THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING  
FOR GOODS AND SERVICES TAX  
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)  
ORDER NO. MAH/AAAR/DS-RM/ 19 /2022-23 Date- 30.03.2023  
  
BEFORE THE BENCH OF  
(1) Shri. Dr. D.K. Srinivas, MEMBER (Central Tax)  
(2) Shri. Rajeev Kumar Mital, MEMBER (State Tax)  
  
Name and Address of the  
  
M/s Puranik Builders Limited,  
  
Appellant: Puranik One Kanchanpushp Complex Opp Suraj  
Water Park, Kavesar Ghodbunder Road Thane,  
400615,  
  
GSTIN Number:  
  
27AABCPO109R1Z9  
  
Clause(s) of Section 97, under  
  
which the question(s) raised:  
  
(a) Classification of any goods or services or both;  
  
Date of Personal Hearing:  
  
| 10.11.2022  
  
Present for the Appellant:  
  
Shri. Gaurav Sugani, Advocate  
  
Details of appeal:  
  
Appeal No. MAH/GST-AAAR/04/2021-22 dated  
02.11.2021 against Advance Ruling No. GST-ARA-  
68/2019-20/B-52 dated 27.08.2021.  
  
Jurisdictional Officer:  
  
Deputy Commissioner, THA-VAT-E-005,Thane  
  
Division  
  
(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and  
  
the Maharashtra Goods and Services Tax Act, 2017)  
  
1. 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 made  
  
in respect of such dissimilar provisions, a reference to the CGST Act would also mean a  
  
reference to the same provisions under the MGST Act.  
  
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2. The present appeal has been filed under Section 100 of the Central Goods and Services  
Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred  
to as “CGST Act” and “MGST Act”] by M/s. M/s Puranik Builders Limited, Puranik One,  
Kanchanpushp Complex Opp Suraj Water Park, Kavesar Ghodbunder Road Thane, 400615.  
(“hereinafter referred to as “the Appellant”) against the Advance Ruling No. GST-ARA-  
68/2019-20/B-52 dated 27.08.2021., pronounced by the Maharashtra Authority for Advance  
Ruling (hereinafter referred to as “MAAR”).  
  
3. FACTS IN BRIEF.  
  
3.1. M/s. Puranik Builders Limited, having its corporate office at Puranik One Kanchanpushp  
Complex Opp. Suraj Water Park, Kavesar Ghodbunder Road Thane, 400615, is, inter-alia,  
engaged in the business of construction and sale of residential apartments, wherein the  
appellant discharges Goods and Services Tax (GST) in respect of supply of construction of  
residential apartments sold prior to receipt of the Occupancy / Completion Certificate. The  
Appellant has obtained registration and holding valid registration certificate issued under  
CGST Act, 2017.  
  
3.2. The terms of sale of an under construction residential apartments by the Appellant are  
governed by an “Agreement for Sale” entered between the Appellant and the customers,  
  
which upon completion of construction is supplemented by a sale deed.  
  
3.3. The construction services provided by the appellant are classified under SAC code 9954  
and are covered under Entry 3 of Notification No.11/2017- (Central Tax-Rate), (hereinafter  
referred as Rate Notification). As per Paragraph 2 of Rate Notification, value of transfer of  
land or undivided share of land is deemed to be 1/3rd of the total value of construction  
services and the same is deducted from the total value of the construction services to arrive  
  
at the taxable value, for the purpose of levy and collection of GST.  
  
3.4. As a part of terms of Agreement for Sale between appellant and customers, the Appellant  
is to provide certain other services (hereinafter referred as “other services”). The  
consideration towards the other services is provided for in the sale agreement which is  
  
collected under the respective heads. They are distinctly identified in the sale agreement.  
3.5. As per the documents submitted, the residential project doesn’t fall under affordable  
  
housing category and the appellant is collecting GST and discharging the liability at the rate  
of 12%.  
  
3.6 Presently the appellant has been collecting and discharging GST at the rate of 18% on the  
  
Other Charges collected from its customers in respect of the sale of residential apartments.  
  
3.7 The appellant has submitted a list of heads of charges generally recovered from the  
customers. A list of such charges generally recovered by the appellant for their various projects  
  
is as under-  
Sr. Description of charges Brief explanation  
No.  
1 | Electric meter installation Paid by the appellant to Maharashtra Electricity Board for each  
and deposit for meter unit at construction stage and later reimbursement is claimed  
from the customer.  
  
2 | Water connection charges Paid by the appellant for each unit at construction stage and  
later reimbursement is claimed from the customer.  
  
3 | Share of municipal taxes Pertains to property tax required to be paid for period post  
receipt of Occupancy Certificate. The amounts are used for  
  
| paying such tax.  
  
4 | Advance maintenance Collected on behalf of the society yet to be formed. These  
amounts are used for maintenance till the time society is  
formed and upon formation of society, any unspent amount is  
transferred to the society.  
  
5 | Club house maintenance Collected on behalf of the society yet to be formed. These  
amounts are used for maintenance till the time society is  
formed and upon formation of society, any unspent amount is  
transferred to the society.  
  
6 | Development charges Additional charges for development of the project computed  
based on premium paid to the Municipal Corporation for the  
  
\_project and various other factors.  
7 | Share money. Application & | charges of making application for allotment, share money for  
entrance fee of the future society of residents, etc.  
organization  
8 | Formation and registration | Charges in respect of formation of future society of residents  
of the organization and legal | and associated legal cost.  
charges in connection  
therewith  
  
9 | Infrastructure charges Additional charges for development of common area  
infrastructure.  
  
10 | Legal fees Charges for legal cost of the transaction of sale of residential  
  
apartments.  
  
4. The order of Advance Ruling Authority: -  
4.1 The Appellant had filed an application before the Advance Ruling Authority (AAR) to  
seek the answers for following two questions in respect of other charges recovered from the  
customer.  
(a) Whether the Other Charges received by the company will be treated  
as consideration for construction services of the Company and classified  
under HSN 9954 along with the main residential construction services of  
the Company or whether the same will be treated as consideration for  
independent service(s) of the respective head?  
(b) Consequently, what will be the applicable effective rate of GSTm  
  
services underlying the Other Charges?  
  
4.2. The AAR passed an order rejecting the contention of the appellant that other services  
are part of a composite supply with construction services being the principle supply. It held  
that “other charges’’ will not be treated as a consideration for construction services and  
will be treated as consideration received against supply of independent services of the  
respective heads. It is further held that other charges would be taxable as per the respective  
  
SAC codes prescribed under Rate Notification and taxable @ 18% without any abetment.  
  
4.3. The AAR rejected the contention of the appellant on following grounds.  
  
= The contract entered into vide impugned agreement is for supply of  
construction services.  
  
" For payment of stamp duty consideration towards construction services is only  
taken into account. The appellant cannot take different and conflicting stand  
about considerations for the same activity before the two independent  
authorities.  
  
" The agreement was intended to transfer the ownership right in flats only and  
not of the adjoining area and other amenities for which charges are collected.  
  
" The charges for construction of residential unit and other services are shown  
  
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separately.  
  
" These facilities/ amenities provided by the applicant to its customers for the  
limited period because, for these facilities created the customers haven’t been  
given perpetual rights as per the said agreement. Therefore, it is held that the  
impugned transactions are not part of a composite supply.  
  
= Therefore, these other services do not part of original construction service.  
5. Appeal before the Appellate Authority of Advance Ruling (AAAR) :-  
  
5.1 Being aggrieved by the order of AAR, the Appellant has filed an appeal before the  
Appellate Authority of Advance Ruling (AAAR). The appeal needs to be filed within 30  
days from the date of communication of AAR order. The order of AAR was passed on  
27.8.2021 while the Appeal against the said order is filed on 02/11/2021. Thus the appeal  
is filed late by 36 days. Section 100 provides for condonation of delay up to further 30  
days. The appeal has been filed after the stipulated 30 days. So it is liable to be rejected on  
the ground of barred by limitation. However, the appellant has found support in the  
Supreme Court order in SMW(C) No.3 of 2020 dt.23.9.2021. The relevant part of the  
Supreme Court order is reproduced below:-  
  
I. In computing the period of limitation for any suit, appeal, application or proceeding,  
the period from 15.3.2020 till 2.10.2021 shall stand excluded. Consequently, the balance  
period of limitation remaining as on 15.3.2021, if any, shall become available with effect  
  
from 03.10.2021.  
  
5.2. Thus, the period from 27.8.2021 to 3.10.2021 will stand excluded from the period of  
limitation. As a result, appeal application filed on 02/11/2021 is treated as filed in time and  
  
it is admitted for disposal.  
  
6. The Grounds of Appeal: -  
  
6.1 The impugned order is erroneous and bad in law and has not properly appreciated the  
  
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factual and legal position.  
  
6.2 The AAR has overlooked the submissions made by the Appellant and has  
mechanically ruled that services supplied in respect of “other charges” are not naturally  
bundled.  
  
6.3 The impugned order is liable to be set aside as it is arbitrary and based on fallacious  
  
presumptions.  
  
7. Personal Hearing :-  
  
The personal hearing in the matter was conducted on 10.11.2022. It was attended by  
Mr. Gaurav Sugani, Advocate on behalf of the Appellant. Shri. Sugani, reiterated the  
submissions made in writing. He described the services provided by the Appellant and  
emphasised that supply of construction services and other services is a composite supply,  
supplied in conjunction with each other, naturally bundled and supplied in the ordinary course  
of business. He also submitted that the payment of stamp duty shouldn’t be considered for  
  
determining the nature of services.  
  
8. Contention of the Appellant:-  
  
8.1 The primary contention of the appellant is that the supply of construction  
services and consideration in respect of other charges (for electricity meter connection and  
water charges, property tax payment. Infrastructure development, legal fees etc.) is a  
composite supply. The appellant has reproduced the definition of Composite supply as  
provide in section 2(30). It has tried to interpret the concept by analyzing the attributes of  
composite supply. There are three attributes, namely,  
  
a) The supply should consist of two or more taxable supplies, where the supply may be  
of goods or services or both, or any combination thereof;  
  
b) Such supplies should be naturally bundled and supplied in conjunction with each other  
in the ordinary course of business  
  
c) One of the supplies should be a principal supply.  
  
8.2 Appellant has submitted that there is no dispute that supply of construction services and  
supply of other services are two taxable supplies.  
  
8.3 The Appellant has referred to the Education Guide to Taxation of Services dt.20.6.2012  
  
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published by the Tax Research Unit, Central Board of Excise & Customs. Whether the  
services are bundled in the ordinary course of business is dependent on following  
indicators/ characteristics.  
a) The perception of the consumer or the service receive. If large number of service  
receivers of such bundle of services reasonably expect such services to be provided as a  
package then such a package could be treated as naturally bundled in the ordinary course  
of business.  
b) Majority of service providers in a particular area of business provide similar bundle of  
services. For example, bundle of catering on board and transport by air is a bundle offered  
by a majority of airlines.  
c) The nature of the various services in a bundle of services will also help in determining  
whether the services are bundled in the ordinary course of business. If the nature of  
services is such that one of the services combined with such service are in the nature of  
incidental or ancillary services which help in better enjoyment of a main service. For  
example, service of stay in a hotel is often combined with a service or laundering of 3-4  
items of clothing free of cost per day. Such service is ancillary service to the provision of  
hotel accommodation and the resultant package would be treated as services naturally  
bundled in the ordinary course of business.  
d) Other illustrative indicators, not determinative but indicative of bundling services in  
ordinary course of business are —  
  
- There is a single price or the customer pays the same amount, no matter how  
  
much of the package they actually receive or use.  
  
- The elements are normally advertised as a package  
  
- The different elements are not available separately  
- The different elements are integral to one overall supply- if one or more is  
  
removed, the nature of the supply would be affected.  
8.4 The Appellant has submitted that principles laid down in the Education Guide are  
applicable in the present case in terms of,  
  
a) perception of the service receiver,  
b) majority of service providers provide similar bundle of services,  
c) other charges are in the nature or incidental or ancillary services,  
d) they are advertised as single package, and  
  
e) further it is claimed they are not available separately.  
  
8.5 The Appellant has relied upon the Supreme Court observations in respect of “dominant  
intention test’ in case of composite contracts (BSNL vs Union of India (2006) 145 STC 91  
(SC). The Court observed,” The test for composite contracts remains to be — did the  
parties have in mind or intend separate rights arising out of the sale of goods. The test  
for deciding whether a contract falls into one category or the other is as to what is “the  
substance of the contract”. We will for the want of a better phrase, call this the  
dominant nature test.” The Appellant emphasizes that the primary dominant intent of the  
customer is to purchase the resident apartment and all other facilities/ services are  
incidental to the main supply of construction of residential apartment.  
  
8.6 The Appellant has relied upon Maharashtra AAR in the case of M/s Joyville Shapporji  
Housing Private Limited (hereinafter referred to as “Joyville”). It is submitted that the facts  
  
in the said AAR are identical to the facts in the present case.  
  
9. DISCUSSIONS AND FINDINGS: -  
  
9.1 We have carefully gone through the entire appeal memorandum containing the  
submissions made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR,  
wherein the MAAR has held that services in respect of other charges are independent of  
construction services. Other charges don’t form part of a composite supply. Therefore, the  
moot question in the present appeal is the nature of and rate of tax on other charges received  
from customers by the Appellant. The Appellant has stressed that it is a composite supply  
with construction of residential apartment as the principle supply and other services  
provided are incidental to the main supply.  
  
9.2 The perception of the consumer or the services receiver is an important factor in  
determining whether the services provided are bundled or not. In the construction of  
residential apartment sector, services in relation to water supply connection charges,  
electricity meter installation and security deposit for meter, development charges paid to  
Government authority/local authority, legal fees for transaction of sale of residential  
apartments can reasonably be expected to be supplied by the builder/ developer/ promoter  
of a residential project. They are inextricably linked to a residential apartment or dwelling.  
Without these aspects, the property may not be used. However certain other charges like  
advance maintenance, club house maintenance, infrastructure charges, share money  
application and entrance fee of the organization are not expected by every customer. These  
are not inextricably linked to the construction services in respect of residential projects.  
9.3 In the said education note on which the appellant has relied heavily, other illustrative  
indicators which are indicative of bundling of services in ordinary course of business are  
provided (cited supra). The analysis of indicative indicators of bundled services show that  
they are largely not applicable to the case in hand. The other charges are received  
separately. It means indicator no a) and c) of para 8.3 are not complied with/ fulfilled. All  
the aspects may be or may not be advertised as a package. The submission of the appellant  
is silent on this aspect of the transaction. In fact, he has submitted that the charges are  
received separately to ensure transparency with the customer. Therefore first part of the  
indicator no. d) is absent i.e. there is a single price or the customer pays the same amount,  
no matter how much of the package they actually receive or use in the present case.  
  
9.4 In the present case, the different elements of transactions are available separately. The  
type of supplies or charges received in this case like advance maintenance charges, club  
house charges, share of municipal taxes (pertaining to period after occupancy), share  
money, application & entrance fee of the organization, formation and registration of the  
organization and legal charges in connection therewith and infrastructure charges (for  
development of common area infrastructure) are independent from construction service.  
Even though any one or all of them is removed from the contract, the supply of services of  
construction of residential apartment / dwelling goes unabated. Therefore, the test that  
  
different elements are integral to one overall supply, even if one or more is removed, the  
nature of the supply would be affected, is not satisfied in the present case. So the nature of  
the other charges in respect of the above said independent services / activities which are  
not inextricably linked to a residential apartment shows that they don’t fulfill the various  
tests of composite supply.  
  
9.5 In view of the Supreme Court observations in respect of “dominant intention test”, the  
intention of the contracting parties is of paramount importance. In the present case, the  
covenants (contained in the agreement for a sale of flat) in respect of other charges, demand  
consideration.  
  
9.6 As per clause 33 (c), all open spaces, road, club house, garden, utility areas and common  
amenities, lobbies, staircases, terraces shall remain the property of the Promoter until the  
said property is transferred to the Apex body as herein mentioned but subject always to the  
rights, reservations, covenants and easements in favor of the Promoter as herein provided.  
9.7 Clause 33 (d) states that Promoter shall have absolute and exclusive right and authority  
to use, utilize and consume present and future FSI and/or TDR which will be made  
available to them, by the concerned local authorities and the Allottee shall not have or claim  
any rights and/or claim any rights and/or benefits of whatsoever nature in respect thereof.  
These two clauses bring out the intention of the parties that customer will not have any  
claim other than the Apartment agreed to be taken by him/her. Even the benefits arising  
out of building will be available to promoter/Appellant only.  
  
9.8 There is another clause that grants Promoter the right to use some of the common areas  
and external facilities to adjoining plot or any other plot in the vicinity of the said property  
(clause 33 (g)). All these clauses bring out the real nature of the services provided other  
than construction services. The property in such services (in terms of use, ownerships, etc.)  
isn’t fully transferred to the customers. Hence it is logical and legal to treat such services  
as not having any inextricable link to the construction services and need to be treated as  
independent supply of services.  
  
9.9 The Appellant has relied upon the case of Advance ruling authority order dated  
26.12.2019 in respect of M/s Joyville Shapoorji Housing Private Limited (herein after  
  
referred as “Joyville”). However the facts of the case are different from the present matter.  
  
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Firstly, the project of the appellant doesn’t fall under Affordable House Category while  
“Joyville” was a project under affordable housing category. In said case, the issue before  
authority was to decide whether the expression “the gross amount charged” provided in  
definition of affordable residential unit includes all charges paid to builder in respect of  
units with area less than 60 sq.Mtrs. only. The AAR decided in affirmative relying on the  
explanation provided in Notification no. 11/2017 which is applicable to Affordable Housing  
segment only. The Advance ruling authority in the said order made amply clear that 18%  
will be applicable on such amounts collected by Joyville from buyers of unit with area  
greater than 60 sq.Mtrs. Therefore the Joyville advance ruling order is not applicable in the  
present case.  
Further the services provided would be considered as provided even when the entire  
consideration for the immovable property is received after issuance of Completion  
Certificate or Occupation Certificate. Here the services provided are clearly identifiable  
separately from the construction service. Further, other services provided can be offered  
only once and the purchaser of flat cannot offer such a service to a buyer from him during  
the resale.  
Hon. High Court of Delhi in SURESH KUMAR BANSAL Versus UNION OF INDIA  
[2016(43) S.T.R. 3(Del.)] has held the Preferential Location Service as a taxable service.  
54. Insofar as the challenge to the levy of service tax on taxable services as defined under  
section 65(105) (zzzzu) is concerned, we do not find any merit in the contention that there  
is no element of service involved in the preferential location charges levied by a builder.  
We are unable to accept that such charges relate solely to the location of land. Thus,  
preferential location charges are charged by the builder based on the preferences of its  
customers. They are in one sense a measure of additional value that a customer derives  
from acquiring a particular unit. Such charges may be attributable to the preferences of the  
customer in relation to the directions in which a flat is constructed; the floor on which it is  
located; the views from the unit; accessibility to other facilities provided in the complex  
etc. As stated earlier, service tax is a tax on value addition and charges for preferential  
  
location in one sense embody the value of the satisfaction derived by a customer from  
  
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certain additional attributes of the property developed. Such charges cannot be traced  
directly to the value of any goods or value of land but are as a result of the development of  
the complex as a whole and the position of a particular unit in the context of the complex.  
  
Thus, it is an attempt on part of the appellant to subsume various other charges collected  
on the guise of Construction Services provided by him. The other charges collected by the  
appellant is clearly distinguishable from the main services provided.  
  
10. Hence, in view of the above facts and discussion, it is clear that charges in respect of  
some services are inextricably linked while other services are independently provided to  
the customer. The dominant intention test and principles for determination of naturally  
bundled services point out the independent nature of some of the services. Therefore,  
following services are clearly identifiable as bundled services:  
  
(i) Water connection charges;  
  
(ii) Electric meter installation and deposit for meter;  
  
(iit) Development charges;  
  
(iv) Legal fees.  
  
These aforesaid services are considered as naturally bundled services and taxable as per the  
rate of construction services. On the other hand, services of:  
  
(i) Club House Maintenance;  
  
(ii) Advance Maintenance;  
  
(iii) Share of Municipal Taxes (pertaining to period after occupancy)  
  
(iv) Formation and registration of the organization and legal charges in connection there  
with;  
  
(v) Share money, Application & entrance fee of the organization;  
  
(vi) Infrastructure charges  
  
are determinable as independent supplies. The rate of tax thereon would be as per the  
respective service codes as mentioned in rate notification. The rate of tax on the  
inextricably linked services would be 12%  
  
11. Thus, in view of the above discussions and findings, we pass the following order:  
  
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ORDER  
  
We, hereby, partly set aside the MAAR Order No. GST-ARA-68/2019-20/B-52 dated  
27.08.2021 by holding that, in the facts and circumstances of the case, the other charges which  
are inextricably linked to services by way of construction of residential apartment /dwelling  
are part of a bundled service with principle service of construction of residential apartment  
/dwelling. The rate of tax applicable on such services would be 12% as applicable to the  
construction service. The other charges that don’t pass the muster of indicators of a bundled  
service are held as supply of independent services. They are to be taxed as per the respective  
SAC codes and rate of tax thereon. As per the submission of the appellant, he has collected  
18% of GST on the supply of such services. In respect of services which are allowed as  
bundled services, the present decision implies an excess collection of tax. It is hereby directed  
that the Appellant to refund the excess tax collected to the customers. Thus, the appeal filed  
by the Appellant is, hereby, partly allowed.  
  
edly —  
  
(RAJEEV KUMAR MITAL) (Dr. D.K. SRINIVAS)  
  
MEMBER MEMBER  
Copy to the:  
  
1. Appellant;  
  
2. AAR, Maharashtra  
  
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.  
4. Commissioner of State Tax, Maharashtra.  
  
5. Deputy Commissioner THA-VAT-E-005, Thane.  
  
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