

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. V. Borhade, Joint Commissioner of State Tax
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	27AAHFP6426G1Z4
Legal Name of Applicant	PRAJAPATI DEVELOPERS
Registered Address/Address provided while obtaining user id	No.406-407 Persepolis Building, Sector -17, Vashi, Thane, Maharashtra, 400703
Details of application	GST-ARA, Application No. 02 Dated 05.04.2018
Concerned officer	Division II, Commissionerate, Belapur
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service Provision ,Works Contract
B Description (in brief)	Works Contract Services by way of construction of residential complex.
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 02 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 PRAJAPATI DEVELOPERS, the applicant, seeking an advance ruling in respect of the following question :

"Whether the construction services provided under the project "Prajapati Magnum" qualifies for the reduced CGST Rate of 6% as provided in Sl. No 3 - item (v)- sub item (da) vide Notification 01/2018- CT (Rate) dated 25.01.2018?"

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, **as reproduced verbatim**, could be seen thus-

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

1. M/s Prajapati Developers, located at No.406-407 Persepolis Building, Sector -17, Vashi, Thane, Maharashtra, 400703 and registered under GST at Maharashtra vide registration number 27AAHFP6426G1Z4 (hereinafter referred to as the 'Applicant'). The Applicant is engaged in the business of construction of residential and commercial complex.
2. Presently the applicant is undertaking development of residential apartments under a project called 'Prajapati Magnum' in Dronagiri, Navi Mumbai.



3. The details of the project are as follows:
 - a) Project Magnum was started in December 2013 and expected to complete in December 2022.
 - b) The Project Magnum has five wings with 19 floors in each wing.
 - c) Total number of flats in the projects are 352.
 - d) The flats are being developed over 12099 sq mtrs of Land. The Total FSI consumed is 18,099.50 Sq.Mtrs of area out of which 13,145.26 Sq.Mtrs of FSI are consumed in the flats having carpet area below 60 Sq.Mtrs.
 - e) Cost of flats ranges from Rs. 41.00.000/- to Rs.87,00,000/-
4. Applicant has discharged Service Tax on the consideration received from the flat owners till 30.06.2017 at the applicable rate of service tax and later GST is being discharged at the effective rate of 12% after availing the 1/3rd deduction towards the land portion as provided in explanation to Notification No. 11/2017- Central Tax (Rate) issued under the provisions of Central Goods and Service Tax Act, 2017.
5. Architect's Certificate on the carpet area usage and the Flat wise FSI Statement have been enclosed for examination.

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought)

1. Initially, Notification No. 11/2017-Centra Tax (Rate) dated 28.06.2017 has been issued under GST law to provide GST rate for supply of services made by the registered person. Sl. No 3 of the said notification provides to levy GST at the rate of 18% (CGST 9% and SGST 9% for intra state supplies) on the Construction Services subject to certain exceptions.
2. Explanation 2 of the said rate notification also provides that *"the value of supply of service and goods portion in such construction services 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. The value of land/undivided share of land in such supply shall be deemed to be one third of the total amount charged for such supply"*.
3. The rate Notification 11/2017- CT (Rate) has been amended from time to time to change the rate of GST towards supply of various goods and or services or both. Recently on 25.01.2018, it has been amended again vide Notification 01/2018- CT (Rate) to reduce the rate of GST on specified Construction Services from the earlier 18% to 12% (effectively '8%' after availing 1/3rd deduction towards value of land)].
4. With effective from 25.01.2018, new item (v) sub item (da) has been inserted in Sl. 3 vide Notification 01/2018- CT (Rate) to specify the rate of CGST as 6% in case of following service:
"Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to - 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"
5. The Maharashtra State Government also issued the similar notification under SGST law to reduce the SGST rate also to 6% on the above specified services in item (v) sub item (da) for the intra state supply.
6. Works Contract is defined in section 2(119) of the CGST Act, 2017 as "means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract".

Discussion on Affordable Housing Project:

7. The reduced rate of 12% (8% after reducing 1/3rd towards land) is applicable only for the low-cost houses up to a carpet area of 60 Square Meters per house in an affordable housing project. Further the benefit is available only to those Affordable housing projects which have been given infrastructure status by Government of India vide F. No. 13/6/2009-INF, dated the 30th March,2017.
8. "Affordable Housing" is defined 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.
9. Accordingly, 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 has been given the infrastructure status by the GOI and therefore would be eligible for the benefit of reduced rate.
10. Further it was also mentioned in the above referred notification dated 30.03.2017 that "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.
11. As per Sec 2(k) of RERA, "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.
12. The expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.



13. The applicant has obtained the Architect's Certificate in this regard to examine the carpet area usage in the project under consideration. As per the said Architect's Certificate, it is evident that the project 'Prajapati Magnum' has total consumed/ Permissible F.S.I. of 18099.50 Sq.Mtrs. Out of which 13145.26 Sq.Mtrs F.S.I area are consumed by flats having carpet area below 60 Sq.Mtrs. Therefore, the said housing project is using around 73% of the total Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area@ of not more than 60 square meters.
14. Architect's Certificate on carpet area usage and also flat wise FSI issued for the given project is enclosed for your kind consideration.
15. Further, following statements made in the press release by the Ministry of Finance, Government of India on completion of 25th GST council meeting dated 18.01.2018 would be relevant:
 - a) *"The Fourth Recommendation of the Council is to extend the concessional rate of 12% 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 30th March, 2009.*
 - b) *The recommendation of the Council would extend the concessional rate of 8% GST (after deducting value of land) 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.*
 - c) *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).*
16. From the above discussion, it is reasonably understood that PD's Magnum project could qualify as to be an affordable housing project and accordingly in the applicant's considered view, the construction of low cost houses with carpet area up to 60 Square Meters per house in the said housing project would be eligible for the reduced rate of 12% GST w.e.f 25.01.2018. The effective rate of GST would be 8% after reducing 1/3rd towards value of land as provided in Notification No.11/2017-CT (Rate) dated 28.06.2017.
17. It would be relevant to note that the GST law do not provide any separate meaning to define the term 'low cost houses'. Thereby, applicant is of the understanding that the houses with carpet area of not more than 60 square meters could itself be considered as low-cost houses for determining the rate of GST.

Applicant's viewpoint:

18. The project "Prajapati Magnum" qualifies to be an Affordable Housing Project which has been given infrastructure status vide notification of Government of India.
19. Accordingly, Service by way of Construction of houses with carpet area up to 60 Square Meters per house in the said housing project would attract GST at 12% [CGST- 6% and SGST-6%] w.e.f 25.01.2018. The effective tax rate would be 8% after reducing 1/3rd towards value of land.

03. CONTENTION – AS PER THE CONCERNED OFFICER

Vide letter dated 14.05.2018, the concerned officer has submitted a report as under :

Point No. 14 states that "Whether the construction services provided under the project "Prajapati Magnum" qualifies for the reduced CGST Rate of 60% as provided in Sr.No.3-item (V)-sub item (da) vide notification 01/2018-CT (Rate) dated 25.01.2018?"

- 1) Notification No.01/2018-CT(Rate) dated 25.01.2018 extend the concessional rate of 8% GST(after deducting the value of land) to construction of low cost houses upto a carpet area of 60 square metre per house in an affordable housing project which has been given infrastructure status vide Notification No. 13/06/2009 dt. 30.03.2009. The said notification of department of Economic Affairs provides infrastructure status to Affordable Housing. Affordable Housing has been defined in the said notification as a housing project using at least 50% of the FAR/FSI for dwelling units with carpet area of not more than 60 square metre.
- 2) The project Prajapati Magnum does not qualify for this concessional rate of 8% GST on account of following reasons :
Concessional rate of 8% GST is only applicable to low cost houses/flats only, not to the project which includes other dwelling units as well. Project Prajapati Magnum is an ongoing project since December, 2013. It is obvious that many of the dwelling units would have been sold out to different categories of buyers viz. prospective buyers, promoters, investors and partners which may or may not include low income groups and economically weaker section. The key conditions to qualify for taking the benefits of the said Notification are:
 - i) Low cost houses up to a carpet area of 60 square metre.
 - ii) Housing project using at least 50% of the FAR/FSI for dwelling units with carpet area of not more than 60 square metre.

Here, CGST Act 2017 does not define "low cost house". There are different definitions given by various agencies like RBI and MOHUPA, etc. Therefore, cost is the most important factor while deciding the benefits of said Notification. The second condition is being fulfilled here as the percentage of FSI used in the flats having carpet area below 60 sq.m is approximately 72.63% as per Area Certificate given by the Architect of Prajapati Developers on 15.03.2018.

There are certain Apprehensions which need to be investigated further. These are :



- i) **Nature of Project:-** Above mentioned Notification is silent on whether the concessional rate of 8% GST(after deducting value of land) is applicable on new projects or , ongoing projects or both. Project Prajapati Magnum is an ongoing project since December, 2013.
- ii) **Timeline of Project:-**The project Magnum started in December 2013 and it is obvious that many of the dwelling units could have been sold out to prospective buyers, promoters and investors which may or may not belong to the category of low income groups and economically weaker sections.
- iii) **Cost:-** Further the Cost of Flats is in the range of 41 Lacs to 87 Lacs. This matter has to be further investigate into -
a) How many units have been sold since December 2013 to different category of buyers viz prospective buyers, promoters and investors?
b) How many flats are there in each category i.e. a) 41 Lacs, b) 87 Lacs, c) In between 41 Lacs to 87 Lacs?
- iv) **Issue of Anti Profiteering:-**Since there is no GST on second sale of flats. It is our apprehension that significant number of flats would be owned by promoter/investor/partners may be sold to prospective buyers, thereby coming out of ambit of GST as there is no GST on second sale of flat. Consequently, it will be further out of purview of Anti profiteering Authority also as this transaction does not involve in GST. This may become a potential revenue loss for Government of India. Moreover, such a step will undermine the large objective of social welfare which is behind the recommendations and amendment in the Notification 1/2018-Central Tax (Rate) dt.25.01.2018.

04. HEARING

The Preliminary Hearing was held on date 15.05.2018. Shri Vasant K Bhatt, Chartered Accountant, duly authorized appeared along with Shri Rakesh Prajapati, Director and Shri Nagender Hegde, Chartered Accountant. They requested for admission of the application as per contentions made therein. They were orally requested to give details of all flats in their projects and names of buyers. Shri Kapil Prajapati, Asstt. Commr., Belapur, CGST & Central Excise, appeared and made written submissions. The Final Hearing was held on 26.06.2018. Shri Vasant K Bhatt, Chartered Accountant, and Shri Nagender Hegde, Chartered Accountant appeared and made reference to Circular No. 354 dated 07.05.2018 which is taken on record. Shri Kapil Prajapati, Asstt. Commr., Belapur, CGST & Central Excise, appeared and also made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case. The only issue that is before us is whether the construction services provided by the applicant under the project "Prajapati Magnum" qualifies for the reduced CGST rate of 6% as provided in Sr. No. 3 - item (v) - sub item (da) of Notification No. 01/2018-CT (Rate) dated 25.01.2018.

This issue is with respect to the housing project called "Prajapati Magnum" in Dronagiri, Navi Mumbai which has been undertaken by them. The applicant has submitted that the said project was started in December 2013 and is expected to be completed in December 2022. They have also submitted that the total FSI consumed in the said project is 18,099.50 sq.mtrs out of which 13,145.26 sq mtrs. of FSI are consumed for flats having carpet area below 60 sq mtrs. They have, whilst submitting Architect's Certificate in support, submitted that their housing project is using around 73% of the total Floor Area Ratio (FAR)/Floor Space Index and therefore 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.

Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, has specified the rate of central tax to be levied on Intra State supply of services of description specified in Column 3 of the Table in the said



Notfn, falling under scheme of classification of services mentioned therein. The relevant clauses of the said Notfn as amended by Notfn No. 20/2017-Central Tax (Rate) dated 22.10.2017 is reproduced below:-

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
3	Heading 9954 (Construction services)	<p>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(a);</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p> <p>(c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(e); or</p> <p>(f)</p>	6	-]
		<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p> <p>(a);</p> <p>(b);</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-</p> <p>(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(2) any housing scheme of a State Government;</p> <p>(e); or</p> <p>(f)</p>		



Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 has made amendments to Sr. No. 3, column no. 3, item no. iv & v the above Notfn No 11/2017 as follows:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, in column (3), -

(A) in item (iv),-

(I) for sub-item (c), the following sub-item shall be substituted, namely: -

'(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)";'

(II) after sub-item (d), the following sub-items shall be inserted, namely: -

'(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban);

(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)';

(III)

(B) in item (v),

(I) in sub-item (a), for the word "excluding",

(II) after sub-item (d), the following sub-item shall be inserted, namely: -

"(da) 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;"

According to sub item (da) of item iv, "a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) would attract a tax rate of 12%. This clause will not be applicable to the applicant because the same envisages partnership by State or Union territory or local authority or urban development authority

According to sub item (db) in item iv "a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban). This clause also shall not be applicable to the applicant since this clause states that the houses should be constructed or acquired under the Credit Linked Subsidy Scheme of the Government.

According to sub item (da) of item (v), "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 would attract a tax rate of 12%. 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.

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.

The 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 is reproduced below:-

With the approval of the Competent Authority, an updated Harmonized Master List of Infrastructure Sub-sectors (Annexure-I) is hereby notified. The new list incorporates the following change to the notification dated 1st August, 2016;

1. Under the category of "Social and Commercial Infrastructure" a new sub-sector - "Affordable Housing" is added.

Annexure-I

Updated Harmonized Master List of Infrastructure Sub-sectors

Sl. No.	Category	Infrastructure sub-sectors
	Transport	<ul style="list-style-type: none"> • Roads and bridges • Ports • Shipyards • Inland Waterways • Airport • Railway Track, tunnels, viaducts, bridges • Urban Public Transport (except rolling stock in case of urban road transport)
	Energy	<ul style="list-style-type: none"> • Electricity Generation • Electricity Transmission • Electricity Distribution • Oil pipelines • Oil/Gas/Liquefied Natural Gas (LNG) storage facility • Gas pipelines
	Water and Sanitation	<ul style="list-style-type: none"> • Solid Waste Management • Water supply pipelines • Water treatment plants • Sewage collection, treatment and disposal system • Irrigation (dams, channels, embankments, etc.) • Storm Water Drainage System • Slurry Pipelines
	Communication	<ul style="list-style-type: none"> • Telecommunication (fixed network) • Telecommunication towers



		<ul style="list-style-type: none"> • Telecommunication & Telecom Services
	Social and Commercial Infrastructure	<ul style="list-style-type: none"> • Education Institutions (capital stock) • Sports Infrastructure • Hospitals (capital stock) • Three-star or higher category classified hotels located outside cities with population of more than 1 million • Common infrastructure for Industrial Parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets • Post-harvest storage infrastructure for agriculture and horticultural produce including cold storage • Terminal markets • Soil-testing laboratories • Cold Chain • Affordable Housing

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10. "Affordable Housing" is defined 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.

@ "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.

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 30th 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.

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 19th March, 2018, the Government vide F.No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7th 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."*

From a reading of the above clarification, notification and the clause (da) of item (v) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 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 stated by them in the 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. the applicant would be required to pay GST at normal applicable rate.

06. In view of the 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- 02/2018-19/B- 58

Mumbai, dt. 03/07/2018

For reasons as discussed in the body of the order, the question is answered thus -



Question : Whether the construction services provided by the applicant under the project "Prajapati Magnum" qualifies for the reduced CGST rate of 6% as provided in Sr. No. 3 - item (v) - sub item (da) of Notification No. 01/2018-CT (Rate) dated 25.01.2018.?

Answer :- Answered in the affirmative as discussed above.



— sd —

B. V. BORHADE
(MEMBER)

— sd —

PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

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


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, 15th floor, Air India building, Nariman Point, Mumbai - 400021