

# **SEMINAR ON REAL ESTATE TRANSATION AND TAXATION**

**ORGANISED BY**

**COMMITTEE FOR MEMBERS IN  
PRACTISE- CMP ICAI**

**HOSTED BY**

**NAGPUR BRANCH OF WIRC OF ICAI**

**Presented by CA RAJIV LUTHIA**

**AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN**

# Coverage

- Bird's Eye View of Important GST provision related to builder/contractor
- **Case Study Related to**
  - 1) Tenancy Rights
  - 2) TDR & JDA
  - 3) GST on premium paid to Municipal corporation
  - 4) Redevelopment of Society
  - 5) GST on sale of TDR
  - 6) ITC – 80%
- **Decision of Hon'ble Gujrat HC** in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022  
TIOL 663 HC AHM GST

# **IMPORTANT NOTIFICATION RELATED TO CONSTRUCTION INDUSTRY**

# TYPES OF PROJECTS

PROJECT (AS PER RERA  
REGISTRATION)

REAL ESTATE PROJECT  
[REP]

RESIDENTIAL REAL  
ESTATE PROJECT  
[RREP]

AFFORDABLE  
RESIDENTIAL  
APARTMENTS

OTHER THAN  
AFFORDABLE  
RESIDENTIAL  
APARTMENTS

COMMERCIAL  
APARTMENTS

# DEFINITIONS

## ➤ REAL ESTATE PROJECTS (REP) :

➤ As assigned in clause 2(zn) of RERA Act,2016

➤ Section 2(zn) of RERA Act,2016:

➤ The development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartment, or the development of land into plots or apartment, as the case may be,

➤ For the purpose of selling all or some of the said apartments or plots or building, as the case may be, and

➤ Includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto

## ➤ RESIDENTIAL REAL ESTATE PROJECTS (RREP) :

➤ Means a Real Estate Project in which carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in Real Estate Project.

# DEFINITIONS

## AFFORDABLE RESIDENTIAL APARTMENT :

- New projects after 1<sup>st</sup> April,2019; **or**
- Ongoing projects (not in specified schemes), where new reduced rate of GST (1%) is opted.

**Metro Cities** : Carpet area **60 sq.m** & **value not more than Rs.45 Lakhs.**

**Non- Metro Cities** : Area of 90 sq.m and value not more than Rs.45 Lakhs

**VALUE** = Amount charged + Cost of Land + any other amount charged such as parking charges, common facility etc.

Ongoing projects in schemes mentioned in Notification 11/2017- CT Rate, under entry such as :

- 3(iv)(b) /(c) /(d) /(da) / (db) [**i.e. in-situ redevelopment under PMAY, etc.]**
- 3(v)(b) /(c) /(d) /(da) [**i.e. low cost houses having infrastructure status, etc]**
- 3(vi)(c) [**i.e. residential complex meant for self use of employees]**

where new reduced rate of GST is opted

# Scheme under provisions before 1<sup>st</sup> April, 2019

- Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana. **[3(iv)(b)]**
- In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) **[3(iv)(c)]**
- Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana. **[3(iv)(d)]**
- 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). **[3(iv)(da)]**
- Houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban). **[3(iv)(db)]**

# Scheme under provisions before 1<sup>st</sup> April, 2019

- A single residential unit otherwise than as a part of a residential complex [3(v)(b)]
- 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; [3(v)(c)]
- Low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority The “Affordable Housing in Partnership” component of the Housing for
  - All (Urban) Mission/Pradhan Mantri Awas Yojana;
  - Any housing scheme of a State Government; [3(v)(d)]
- 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 30<sup>th</sup> March, 2017. [3(v)(da)]



# TAXABILITY OF PROJECT

## ONGOING PROJECT

(Option exercised for old Scheme i.e. old Rate of Tax)

### Residential projects:

- Affordable unit – 8%
  - Non –Affordable unit – 12%
- (with ITC)

### Mixed Projects (RREP) :

- Affordable unit – 8%
  - Non –Affordable unit – 12%
  - Commercial unit – 12%
- (with ITC)

### Commercial Projects:

12% with ITC

### Mixed Projects (REP) :

- Affordable – 8%
  - Non –Affordable – 12%
  - Commercial – 12%
- (with ITC)

# TAXABILITY OF PROJECT

ONGOING PROJECT (**Opted for new rates**) or New Project

## Residential projects:

- Affordable unit – 1%
  - Non –Affordable unit – 5%
- (No ITC)

## Mixed Projects (RREP) :

- Affordable – 1%
  - Non –Affordable – 5%
  - Commercial – 5%
- (No ITC)

## Commercial Projects: 12% with ITC

## Mixed Projects (REP) :

- Affordable – 1%
  - Non –Affordable – 5%
  - Commercial – 12%
- (Proportionate ITC)

# **REVERSE CHARGE MECHANISM APPLICABILITY**

NATURE OF SUPPLY	SUPPLIER	PERSON LIABLE
Supply by way of TDR / FSI by any person for construction of a project by promoter	Any Person	Promoter (@ 18%)
Long Term lease (30 years or more) by any person against consideration in form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any Person	Promoter (@18%)
Capital goods falling under any chapter in the first schedule to the Customs Tariff Act,1975 supplied to a Promoter (Only for New Scheme)...Chapter 85...JCB, floor polishing machine, generators	Unregistered person	Promoter (@ applicable rates of particular CG)
Cement falling in Chapter heading 2535 (Only for New Scheme)	Unregistered person	Promoter (@ 28%)
Supply of any goods / services which falls short of 80% of the value of input / input services during F.Y.	Unregistered person	Promoter (@ 18%)

# **EXEMPTIONS FROM LEVY OF GST**

## EXEMPTION (Entry 41A & 41B of Not. 12/2017 – CT(Rate))

TDR / FSI sold on or after 1<sup>st</sup> April, 2019 for **construction of residential apartments.**

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of **service by way of granting of long term lease of thirty years, or more**, taken on or after 1<sup>st</sup> April, 2019 for **construction of residential apartments**

### VALUE OF EXEMPTION :

GST on TDR / FSI/ Upfront amount (such as premium, salami etc.)



carpet area of residential apartment in project booked before OC

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Total carpet area of the project (residential + commercial)

- Value of TDR / FSI = Value of similar apartments charged by builder from independent buyers nearest to the date of development right or FSI transferred to the builder.

# EXEMPTION

## CONDITION FOR EXEMPTION :

- Above exemption on TDR / Upfront amount shall be available only IF all the residential apartments have been booked before issuance of completion certificate or first occupancy , whichever is earlier.
- If all the residential apartments are **not booked** on date of completion certificate, **Builder is liable to pay GST under reverse charge** as per following formula :

GST on TDR / FSI/ Upront amount  
(such as premium, salami etc)



carpet area of residential apartment  
in project remain un-booked on date  
of completion certificate

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Total carpet area of the residential apartment project

- Above GST shall not exceed 1% of the value in case of Affordable residential apartments or 5% of the value in case of other than affordable residential apartments, remained un-booked on date of completion certificate.
- **Point of Taxation** : Date of completion or first occupation of the project, as the case may be, whichever is earlier.

# POINT OF TAXATION



A promoter who **receives DR or FSI on or after 1st April, 2019** for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash

### Liability to Pay GST on

Consideration paid by him (promoter) in the form of construction service of **commercial or residential apartments** in the project, for supply of development rights or FSI subject to exemption for residential unit

The **monetary consideration** paid by him (Promoter), for supply of development rights or FSI relatable to construction of **residential apartments** in project subject to exemption for residential unit

The upfront amount paid for long term lease of land relatable to construction of residential apartments in the project subject to exemption for residential unit

**The supply of construction service** by him against consideration in the form of development rights or FSI

in a tax period **not later than** the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier.

**GST to be paid as per Time of supply in case of transaction of sale of FSI/TDR by any person to Promotor for consideration in cash and promotor is intending to construct commercial units**

# **CASE STUDY 1 – TENANCY RIGHTS**

# Case Study – 1

XYZ Developer Ltd  
(Builder & Developer)

Agreement dated 11<sup>th</sup>  
Dec, 2019

ABC Landowner

For Purchase Land along  
with Tenanted building



APEX PROJECT

Agreement dated 30<sup>th</sup>  
January, 2020

Tenants

For providing PAA in form of 450 sq.ft to  
each tenant on ownership basis in lieu of  
surrender of tenancy rights

- New project to be constructed will be REP (i.e. more than 15% will be commercial)

## Case Study – 1

**Question 1** - Whether ABC – landowner is required to pay GST on sale of land, Building thereon along with tenants to XYZ DEVELOPERS ?

- Schedule III – Entry 5 : Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- ABC-Landowner has ownership right of building sold to XYZ Ltd which is nothing but sale of land and building itself.
- Transaction covered under Schedule III – Entry 5

## Case Study – 1

**Question 2** - Whether GST is leviable of Tenancy right surrendered by tenant? If yes who is required to discharge the liability?

- Any form of supply such as sale, transfer, barter, exchange etc. made or agreed to be made for a consideration in the course or furtherance of business is covered in definition of “supply”
- Surrendering of tenancy right by tenant is nothing but a transfer/disposal of right for a consideration either in form of flats/shops on ownership basis.

## Case Study – 1

- **CBIC vide circular number 44/18/2018-CGST dated 2<sup>nd</sup> May, 2018** -----clarifications on issues related to taxability of “Tenancy Rights”
- ✓ Service provided by outgoing tenant by way of surrendering the tenancy rights against consideration in form of a portion of tenancy premium is liable to GST.
- ✓ Activity of transfer of tenancy right against consideration in form of tenancy premium is supply of service liable to GST. It is form of lease or renting of property & such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, license to occupy land **is supply of service**.
- ✓ Transfer of tenancy right cannot be treated as sale of land or building declared as neither a supply of goods nor of service in para 5 of schedule III of CGST Act, 2017.

Above circular clarifies that **surrendering of Tenancy rights is liable to GST.**

## Case Study – 1

- **whether the Tenant can be said to be engaged in the business when having tenanted shop in said project and tenancy right in shop was surrendered ?????.**
- **“Business” is defined U/s. 2(17) which includes -**
  - a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;**
  - b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);**
  - c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;**

## Case Study – 1

- **Hon'ble SC in the case of Commissioner of Sales Tax Vs Sai Publication Fund (Civil Appeal No.9445 of 1996) has held that**
- ✓ **It was not every activity or any repeated activity resulting in sale or supply of goods that would attract sales tax. If legislature intended to tax every sale or purchase irrespective of the object of the activities out of which the transaction arose, then it was unnecessary to state that the person must "carry on business" of selling, buying etc.**
- ✓ **In Girdharilal Jiwanlal vs. CST [(1957) 8 STC 732 (Bom)], the Bombay HC held that an agriculturist did not necessarily fall within the definition of a "dealer" under Section 2(c) of the C.P. & Berar Sales Tax Act (Act 21 of 1967), merely because he sold or supplied commodities. It must be shown that he was carrying on a business. It was held that it must be established that his primary intention in engaging himself in such activities must be to carry on the business of sale or supply of agricultural produce. This HC held that there was "nothing to show that the petitioner acquired these lands with a view to doing 'the business of selling or supplying' agricultural produce. According to the assessee he is principally an agriculturist who also deals in cotton, coal, oilseeds and groundnuts"**



## Case Study – 1

- Press Release dated 13<sup>th</sup> July,2017.... GST on sale of old gold ornaments.
- Para 4, it was clarified that
  - ✓ *Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold Jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly the sale of old Jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases.*
- Good case to argue that transaction of transfer of tenancy rights (residence) is not liable to GST since does not get covered in the definition of “supply”.
- Tenant carrying on business ... surrendering of Tenancy right covered within definition of “Business”.....in the furtherance or course of business

## Case Study – 1

**Question 3 -Whether GST is leviable on flats/shop allotted on ownership basis by XYZ DEVELOPERS LTD to tenant in lieu of surrender of tenancy rights?**

- XYZ Ltd will be undertaking activity of construction and handing over commercial/residential premises to tenants, for a consideration in lieu of surrender of their respective tenancy right. Activity is covered under definition of “supply”.
- Activity is covered in clause 5 (b) of schedule-II & therefore will be treated as supply of services.
- XYZ Ltd liable to pay GST on construction service provided to tenant.

## Case Study – 1

### TIME OF SUPPLY:

- For BUILDER, TIME OF SUPPLY shall be earliest of following
  - Date of receipt of consideration
  - Date of Issue of Invoice/demand note, if issued within time limit as stated in Section 31(5)
  - Date of provision of services as per mile stones provided in agreement, if invoice is not issued within time limit as stated in section 31(5)
- XYZ Ltd have received payment in form of surrendering of Tenancy rights
- **Time of supply of construction service ... date of execution of surrender agreement with tenant.**

## Case Study – 1

### VALUE:

- **Section 15(1)** of the Act, the value of the supply is the price actually paid or payable for such supply, where the supplier and recipient are not related and the price is the sole consideration for the supply.
- As per Section 15(5) read with Rule 27 of the CGST Rules, 2017, the value of supply, where consideration is not wholly in money, shall

A) be the open market value of such supply

.....

.....

- It is agreed between XYZ Ltd & Tenant that certain portion of constructed area will be allotted to tenant on ownership basis in lieu of surrender of tenancy right.
- The market value ( i.e. price charges by XYZ Ltd to buyer for booking premises on date of surrender of tenancy right) on the date of such allotment of constructed area will be value for the purpose of GST.

# **CASE STUDY 2 – TRANSFER OF DEVELOPMENT RIGHTS**

## Case Study – 2



Mr. YOGESH – Land owner

Entered into Development agreement dated 25<sup>th</sup> Feb, 2018

ABC Builder

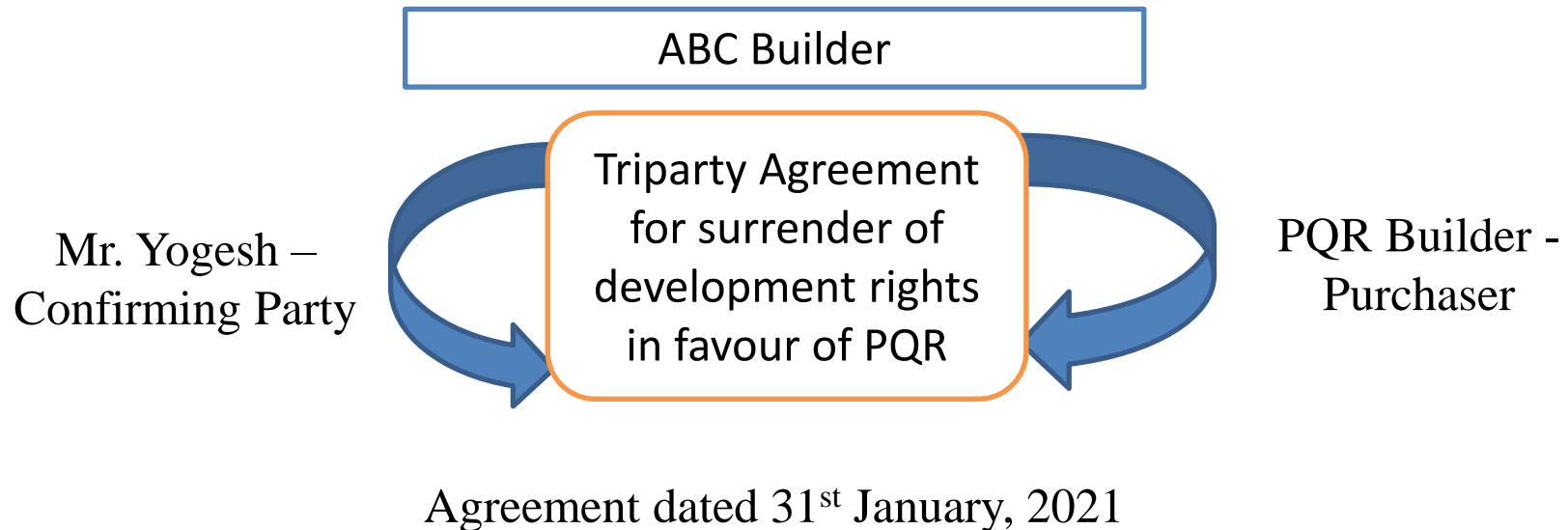
### Terms of Development Agreement

ABC paid Mr. Yogesh

- Rs.1 Crore in cash in Feb, 2018; and
- To Allot 30 flats of 550 Square feet (i.e. Total 16,500 Square Feet RERA CARPET area) in a building to be constructed on said land in lieu of DA.

## Case Study – 2

- As construction plans were not getting approved by AKOLA MUNICIPALITY, CC was not issued and Construction could not start.
- Due to time/cost overrun and lack of sufficient working capital funds, ABC BUILDERS unable to continue/ take up said project development.



## Case Study – 2

- **Terms of Agreement**

- PQR BUILDERS will allot area in constructed building to Mr. YOGESH as per old terms  
**and**
- Additionally will also allot area of 8,250 square Feet RERA CARPET Area (i.e. 15 flats of 550 square feet each) to ABC & Co. in a newly constructed building on said land.
- The building plan got approval from AKOLA MUNICIPALITY in April,2021.
- The project is fully residential RREP project.
- Mr. YOGESH is not registered for payment of GST.



## Case Study – 2

- **Question 1** : What are tax implications in the hands of ABC BUILDERS and Mr. YOGESH for transaction executed in Financial Year 2017-18?
- *Section 7(1) ..... “supply” includes*
  - (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business*
- One time activity of transfer of development right by Mr. YOGESH, whether “Business”?

## Case Study – 2

### *Without prejudice:*

- *Notification 4/2018-CT (Rate) dated 25<sup>th</sup> January, 2018 provide that 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,*

## Case Study – 2

*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).*

*Explanation.- Nothing contained in this notification shall apply with respect to the development rights supplied on or after 1st April, 2019.*

- In Instant case, Mr. YOGESH has transferred development rights to ABC BUILDER in February, 2018,
- Leviable to GST under forward charge.

## Case Study – 2

- Notification 4/2018-CT applicable only to registered person.
- YOGESH was not registered at the time of entering into agreement.
- Time of supply not postponed as per notification 4/2018

## Case Study – 2

**Question 2 :** What are tax implications in hands of ABC BUILDER, PQR BUILDERS and Mr. YOGESH for transactions executed during FY 2021-22?

- ABC BUILDER transferred development rights acquired from Mr. YOGESH to PQR BUILDER in financial year 2021-22.
- **Notification 5/2019-CT (Rate) dated 29<sup>th</sup> March, 2019 (w.e.f. 1<sup>st</sup> April, 2019)** provide that Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter shall be liable to paid under RCM by promoter.
- **PQR BUILDER to pay GST on DR acquired from ABC BUILDER under RCM.**
- **What about GST paid by Yogesh under forward charge on TDR? Double taxation??**

## Case Study – 2

- **Notification 6/2019-CT (Rate) dated 29th March, 2019**, PQR BUILDER liable to pay **GST on development rights received** from ABC BUILDER under RCM in a tax period not later than tax period in which CC or first occupancy whichever is earlier falls.
- **Notification 4/2019-CT (Rate) dated 29<sup>th</sup> March, 2019** PQR BUILDER to pay GST under RCM on portion of value of DR as is attributable to residential apartments, **which remain un-booked** on date of issuance of CC, or first occupation of project
- **Rate of Tax on Transfer of DR...** No specific entry in Notification 11/2017-CT (Rate) dated 28<sup>th</sup> June, 2017. Possible entry 16(iii) – residual entry & will attract tax at rate of 18% (9% CGST + 9% SGST).
- PQR BUILDER will require to pay **GST on construction service provided** to ABC BUILDER & Mr. YOGESH in a tax period not later than tax period in which completion certificate or first occupancy whichever is earlier falls

## Case Study – 2

**Question 3** :During construction stage (i.e. before completion), 25 out of 30 apartments were sold by land owner Mr. YOGESH to various buyers. What are the tax implications of this transaction?

- PQR BUILDER to pay GST on construction service provided to Mr. YOGESH in a tax period not later than tax period in which CC or first occupancy whichever is earlier falls.
- Mr. YOGESH has transferred the right in favour of customers for 25 flats allotted by PQR BUILDER,
- Mr. YOGESH to pay GST on sale of right in 25 flat ????
- Rate of 18% without any abatement for land ???.
- Mr. YOGESH has not provided any **construction service. whether** entry 3 of rate notification 11/2017 is applicable ????

## Case Study – 2

- Notification 3/2019-CT (Rate) where a registered person (landowner- promoter) who transfers DR 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 CC 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.**



## Case Study – 2

- Explanation. -

(iii) the landowner-promoter shall be eligible to utilise the credit of tax charged to him by the developer-promoter for payment of tax on apartments supplied by the landowner-promoter in such project

- PQR BUILDER should pay GST at the time of allotment of flats to Mr. YOGESH, so that Mr. YOGESH will be eligible to take ITC of the same

# **CASE STUDY 3 – PREMIUM PAID TO MCGM**

# Case Study – 3



Dainamic Builders

Paid

Paid

Project "SAI KRISHNA"



Municipal Corporation of Greater Mumbai



VectorStock.com/33690211

7 crore

Rs. 10 Crore  
Rs. 5 Crore

Premium for Additional FSI

Premium towards development charges, stair case premium etc

### Project

20% - Commercial  
80% - Residential

Towards TDR purchase to be loaded on Residential portion

## Case Study – 3

**Question 1** : Whether GST is leviable on premium paid to MCGM towards additional FSI purchased? If yes, who is liable to pay GST thereon?

- Entry 5 of Schedule III ... Sale of land and building treated as neither supply of goods nor supply of service.
- **As compared to service Tax regime, scope of supply is widened under GST to include anything other than goods as “supply of service”.** In erstwhile regime, immovable property was excluded from definition of service.
- Scope of “ supply” under GST is vide enough to cover even transfer of development right as “supply of Service” on the contention that development right is not land or building per se.

## Case Study – 3

### Reverse charge Mechanism

- Notification 5/2019-CT (Rate) dated 29<sup>th</sup> March, 2019 (w.e.f. 1<sup>st</sup> April, 2019) provide that Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter shall be liable to paid under RCM **by promoter.**
- DIANAMIC BUILDER being promoter liable for GST under RCM on premium paid to MCGM towards grant of FSI & additional FSI.

## Case Study – 3

**Question 2 :Whether GST is leviable on TDR purchased from STAR & Co.? If yes, who is liable to pay GST thereon?**

### Reverse charge Mechanism

- DIANAMIC BUILDER being promoter liable to pay GST under RCM on purchase of TDR from open market.

### Exemption

- Notification 4/2019-CT (Rate) dated 29<sup>th</sup> March, 2019 provide exemption to service by way of TDR for construction of **residential apartment** by promoter to that portion of TDR which is sold before O.C
- Thus, builder is liable to pay GST under RCM in respect of **residential FSI** only on that portion of FSI which remain unsold on the date of O.C.

## Case Study – 3

**Question 3 : Whether GST is payable on various premiums such as development charges, stair case premium, debris deposit premium etc. (other than Premium on FSI & Additional FSI) paid /payable to MCGM. If yes, who is liable to pay GST thereon?**

- Notification 13/2017-CT (Rate) dated 28th June, 2017 provide that GST on Services supplied by the Central Government, State Government, Union territory or local authority to a business entity, Shall be paid under RCM by any business entity located in the taxable territory

## Case Study – 3

- Notification 14/2017-CT (Rate) ..... activities or transactions undertaken by the Central Government or State Government or Union territory or **any local authority** in which they are engaged as public authority, shall be treated neither as supply of goods nor supply of service, namely:-

*“Services by way of any activity in relation to a function entrusted to a Panchayat under [article 243G](#) of the [Constitution](#) or to a Municipality under article 243W of the Constitution”.*

- “Municipality” as defined in clause (e) of article 243P of the Constitution is covered under definition of Local Authority – Section 2(69)
- MCGM is municipality as defined under article 243P of the constitution.



## Case Study – 3

**“243W. Powers, authority and responsibilities of Municipalities, etc.:** Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(i) the preparation of plans for economic development and social justice;

**(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;**

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule”

## Case Study – 3

### **TWELFTH SCHEDULE - (Article 243W)**

1. **Urban planning including town planning.**
2. **Regulation of land-use and construction of buildings.**
3. **Planning for economic and social development.**
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society
10. **Slum improvement and upgradation.**
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public convenience
18. Regulation of slaughter houses and tanneries.

## Case Study – 3

Section 354AA of The Mumbai Municipal Corporation Act, 1888 grants power to MCGM to regulate future construction of certain classes of buildings in particular streets or localities.

Good case to argue.....premium paid to MCGM towards stair case premium, Development charges etc. would be neither supply of goods nor supply of service. ....**sovereign function**

# **CASE STUDY 4 – REDEVELOPMENT OF SOCIETY**

## Case Study – 4



Neelam Society – occupied by 20 flat owner  
and 10 shop owner

Approached for redevelopment to



## Case Study – 4

Terms of redevelopment agreement dated 1<sup>st</sup> November, 2021,

- a) Society grants development rights to ANANT BUILDER for redevelopment
- b) ANANT BUILDER shall at their own costs, demolish Existing Building and construct New Building on the said Plot by utilising the entire FSI.
- c) ANANT BUILDER have agreed to allot a flat of 800 square feet RERA carpet area to all 20 flat owners and shop of 1,000 square feet RERA CARPET Area to existing 10 shop owners.
- d) Balance available FSI shall be available to ANANT BUILDER for development and sale in open market.
- e) ANANT BUILDER shall pay Rs. 6 crores as Hardship allowance to Society members. The society members shall arrange their own alternate accommodation till the new building is being constructed within maximum period of 2 years.

## Case Study – 4

- f) The building plan, Approval etc. are required to be obtained by ANANT BUILDERS from concern authority.
- g) The New building is required to be built by ANANT BUILDERS Ltd within 24 months from the date of hand over possession of vacated premises by society.

## Case Study – 4

**Question 1** : Whether GST is leviable on flats/commercial premises allotted to society member? If yes what is value of taxable service? When the GST is required to be discharged?

- The builder has undertaken the activity of construction and handing over flat/shops to society members for a consideration in the form of development rights. The said activity is covered in definition of “supply”.
- Whether ANANTBBUILDER classified as Builder/Developer or a Contractor in respect of the activities of construction & handing over of the members area ????
- The building plan, Approval etc. are required to be obtained by ANANT BUILDERS from concern authority.
- ANANT to be classified as BUILDER for entire project



## Case Study – 4

### VALUE

#### Member's Portion:

- Para 2A of Notification 3/2019-CT (Rate) dated 29<sup>th</sup> March, 2019 provides that where a 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.**”

## Case Study – 4

### VALUE

#### Sale Portion:

- Para 2 of notification 3/2019-CT (Rate) dated 29<sup>th</sup> March, 2019 provide that In case of supply of construction service specified, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer 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.**

## Case Study – 4

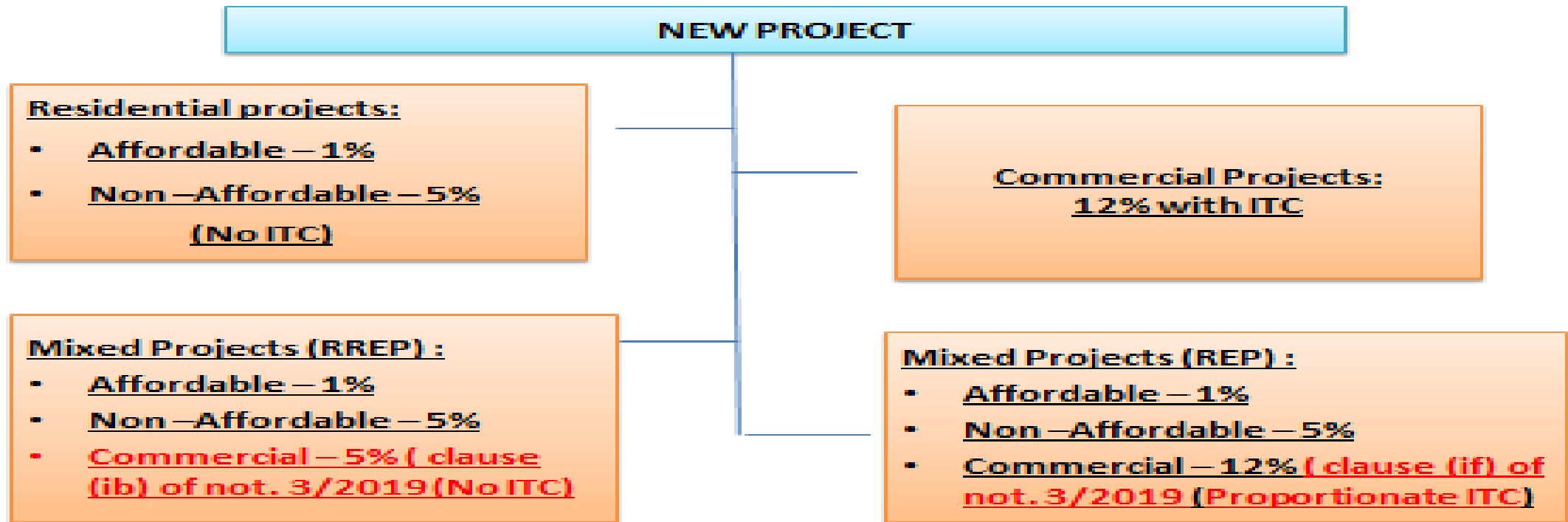
### TIME OF SUPPLY

- ANANT BUILDER have received DR vide agreement dated 21<sup>st</sup> November, 2021, hence they will require to pay GST on units allotted to existing member in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls -----Notification 6/2019-CT (Rate)
- As regards sale to **outside party**, the time of supply shall be earliest of
  - ✓ Date of receipt of consideration
  - ✓ Date of issuance of Invoice (Demand Note – i.e. as per milestone) if raised in prescribed time of 30 days form supply of services/milestone set in agreement.

## Case Study – 4

**Question 2 : Whether querist can avail Input tax credit of tax charged on goods & service used?**

# TAXABILITY OF PROJECT



**\*\*The above rates are derived after considering 1/3<sup>rd</sup> deduction for Land**

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# **CASE STUDY 5 – GST ON TDR**

## Case Study – 5



Trader and Dealer in TDR

Purchased TDR

Mahesh – Landowner  
Rs. 10 crore

Marathon – Builder  
Rs. 20 crore

Kiran Heights – Society  
Rs. 15 crore

## Case Study –5

### Notification 5/2019-CT (Rate) dated 29<sup>th</sup> March, 2019----- RCM

(1)	(2)	(3)	(4)
“5B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	<b>Promoter.</b>

- Thus, promoter is liable to pay tax under RCM on service supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter

## Case Study – 5

- The term “**promoter**” shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016
- (zk) “**promoter**” means,—
  - a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
  - a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of plots in said project, whether with or without structures thereon; or
  - any development authority or any other public body in respect of allottees of—
    - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or



## Case Study – 5

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

such other person who constructs any building or apartment for sale to the general public.

## Case Study – 5

- Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;
- **In instant case, Ashish Group Ltd is not a promoter, therefore not liable for GST under RCM.**
- Mahesh land owner -----Whether in course or furtherance of business?
- KIRAN HEIGHTS.....whether in course or furtherance of business???

**CASE STUDY 6 –  
GST ON purchase from URD more than  
20%**

## Case Study – 6

SVM builder and Developer, during F.Y 2021-22 incurred following expenditure:

Particulars	Amount	Registered or Unregistered
Steel	10 lakhs	Registered
Cement	20 lakhs	Registered
Cement	10 lakhs	Unregistered
Sand	20 lakhs	Unregistered
Bank Interest on borrowings	15 lakhs	Registered
Interest on unsecured loan	5 lakhs	Unregistered
TDR	15 lakhs	Unregistered
Salary	20 Lakhs	unregistered
Rental of JCB	20 lakhs	unregistered
<b>Total</b>	<b>135 Lakhs</b>	

- SVM wants to know on what amount they need to pay GST under RCM in view of notification 7/2019-CT (Rate) date 29<sup>th</sup> March, 2019

NATURE OF SUPPLY	SUPPLIER	PERSON LIABLE
<b>Supply by way of TDR / FSI by any person for construction of a project by promoter</b>	<b>Any Person</b>	<b>Promoter (@ 18%)</b>
Capital goods falling under any chapter in the first schedule to the Customs Tariff Act,1975 supplied to a Builder <b>(Only for New Scheme)...</b> Chapter 85...JCB, floor polishing machine, generators	Unregistered person	Builder (@ applicable rates of particular CG)
Cement falling in Chapter heading 2535 <b>(Only for New Scheme)</b>	Unregistered person	Builder (@ 28%)
<b>Supply of any goods / services which falls short of 80% of the value of input / input services during F.Y. (other than <u>services by way of grant of development rights, long term lease of land or FSI (including additional FSI)</u>)</b>	<b>Unregistered person</b>	<b>Builder (@ 18%)</b>

## Case Study – 6

Section 2(59) - “Input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

Section 2(60) - “Input service” means any service used or intended to be used by a supplier in the course or furtherance of business;

### FAQ (Part II- issued by CBI&C vide Circular F No. 354/32/2019-Tax Research Unit dated 14-5-2019)

- Services by an employee to the employer in the course of or in relation to his employment are neither a goods nor a service as per clause 1 of the Schedule III of CGST Act, 2017. Therefore, salaries and wages paid by promoter to his employees will not be relevant for the minimum purchase requirement of 80% .
- Inward supplies of **exempted goods/ services** shall be included in the value of supplies from unregistered persons while calculating 80% threshold.
- As per Schedule III, Entry No 5, of CGST Act, sale of land is not a supply. Therefore same shall not be included.

## Case Study – 6

In instant case, total input and input service from registered & unregistered dealer (excl. Salary, TDR) amount to Rs. 100 lakhs.

Purchase from registered dealer accounts to 45% of input and input services.

To fulfill his tax liability on the shortfall of 35%. from mandatory purchase from registered dealer, the SMV builder has to pay GST on cement at rate of 28% on reverse charge basis.

After payment of GST on cement, on the remaining shortfall of 25 per cent., the promoter shall pay tax @18 (9 + 9)] per cent. under RCM.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## **Facts:**

Writ applicant entered into an agreement dated 29th September 2020 with the NAVRATNA ORGANIZERS & DEVELOPERS PVT. LTD.

Agreement for purchase also encompassed construction of bungalow on said plot of land by builder- separate and distinct consideration was agreed upon between the parties to the agreement for:

- 1) the sale of land; and
- 2) construction of a bungalow on the land

This WP was filed by Petitioner Mr. MUNJAL BHATT who has entered into agreement dated 29th Sept, 2020 with NAVRATNA BUILDER for purchase of plot along with construction of bungalow thereon for which separate consideration is stated in agreement.



## Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

### **Facts:**

As per agreement, writ applicant was liable to GST on this transaction.

NAVTRATNA charge 18% GST on entire consideration after 1/3<sup>rd</sup> deduction towards value of land.

Since the value of land though known in agreement, not excluded for computing GST liability---  
Writ was filed

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Arguments of Applicant:

- Section 9 of CGST Act imposes Tax on **supply of goods/service** defined in section 7. **Land is excluded** by entry 5 to schedule III of section 7 as neither supply of goods nor service
- 1/3<sup>rd</sup> deduction for land is given by way of notification 11/2017 which is **delegated legislation** which cannot exceed the parent legislation.
- In 14th GST Council meeting the Deputy Chief Minister of Gujarat expressed apprehension that, the abatement of 1/3<sup>rd</sup> value towards the land shall be only in respect of sale of flat by builder & not in respect of transaction where land was sold at separate value.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Arguments of Applicant:

- Reference was given by petitioner of various SC case laws about history of works contract transaction
  - ❑ *State of Madras Vs. Gannon Dunkerley and Co*
  - ❑ *State of Kerala v/s Builders Association of India (1997) 2 SCC 183*
  - ❑ *K. Raheja Development vs State of Karnataka (2005) 5 SCC 162*
  - ❑ *Larsen and Toubro Ltd. v/s State of Karnataka (2014) 1 SCC 708*
- ***Suresh Kumar Bansal v/s Union of India (2016) 92 VST 330 (Del.)*** - wherein it was held that the valuation rules **did not provide any mechanism for deriving value of services in case the transaction involved sale of flat having undivided share of land.** It was therefore held that no service tax could be demanded in the absence of any computation mechanism. The argument of the revenue that there was an abatement notification to take care of deduction for land was rejected on the ground that mere abatement by way of notification could not be a substitute for statutory valuation mechanism which was absent.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Arguments of Applicant:

- Finance Act 2017--- Amendment -----Rule 2A of Service Tax determination Value Rule,2006 by providing exclusion for value of land for determining value of works contract service.
- Providing arbitrary value of land when person can demonstrate that land component is 80% plus of total consideration then notification is completely decimating & violate of Article 14 of constitution
- **It is well established that the measure of tax must have a nexus with the subject matter of tax**

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Arguments of Applicant:

- Section 15(5) empowers fixing of value of supply of goods or services. The sale of land being neither supply of goods nor services, its value cannot be prescribed under Section 15(5).
- Moreover, Section 15 (5) provides that the value of deemed supplies shall be determined in such manner as may be "prescribed". The term "Prescribed" is defined under Section 2 (87) as follows:

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

- It was therefore argued that prescription of value even for the purpose of Section 15 (5) can only be by way of Rules and not by Notification

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Arguments of Applicant:

- Once a particular consideration was agreed for the sale of land between two parties, it was not open for the taxing authorities to rewrite the terms of the agreement. The learned counsel relied upon the judgement of the Apex Court in the case of ***Mangalore Ganesh Beedi Works v/s Commissioner of Income Tax (2015) 378 ITR 640 (SC) = 2015-TIOL-241-SC-IT*** wherein it was observed that the taxing authorities do not have the power or jurisdiction to re-write the terms of the agreement arrived at between the parties with each other at arm's length and with no allegation of any collusion between them and that the commercial expediency

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## COURT OBSERVATION:

### **What is sought to be taxed by the Parliament/State Legislatures?**

It is not as if the very base of the levy was sought to be changed under the CGST Act. While earlier VAT and service tax were imposed on tripartite agreements, such taxes were sought to be consolidated under the CGST Act with a specific exclusion of land element. In other words the construction which was carried out by the developer in accordance with the agreement with the prospective buyer, which was earlier taxable under the Vat/service tax law is now sought to be taxed under the CGST Act and therefore deduction is given for sale of land - Even otherwise “supply” under Section 7 includes supply of goods or services made or agreed to be made for a consideration. Thus the factum of supply would be initiated only once the agreement is entered into between supplier and recipient and such agreement is for consideration.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Court Observation:

**What is sought to be taxed by the Parliament/State Legislatures?**

Thus the legislative intent is to impose tax on construction activity undertaken by a supplier at the behest of or pursuant to contract with the recipient. There is no intention to impose tax on supply of land in any form and it is for this reason that it is provided in the Schedule III to the GST Acts that the supply of land will be neither supply of goods nor supply of services.



## Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

### Court Observation:

**Measure of Tax - HELD THAT:-** When the statutory provision requires valuation in accordance with the actual price paid and payable for the service and where such actual price is available, then tax has to be imposed on such actual value. **Deeming fiction can be applied only where actual value is not ascertainable** - the mandatory application of deeming fiction of 1/3rd of total agreement value towards land even though the actual value of land is ascertainable is clearly contrary to the provisions and scheme of the CGST Act and therefore ultra-vires the statutory provisions.

**Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs.**  
**UOI 2022 TIOL 663 HC AHM GST**

**Court Observation:**

**Arbitrary deeming fiction has led to measure of tax having no nexus with charge - HELD THAT:-**  
The arbitrary deeming fiction by way of delegated legislation has led to a situation whereby the measure of tax imposed has no nexus with the charge of tax which is on supply of construction service. It is well established that the measure of tax should have nexus with the charge of tax.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Court Observation:

**Section 15(5) does not further the case of the respondents - HELD THAT:-**

- The prescription u/s 15(5) of the CGST Act has to be by rules and not by notification.
- Wherever a delegated legislation is challenged as being ultra-vires the provisions of the CGST Act as well as violating Article 14 of the Constitution of India, the same cannot be defended merely on the ground that the Government had competence to issue such delegated piece of legislation. Even if it is presumed that the Government had the competence to fix a deemed value for supplies, if the deeming fiction is found to be arbitrary and contrary to the scheme of the statute, then it can be definitely held to be ultra-vires.

## Gujrat HC in case of MUNJAAL BHATT Vs. UOI 2022 TIOL 663

### Court Observation:

**What if the supplier artificially inflates the price of land thereby deflating the value of construction service?** - HELD THAT:- Valuation by adding 10% profit to cost of production or manufacture or the cost of acquisition of goods or cost of provision of services is a statutorily accepted method of valuation. Even if such cost based valuation is not possible then the residual method is provided under Rule 31 of the GST Rules which also provides for using reasonable means consistent with the principles and general provisions of Section 15 as well as valuation rules - the revenue is not remediless even in a case where it doubts the correctness of the value assigned in the contract towards construction. If it is established that such value was not the sole consideration for the service, then resort can be had to the valuation rules and value can be derived by applying the cost plus profit method or a reasonable value consistent with the principles and provisions of the Statute - 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.

**Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs.**  
**UOI 2022 TIOL 663 HC AHM GST**

**Court Observation:**

**Already similar mechanism existed under service law which is not required to be deviated from?**  
- HELD THAT:- When such workable mechanism for deduction of land was already in force under the service tax regime, the same ought to have been continued. Instead, the Government has chosen to fix a standard rate of deduction without any regard to different possible factual scenarios which is completely arbitrary and violating Article 14 of the Constitution of India.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Court Observation:

**Applicability of decision in the case of VKC Footsteps [[2021 \(9\) TMI 626 - SUPREME COURT](#)] - HELD THAT:-** The reliance placed by the learned ASG on the decision of the SC in case of VKC Footsteps Pvt. Ltd. is misplaced. In that case the SC came to a conclusion that Rule 89(5) of the GST Rules was not in conflict with Section 54(3) of the CGST Act. Thereafter it was observed that once the rule was valid, minor defects in the formula would not invalidate the rule itself and therefore the assessee were relegated to make representation before the GST Council. However, in the present case, it is found that the impugned notification to be contrary to the provisions and scheme of the GST Acts as well as arbitrary and violative of Article 14 of the Constitution of India.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Court Observation:

### **Illustration:**

101. Apart from being contrary to the statutory provisions contained in the CGST Act, one of the most glaring feature of the impugned deeming fiction is its arbitrariness in as much as the same is uniformly applied irrespective of the size of the plot of land and construction therein.

Two illustrations may be taken:

a) Take a case of a plot of land admeasuring 5000 square yards and valued at say Rs. 2.5 crore. If suppose a buyer enters into an agreement with the developer for buying the plot of land along with getting bungalow constructed and the total area of the bungalow is say 500 square yards and the construction value is say Rs. 50 lakhs. Thus the total agreement value is Rs. 3 crores. Applying the impugned deeming fiction, deduction of 1/3rd i.e. Rs. 1 crores will be available towards land and the balance consideration of Rs. 2 crores will be taxable under the GST Acts.

# Gujrat HC in case of MUNJAAL MANISHBHAI BHATT Vs. UOI 2022 TIOL 663 HC AHM GST

## Court Observation:

(b) Suppose the same bungalow is constructed on a plot of land of 2000 square yards of which the value is Rs. 1 crore. The construction value being Rs. 50 lakhs, the total agreement value is Rs. 1.5 crores. Applying the impugned deeming fiction, deduction of 1/3rd i.e. Rs. 50 lakhs will be available towards land and the balance consideration of Rs. 1 crore will be taxable under the GST Acts.

**102. Thus even though in both the above illustrations the actual bungalow remains the same and it is the construction of this bungalow which is taxable under the GST Acts, the taxable value in the first illustration is double the taxable value in the second illustration because of the fact that the deduction rate is uniform irrespective of the size of the plot.**

**Thus notification providing for 1/3rd deduction with respect to land or undivided share of land in cases of construction contracts involving element of land is ultra-vires the provisions of the GST Acts and/or violative Article 14 of the Constitution of India**



WITH KNOWLEDGE..... WE KNOW THE WORDS,  
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



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