

RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX

KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)

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ADVANCE RULING NO. RAJ/AAR/2019-20/10

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Greentech Mega Food Park Pvt. Ltd., Bhadun Road, Village & Tehsil - Roopangarh, Ajmer, Rajasthan 305814
GSTIN of the applicant	:	08AAECG8111FIZU
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	d. admissibility of input tax credit of tax paid or deemed to have been paid; e. determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	21.05.2019
Present for the applicant	:	Shri Pankaj Ghiya, (Authorised Representatives)
Date of Ruling	:	28.05.2019

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.



- *At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST 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 RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".*
- The issue raised by M/s Greentech Mega Food Park Pvt. Ltd., Bhadun Road, Village & Tehsil - Roopangarh Ajmer, Rajasthan 305814 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (d)(e) given as under :
 - d. admissibility of input tax credit of tax paid or deemed to have been paid;
 - e. determination of the liability to pay tax on any goods or services or both;
- Further, the applicant being a registered person (GSTIN is 08AAECG8111FIZU as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. **SUBMISSION AND INTERPRETATION OF THE APPLICANT:**

- a. That the Applicant Company is a special purpose vehicle set up for establishing a 'Mega Food Park' pursuant to guidelines framed under the 'Mega Food Park Scheme', 2012 (the "Scheme Guidelines") of the Ministry of Foods Processing Industries, Government of India ("MoFPI"). MoFPI has granted approval to the Applicant Company to set up a Mega Food Park at Village Roopangarh, Ajmer, Rajasthan and a Memorandum of Agreement



has been entered into between the President of India acting through the Director, MoFPI and the Applicant Company.

- b. That in terms of the said MoA, the applicant company is responsible for establishing the Food Park, including design, engineering procurement, financing, construction and operation of the Food Park in accordance with the provisions of MoA read with the scheme guidelines.
- c. That as part of the development or setting up of the Foods Park, the Applicant company has identified / developed certain individual plots on the project site for the purpose of transferring the plots for a lease of 99 years and setting up of industrial units inter alia manufacturing of food and related products as well as food processing activities in accordance with the Scheme Guidelines.
- d. That the applicant Company wishes to enter into lease agreements with several lessees for a total period of 99 years for separate industrial units situated at Greentech Mega Food Park, Village Roopangarh in Ajmer (Rajasthan) for a consideration towards booking and allotment of developed plot. The entrepreneurs can pay either immediately or within a mutually agreed upon period along with interest.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

- a. Whether the Lease Agreement between the Applicant Company i.e. the lessor and the Lessee for a period of 99 years is a Sale of immovable property and outside GST and is exempt from levy of GST?
- b. If the present transaction of giving land on lease of 99 years is taxable under GST, then at what rate and what HSN Code is applicable?



3. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 21.05.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Shri Pankaj Ghiya (Authorised Representative) of applicant appeared for PH. During the PH, he reiterated the submissions already made in the application. He has also submitted additional submission (copy of lease agreement). He further requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The Jurisdictional officer (STO, Ward-7, Circle-Kishangarh, Commercial Taxes and SGST, Ajmer) has submitted his comments vide letter dated 11.04.2019 which can be summarized as under:

- a. The applicant is a person and in the course or in furtherance of its business, it disposes of lands by leasing them out for a consideration as one-time premium or periodic premium as per convenience. Therefore, if one refers to Schedule II, section 7, then any lease, tenancy, licence to occupy land is a supply of service. Any lease or letting out of a building, including commercial, industrial or residential complex for business, either wholly or partly is a supply of service. The substantive provisions and the Schedule treat the activity as supply of goods or supply of services, particularly in relation to land on a lease, then, the consideration therefore as a premium/one-time premium is a measure on which the tax shall be levied.
- b. If Government has equity of 50% or more than there will be Nil rate of tax for leasing services of SAC Code 9972. As per the updated version of the Notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017 as amended up to 1st January,

2019, the HSN Heading 9972 have nil rate of tax where 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) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development.



5. **FINDINGS, ANALYSIS & CONCLUSION:**

- a. The Applicant is a special purpose vehicle set up for establishing a 'Mega Food Park' pursuant to guidelines framed under the 'Mega Food Park Scheme', 2012 of the Ministry of Foods Processing Industries, Government of India ("MoFPI"). MoFPI has granted approval to the Applicant Company to set up a Mega Food Park at Village Roopangarh, Ajmer, Rajasthan and a Memorandum of Agreement has been entered into between the President of India acting through the Director, MoFPI and the Applicant Company.
- b. That as part of the development or setting up of the Foods Park, the Applicant company has identified / developed certain individual plots on the project site for the purpose of setting up of industrial units / manufacturing units of food and related products as well as food processing activities in accordance with the Scheme Guidelines.
- c. That the applicant has entered into lease agreements with several lessees for a total period of 99 years for separate industrial units situated at said Mega Food Park for a consideration towards booking and allotment of developed plot.



d. The transaction in question is between the applicant and the business entities to whom the industrial plots are given on a long term lease of 99 years vide separate lease agreements.

e. The first thing to be determined in the present case is that whether the said transaction falls under the definition of Supply under GST. The term "Supply is defined under Section 7 of the GST Act, 2017, the relevant portion is reproduced hereunder:

Section 7 (1) For the purposes of this Act, the expression "supply" includes:-

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, **lease** or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business;***
- (b) import of services for a consideration whether or not in the course or furtherance of business;*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

f. Further, the Schedule II of GST Act, 2017 specify that lease of a industrial place or building is a supply, the relevant portion is reproduced hereunder:-

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;*
- (b) **any lease** or letting out of the **building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.***



- g. Lease though is not defined explicitly under GST Act, the reference could be drawn from the Transfer of Property Act, 1992 under Section 105 as under:

*"A lease of immovable property is a transfer of a right to enjoy such property, **made for a certain time**, express or implied, **or in perpetuity**, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, **to be rendered periodically or on specified occasions** to the transferor by the transferee, who accepts the transfer on such terms."*

We find that the applicant has submitted in submissions that a lease of 99 years is as good as sale but the above definition of lease marks that lease could be of perpetuity. Therefore, quantum of time has no relation in determination of lease or sale.

- h. Reference could also be drawn from *Builders Association of India vs UOI*, in the High Court of judicature at Bombay, *writ petition no. 12194 of 2017 dated 28.03.2018*, where the hon'ble high court has sustained GST on long term lease of plots for 60 years. The relevant portion of the said order is reproduced as follows:-

"21. We are, therefore, of the clear view that the demand for payment of GST is in accordance with law. The said demand cannot be said to be vitiated by any error of law apparent on the face of the record. In these circumstances, we do not find any merit in the writ petition. It is accordingly dismissed. Rule is discharged. There would be no order as to costs."

- i. While going through LEASE AGREEMENT dated 10-01-2017 between the applicant and lessee, submitted by the authorized



representative of the applicant during the personal hearing, we observe that :-

- a) The heading of the stamp paper clearly reads as LEASE AGREEMENT.
 - b) The plot is allotted for a long term lease of 99 years.
 - c) e-Challan dated 3.1.2017 for Rs 415740 of Registration and Stamps department Govt. of Rajasthan is issued specifically for registration of lease agreement.
 - d) The lessee will not without the previous consent in writing of the lessor transfer sub-lease, sublet, relinquish, sub-divide or assign his interest in the demised premises or the building standing thereon or both as a whole and every such transfer assignment, relinquishment, mortgage, sub -division, subleasing or sub-letting shall be subject to condition that the transfer assigns shall be bound by all the covenants and conditions herein contained and be answerable to the lessor in all respect thereof.
- j. Further while surfing through the website "**Document of Developed Industrial Plot Allotment Policy**" of the applicant available in the public domain some of the conditions are reproduced as below-:

1.11 *The allotted land **cannot be sold or otherwise disposed off by the allottee. The allotted land can only be sub-leased** by allottee according to the terms and conditions mentioned in Clause 3 below.*

3.1 *The Allottee shall be allowed to sub-lease the permissible saleable area allotted land to any third party in accordance with lay-out plan approved by GMFPL for remaining lease period from the date of allotment to allottee on such terms and conditions shall not be beyond the conditions of allotment as*

well as Lease Agreement or co-terminus with allotment letter/Lease Agreement of allottee.



From the above facts, we observe that the agreement made between the applicant and the lessee for long term of 99 years is for lease agreement with many restrictions and has no right to further sale the allotted plot. In the sale deed purchaser becomes the absolute owner of the plot and is not dependent on the lessor for renewal or extension of the lease period.

- k. That the applicant has submitted that said transaction is required to be registered and stamp duty on lease charges treating it as Sale of immovable property is to be paid on the said consideration. The said transaction amounts to transfer of rights in an immovable property and hence sale which is outside the scope of GST.
- l. We observe that applicant's submission is not tenable as the e-challan dated 3.1.2017 for Rs 415740/- submitted by the applicant along with the lease agreement of Registration and Stamps department Govt. of Rajasthan is specifically for registration of lease agreement.

Further we also observe that stamp duty charged by the Registration and Stamp department of the state govt. varies from one state to another.

We also observe that merely by charging stamp duty at par with sale deed by Registration and Stamps department Government of Rajasthan does not change the status of the document from lease agreement to sale deed.

- m. Leasing of a private property (land, building etc.) are classifiable under HSN 997212 heading "Rental or leasing services involving own or leased non-residential property" attracting GST @18% (SGST 9% + CGST 9%) of Annexure to Notification No. 11/2017



dated 28.06.2017. The relevant provision of the Annexure and the Notification is reproduced as below :-

Annexure: Scheme of Classification of Services

Sl No.	Chapter, Section, Heading or group	Service Code (Tariff)	Service Description
16	Group 99721		Real estate services involving owned or leased property
		997212	Rental or leasing services involving own or leased non-residential property

Notification No. 11/2017 dated 28.06.2017


Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
16	Heading 9972	(i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land.	Nil	-
		(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); sub-item (b), sub-item (c), sub item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub item (c) of item (vi). Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	Nil	-
		(iii) Real estate services other than (i) and (ii) above.	9	-


6. In view of the foregoing, we rule as follows:-

RULING

The Lease Agreement between the Applicant i.e. the lessor and the Lessee for a period of 99 years is a Lease Agreement of immovable property classifiable under HSN 9972 and attracts GST @18% (SGST 9% + CGST 9%).




J.P. MEENA 2815119
Member
(Central Tax)


HEMANT JAIN 2815119
Member
(State Tax)

SPEED POST

M/s Greentech Mega Food Park Pvt. Ltd.,
Bhadun Road, Village & Tehsil - Roopangarh,
Ajmer, Rajasthan 305814

F.No. AAR/Greentech/2018-19/56

Dated: 29-05-2019

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, CGST and Central Excise Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. STO, SGST and Commercial Taxes, Ward-7, Circle- Kishangarh, Ajmer, Rajasthan 305801.