**ORDER**

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 99/2018-19/B- 31 Mumbai, dt. 20/03/2019

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- The question / issue before Your Honor is eligibility of Notification 01/2018-Central Tax (Rate) dated 25.01.2018 which provides for concessional rate of GST @ 12% on supply of works contract service in respect of Original Works pertaining to construction of a Low Cost House in an AHP.

Answer :- The applicant will be eligible for concessional rate @ 12% in the project as per the facts as seen above. The concessional rate will be applicable only for residential units of upto 60 sq mts., in their project and not for commercial units.



PLACE - Mumbai

DATE - 20/03/2019

— sd —  
B. TIMOTHY  
(MEMBER)

— sd —  
B. V. BORHADE  
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax , Mahavikas for Website.

**CERTIFIED TRUE COPY**

*[Signature]*  
**MEMBER**  
ADVANCE RULING AUTHORITY  
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai - 400021.