

TAX INFO

Dated: 30.09.2020

Latest update on GST Law: Information regarding **Builder required to Deduct one-third Value of Land or Undivided Shares from the total value charged for the subject** based on the **Judgement issued by Gujarat Authority for Advance Ruling**.

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Builder required to Deduct one-third Value of Land or Undivided Shares from the total value charged for the subject

Name of Appellant	M/s Karma Buildcon
Name of Court	AAR-Gujarat
Appeal Number	GUJ/GAAR/R/33/2020
Date of Judgement	02/07/2020

Facts of the Case:

The applicant are engaged in the business of construction. For the purpose of the business they buy land and develop residential/commercial property on that land. For the purpose they engaged Architects, consultants, structural engineers to prepare plan for the development of residential/commercial property. The applicant on the basis of such plan and approvals enter into the agreement with prospective buyers for such residential /commercial property. The agreements entered into are for inclusive of land or undivided share of land basis. The applicant constructs such residential / commercial property by engaging labour machinery for the purpose and transfers such property to the buyers.

The applicant submitted that cost of land that is being transferred to the buyers on inclusive of land or undivided share of land basis need to be allowed to be deducted as a whole and not as provided in Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 as one third (33.33%) of the value, because in applicant's case the cost of Land is distinctly determinable and is more than one third (33.33%) of the consideration value of sale of property.

Question on which Ruling is sought

1. What will be the value of supply for the transaction of sale of residential/ commercial property with undivided rights of land?
2. In the case of construction of residential/commercial complex, the builder charges an amount which is inclusive of land or undivided share of land. As per Not No. 11/2017-CT (Rate) and 08/2017-I.T (Rate) both dated 28.06.2017 the land value is deemed to be one third (33.33%) of the total amount (i.e. value including land value) and GST is payable on balance amount. But in applicant's case the value of Land is clearly ascertainable. In that case actual cost of Land can be deducted for the for the purpose of arriving at the taxable value of supply?

Contention of Applicant:

The applicant submitted that value of land cannot be same at all places. It varies from place to place and even at different location in same city/town. In view of that, a uniform deduction for land @33% as prescribed by the notification is contrary to the ground realities. More so, when in applicant's case cost of land is distinctly ascertainable and much more than 33% of the total value to be realized of the constructed residential/commercial property, actual amount of land need to be allowed to be deducted.

Observations:

The deduction of actual value of land from the transaction value instead of deduction, as defined in the Notification No. 11/2017-CT (Rate) dated 28.06.2017, is not tenable and beyond the purview of legality. In para 2 of the Not. No. 11/2017-Ct (Rate) dated 2017, as amended by Not. No. 01/2018-CT (Rate), there is deemed provisions that 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. Accordingly, the applicant contention to allow the deduction of actual value of land from the sale value on the grounds that their land value is ascertainable and other grounds is not legal in terms of para 2 of Not. No. 11/2017-CT (Rate) dated 28.06.2017 as amended vide Notification No. 1/2018-C.T. (Rate), dated 25-1-2018

Ruling:

The value to be arrived in terms of deeming provision of Para 2 of Notification no. 11/2017-CT (Rate) dated 28.06.2017, as amended by Not. No. 1/2018-C.T. (Rate), dated 25-1-2018 thus 1/3 is deductible towards cost of land.

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