

RAJASTHAN AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

KAR BHAWAN, AMBEDKAR CIRCLE, NEAR

RAJASTHAN HIGH COURT

JAIPUR - 302005 (RAJASTHAN)

**ADVANCE RULING NO. RAJ/AAR/2021-22/30, Dated 26th November,  
2021**

J.P.MEENA Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Richwell Enterprises Private Limited,  S 21, G 1, Western Heights, Shyam Nagar, Sodala,  Jaipur-302019, RAJASTHAN
GSTIN of the applicant	:	08AABCR7095Q1ZI
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of this Act;  (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;  (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	15.11.2021
Present for the applicant	:	Sunil Goyal, CA & Deepak Goyal, CA
Date Of Ruling	:	26.11.2021

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 SGST 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 SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act/SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s Richwell Enterprises Private Limited, S 21, G 1, Western Heights, Shyam Nagar, Sodala, Jaipur-302019, RAJASTHAN - (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (b),(d) (e) & (g) given as under:-

- (a) applicability of a notification issued under the provisions of this Act;
- (b) admissibility of input tax credit of tax paid or deemed to have been paid;
- (c) determination of the liability to pay tax on any goods or services or both;
- (d) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

## **A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:**

### **1. Brief facts of the case :**

- > Richwell Enterprises Private Limited is the company is engaged in the business of construction of residential complex.
- > Currently, as per Notification No, 03/2019 - Central Tax (Rate) dated 29 March 2019, the applicant is paying outward tax liability on Construction Services at the rate of 1% or 5%, as the case maybe.
- > Further, the applicant does not pay GST in respect of flats/units sold after the issuance of Completion Certificate or its first occupation, whichever is earlier.
- > Furthermore, the assessee recovers charges for the following ancillary services from the residents:-

- a) JDA Lease Charges
- b) Electrification Charges
- c) Sewage Treatment Plant Charges
- d) Non-refundable IFMS (Interest Free Maintenance Security)
- e) Club Membership

Cumulatively, hereinafter called as 'the ancillary services'.

> To provide 'the ancillary services', broadly the applicant makes the following inward supplies:-

- a) Civil expenses related to club formation, interior furnishing, air conditioning and equipment expenses
- b) Electrification Transformer, Vacuum Circuit Breaker, Ring Main Unit, Variable Renewable Energy, Main Panel, Active/Automatic Power Factor Correction/Control (Panel), Panel Distribution Channel, High Tension Low Tension Cable, CTPT Combined Metering Panel, Solar Panel, Inverter and Net Metering Expenses
- c) Sewage Treatment Plant related equipment as well as civil expenses

> It has come to notice of applicant in some conferences that some builders paying GST for that outward supply of the ancillary services at 1% / 5%.

> The applicant is law abiding person and does not want to default and to pay less/ excess GST. Hence, the applicant is hereby seeking advance ruling on treatment/taxability of 'the ancillary services' and eligibility of Input Tax Credit thereon.

**Applicant's interpretation / view on the case:**

**Question No 1.** Whether recovery of charges for 'the ancillary charges' by builders would be considered as a 'composite supply' naturally bundled with 'Construction Services' under Section 8 of CGST and RGST Act, 2017?

> Firstly, the applicant is reproducing definition of composite supply as mentioned under Section 2(30) of the CGST Act as follows:-

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any

combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

> Further, as per Section 8 of the CGST Act -

i. "a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. "

> Furthermore, the meaning of Composite Supply has been clarified in a Flyer issued by CBIC and relevant extract has been produced below for ready reference:-

i. The concept of composite supply under GST is identical to the concept of naturally bundled services prevailing in the existing service tax regime. This concept has been explained in the Education Guide issued by CBEC in the year 2012 as under-

'Bundled service' means a bundle of provision of various services where in an element of provision of one service is combined with an element or elements of provision of any other service or services. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different. "

ii. The rule is - 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'. "

> In view of, it is submitted that the primary business of the applicant is construction of Residential Complex. In addition to construction services, the applicant also provides 'the ancillary services' to the residents of the complex.

> It is submitted that the said ancillary services are provided in conjunction to the construction services in the ordinary course of business and are naturally bundled. It should be treated as provision of composite service which gives such bundle its essential character. Also, the applicant is not providing 'the ancillary services' separately to parties other than buying the flat / unit from the company. Hence 'the ancillary services' shall be treated as composite supply with construction while charging GST on the same.

> Further, we submit that through FAQ No. 354/32/2019-TRU dated 14 May,2019 issued by Ministry of Finance, Government of India, following has been clarified:

Question	Answer
<p>For the purpose of determining the threshold of Rs. 45 lakhs in case of "affordable residential apartment", whether the following charges generally recovered by the developer from the buyer shall be included?</p> <ul style="list-style-type: none"> <li>&gt; Amenity Charges</li> <li>&gt; Society formation charges</li> <li>&gt; Advance maintenance</li> <li>&gt; Legal Charges</li> </ul>	<p>For the purpose of determining the threshold of the gross Amount of Rs. 45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged. Clause xvi, sub-clause (a)(ii)(C) of paragraph 4 of notification No. 11/2 017-CT(R) dated 28.06.2017, reproduced below, refers.</p> <p>"C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc. "</p> <p>However the value shall not include stamp duty payable to the statutory authority, maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure.</p>

Government has specified list of charges to be bundled, are mere explanatory in nature. Accordingly, 'the ancillary services' would be bundled accordingly and GST would be payable as mentioned for construction services.

> Therefore, the applicant is of the view that the said supply of services should be considered as Composite Supply under Section 8 of CGST and RGST Act, 2017 wherein 'Construction Services' are considered as 'principal supply'.

**Question No 2.** If answer to Question No. 1 is yes, whether the charges for the ancillary services would attract GST at the rate specified for Construction Services (principal supply), i.e., 1% or 5% as the case maybe?

> As per Section 8 of CGST and RGST Act 2017, GST on the composite supply shall be applicable on the basis of the principal supply and therefore, in the given instance, the ancillary services would attract GST liability as applicable on the Construction Services being the principal supply.

> As per Notification No. 03/2019 - Central Tax (Rate) dated 29 March 2019 following rates are applicable:

<b>Particulars</b>	<b>Rate applicable on Value of Flats after 1/3rd abatement for Land</b>	<b>Effective Rate</b>
<p>i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April. 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at threats as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p>	<p>0.75 (CGST) + 0.75 (SGST)= 1.5%</p>	<p>1%</p>
<p>(ia) Construction of residential apartments other</p>	<p>3.75 (CGST)</p>	<p>5%</p>

<p>than affordable residential apartments by a promoter in an RREP which commences on or after 1 st April 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be. in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p>	<p>+ 3.75 (SGST)= 7.5%</p>	
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> Since, GST is payable on construction services (before Completion Certificate is issued) at the rate of 1% or 5%, as the case maybe, the applicant is of the view that charges for 'the ancillary services' would also attract GST at the rate of 1% or 5%, as the case maybe.

> Accordingly, the applicant is view of, 'the ancillary services' would be taxable as 'construction services' entry number 3 of Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 as amended from time to time. Extract of Notification has been attached herewith as Annexure G.

**Question No 3.** Further, if answer to Question No. 1 is yes, whether recovery of charges for the ancillary services by builders after completion certificate would not attract GST liability considering them to be composite supply naturally

bundled with Construction Services which does not attract GST once completion certificate is issued?

> As per above mentioned applicant's interpretation, the ancillary services would attract GST liability as applicable on the Construction Services being the principal supply. Now we are assessing that whether such charges would be taxable post issuance of completion certificate also. For assessing the same, taxability of construction services needs to be rationalized.

> As per Para 5 of Schedule III of CGST Act, 2017. the following shall be treated neither as a supply of goods nor a supply of services:-

"Sale of land and, subject to clause tb) of paragraph 5 of Schedule II. sale of building. "

Further, as per clause (b) of paragraph 5 of Schedule II. the following shall be considered as supply of service:-

"construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier"

> As GST is not applicable on flats / units sold post the issuance of Completion Certificate or after its first occupation, whichever is earlier. The applicant is of the view that charges recovered for 'the ancillary services' on flats / unit sold post issuance of CC or after first occupation would also not attract GST Liability'.

**Question No 4.** If answer to Question No. 1, 2 and 3 is NO and GST is levied on charges for the ancillary' services as individual respective service (considering 18% GST rate) then whether Input Tax Credit can be claimed in respect of GST paid on expenses incurred to provide the said ancillary services?

> Without prejudice to our submission / interpretation for Question 1 to 3 mentioned above, if the answer to applicant's question no. 1,2 and 3 is No, then 'the ancillary services' have been deemed to be unrelated to the construction services and shall be subject to outward tax liability at the rate of 18% as under category' "Other services n.e.c." having SAC code 999799.

> As per Section 16 of the CGST and R.GST Act, every registered person shall be eligible to take ITC of the GST paid on goods or services used or intended to be used in the course or furtherance of business.



> Further, Section 17(5) does not disallow ITC in respect 'the ancillary services', same shall be eligible.

> Therefore, without prejudice to the applicant's interpretation for Question 1 to 3, if the ancillary' services are taxable at 18% then, ITC in respect of the said services (as mentioned in Para 5 above) shall be eligible as the same are incurred in the course or furtherance of business.

## **B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-**

**Question No 1.** Whether recovery of charges for 'the ancillary services' by builders would be considered as a 'composite supply' naturally bundled with 'Construction Services' under Section 8 of CGST and RGST Act, 2017?

**Question No 2.** If answer to Question No. 1 is YES, whether the charges for 'the ancillary services' would attract GST at the rate specified for 'Construction Services' (principal supply), i.e., 1% or 5% as the case maybe?

**Question No 3.** Further, if answer to Question No. 1 is YES. whether recovery of the charges for 'the ancillary services' by builders, after completion certificate would not attract GST liability considering them to be composite supply naturally bundled with Construction Services which does not attract GST once completion certificate is issued?

**Question No 4.** If answer to Question No. 1, 2 and 3 is NO and GST is levied on charges for 'the ancillary services' as individual respective service (considering 18% GST rate) then whether Input Tax Credit can be claimed in respect of GST paid on expenses incurred to provide the said ancillary services?

## **C. PERSONAL HEARING**

In the matter personal hearing was granted to the applicant on 15.11.2021. Shri Sunil Goyal, CA & Deepak Goyal, CA appeared for personal hearing. They reiterated the submission already made in written submission. They requested for early disposal of the application. They also submitted the copies of orders passed by the Maharashtra Authority of Advance Ruling in the case of M/s Paranik Builder Ltd and by the Gujarat Authority of Advance Ruling in the case of M/s CAPITAL commercial Co-op (Service) Society Ltd.

## **D. COMMENTS OF THE JURISDICTIONAL OFFICER**

Comments received from the Assistant Commissioner, CGST Div-G. Vidhyadhar Nagar, Jaipur vide letter dated 27.10.2021 are as under: -

1. In this regard, it is mentioned that,-

a. If the ancillary services are mentioned separately in the sale/ purchase agreement and they are charged separately apart from the basic land construction cost, and,

b. if the stamp duty is paid on the Gross amount including the basic land construction cost and the other amenities , then , 'the ancillary services' would not be considered as a 'composite supply' naturally bundled with 'Construction Services' under Section 8 of CGST and RGST Act, 2017

2. NA

3. NA

4. GST is levied on charges for 'the ancillary services' as individual respective service and shall be subject to outward tax liability at the rate of 18% as under category "Other services n.e.c." having SAC code 999799. As per Section 16 of the CGST and RGST Act, every registered person shall be eligible to take ITC of the GST paid on goods or services used or intended to be used in the course or furtherance of business. Further, Section 17(5) does not disallow ITC in respect of 'the ancillary services', same shall be eligible.

On the other side, it can be further mentioned that,-

a. If the ancillary services are not mentioned separately in the sale/ purchase agreement and they are not charged separately and the cost of these services are included in the land construction cost, and,

b. If the stamp duty is paid on the amount of the basic land construction cost only and does not include the cost of the other amenities , then,

1. 'the ancillary services' would be considered as a 'composite supply' naturally bundled with 'Construction Services' under Section 8 of CGST and RGST Act, 2017.

As definition of composite supply as mentioned under Section 2(30) of the CGST Act as follows -

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

> Further as per Section 8 of the CGST Act -

i. "a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. "

It is submitted that the said ancillary services are provided in conjunction to the construction services in the ordinary course of business and are naturally bundled. It should be treated as provision of composite service which gives such bundle its essential character, provided, that the ancillary services are not provided separately to parties other than buying the flat / unit from the company. Hence 'the ancillary services' shall be treated as composite supply with construction while charging GST on the same.

2. As per Section 8 of CGST and RGST Act 2017, GST on the composite supply shall be applicable on the basis of the principal supply and therefore, in the given instance, the ancillary' services would attract GST liability as applicable on the Construction Services being the principal supply.

3. For the question whether such charges would be taxable post issuance of completion certificate also, taxability of construction services needs to be rationalized.

As per Para 5 of Schedule III of CGST Act, 2017, the following shall be treated neither as a supply of goods nor a supply of services:-

"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. "

Further, as per clause (b) of paragraph 5 of Schedule II, the following shall be considered as supply of service:-

"construction of a complex, building, civil structure or a part thereof including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority' or after its first occupation, whichever is earlier"

As GST is not applicable on flats / units sold post the issuance of Completion Certificate or after its first occupation, whichever is earlier. It may be inferred that charges recovered for 'the ancillary services' on flats / unit sold post issuance of CC or after first occupation would also not attract GST Liability.

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

1. We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department. The issue is related to the classification of services, applicable tax rate thereon & availability of Input Tax Credit under the GST Act.

2. The applicant, registered under GST ACT and engaged in the business of construction and sale of residential apartments, discharges GST in respect of such supply for which, consideration is received before receipt of Occupancy/Completion Certificate.

3. Applicant submitted that apart from consideration for the main construction activity, they also recover charges for 'the ancillary services' like JDA Lease Charges, Electrification Charges, Sewage Treatment Plant Charges, Non-refundable IFMS (Interest Free Maintenance Security) and Club Membership from the residents.

4. To provide 'the ancillary services', broadly the applicant makes the following inward supplies:-

a. Civil expenses related to club formation, interior furnishing, air conditioning and equipment expenses

b. Electrification Transformer, Vacuum Circuit Breaker, Ring Main Unit. Variable Renewable Energy, Main Panel, Active/Automatic Power Factor Correction/Control (Panel), Panel Distribution Channel, High Tension Low Tension Cable, CTPT Combined Metering Panel, Solar Panel. Inverter and Net Metering Expenses

c. Sewage Treatment Plant related equipment as well as civil expenses

5. Applicant feels that the charges for the 'Ancillary Services' are primarily for supply of construction services since they are received only from the customers to whom construction services are supplied and therefore the services underlying the 'Ancillary Services' may be treated as naturally bundled with supply of main construction services which are supplied in conjunction with each other, in the ordinary course of business. Hence, in case these services are treated as 'Composite supply', construction services may be treated as principal supply of such composite supply; since the same clearly constitutes predominant element of such transactions and is the primary supply giving rise to the associated or ancillary supplies. As per the applicant, in such a situation, the entire value of the charges of the 'Ancillary Services' should attract the effective rate of GST, as applicable on the main construction service (supplied by the Company supplied under the same Agreement). In other words, the

applicant is contending that 1/3rd of the value of land is available to them as rebate even on these other charges.

6. We observe that the question before us is whether the Charges for the 'Ancillary Services' recovered by the applicant will be treated as consideration for 'construction services' and classified under SAC 9954 along with the main residential construction services or whether the same will be treated as consideration for independent service(s) under the respective head. And consequently, what would be the applicable GST rate on such Charges collected for the 'Ancillary Services'.

7. The applicant has provided, a sample copy of the 'Agreement for sale' deciding the present issue. On perusal of the said 'agreement for sale, it seen that the charges for the construction of residential property and the other charges for providing different ancillary' services are mentioned separately.

8. To decide the issue, it is important to examine the concept of 'Composite Supply' as provided under the CGST Act, 2017. The relevant definitions in this regard, as provided under Section 2 of the CGST Act, are as under:

**8.1 Composite Supply [Section 2(30)]:-**"Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply:

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply."

**8.2 Principal Supply Section 2(90):-** "Principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary"

8.3 Section 8 of the CGST Act which provides the manner of determining tax liability on a composite supply or a mixed supply, is reproduced as under:

"8. The tax liability on a composite or a mixed supply shall be determined in the following Manner, namely:-

(a) a composite supply comprising two or more supplies, one of which is a supply, shall be treated as a supply of such principal supply:

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. "

8.4 In order to be held as 'Composite supply' as per Section 2 (30) of the CGST Act, 2017, there must be two or more taxable supplies of goods or of services or both or any combination thereof, which are naturally bundled and are supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

9. In the present case, we observe from said agreement for sale that, the applicant has mentioned the value of supply of construction of residential unit and the value of other ancillary services separately. As per para no. 1.2 of page 3 & 4 of the impugned agreement for sale, the applicant intend to collect the value of construction of residential unit supply (having saleable area of apartment No. A-704 is 1603 Sq Ft.), for an amount of Rs. 40,50,000/- + taxes extra separately from the customer on which stamp duty is payable. Para no. 1.2 of page 4 shows that certain charges are collected separately for 'Ancillary services' provided by the applicant viz. JDA Lease Charges, Electrification Charges, Sewage Treatment Plant Charges, Non-refundable IFMS (Interest Free Maintenance Security) and Club Membership from the residents etc.

10. A combined reading of the agreement as a whole, reveals that, there are more than two supplies in the subject transaction, which are independent supplies and so taxable separately. From the above terms and conditions of the agreement of sale, it is seen that the applicant intend to collect the basic flat sale price separately for the supply of residential unit and the other charges are to be collected separately for supply of different ancillary services which are called as 'other charges'. Merely because the agreement is common will not make it a supply of bundled services.

11. Therefore, in the present case, we find that there are more than two supplies which are independent supplies and so taxable separately, the supply of construction services of residential unit and the other supply of 'ancillary services' (as mentioned in 'Agreement for Sale' provided), viz. JDA Lease Charges, Electrification Charges, Sewage Treatment Plant Charges, Non-refundable IFMS (Interest Free Maintenance Security) and Club Membership from the residents. Ancillary Services supplied in respect of the 'other charges' are different from the service of construction of residential flats. Therefore, it is observed that the 'ancillary services' provided cannot be said to be naturally bundled and supplied in conjunction with each other in the ordinary course of business with main supply of residential flat in the subject case.

12. We find that Heading 9954, Entry No. 3 covers 'construction services" of Notification No.11/2017 CT (R) dated 28.6.2017. The entry no. 3 is reproduced as below:

13 '3 (i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first Occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)

14. The above entry is specifically related to construction of a complex, building, civil structure or a part thereof, including, a complex or building intended for sale to a buyer, wholly or partly.

15. Further, the Entry No. 3 of Notification No. 11/2017 CT (R) dated 29.6.2017 has been amended vide Notification No. 1/2019 CT(R) dated 29.01.2010, Which is as under:-

(a) against serial number 3, for item (i), and the entries relating thereto in column (3), (4) and (5), the following items and entries shall be substituted, namely, -

**Table**

<p>"(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein,</p>	<p>0.75</p>	<p>Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;</p> <p>Provided also that credit of input tax charged on goods and services used in supplying the service hasnot been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of</p>
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<p>intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>		<p>supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;</p> <p>Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments,-</p>
<p>(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph</p>	<p>3.75</p>	<p>(i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner- promoter, and</p> <p>(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 completion certificate 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.</p> <p>Explanation. -</p> <p>(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or</p>



<p>2 of this notification shall apply for valuation of this service)</p>		<p>develops a plot for sale,</p>
<p>(ib) Construction of 3.75 commercial apartments (shops, offices, godowns etc.) by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>		<p>(ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.</p> <p>Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;</p> <p>Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;</p> <p>Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., Central tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate</p>
<p>(ic) Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1st April, 2019 or in an ongoing REP other</p>	<p>0.75</p>	

<p>than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>		<p>of nine percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;</p> <p>Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;</p> <p>(Please refer to the illustrations in annexure III) Explanation. -</p>
<p>(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner</p>	<p>3.75</p>	<p>1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.</p>

<p>prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>		<p>2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.</p> <p>3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].</p>
<p>(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), subitem (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), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>	6	<p>Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th of May, 2019;</p> <p>Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;</p> <p>Provided also that invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;</p>
<p>(if) Construction of a complex, building, civil structure or a part thereof,</p>	9	

including,-

(i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP,

(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein, but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column

<p>(4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.</p> <p>(Provisions of paragraph 2 of this notification shall apply for valuation of this service</p>		
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16. The services to be provided by the applicant covered under entry No. (i) or (ia) as the case may be, is specifically related to Construction of affordable residential apartments other than affordable residential apartments by a promoter in a Residential Real Estate Project (RREP).

17. Further, as per the explanatory note published by the Government, for the purposes of the CGST Act. 2017 'the ancillary services' provided by the applicant can be said to be classified under different SAC as under. -

Sr. No	Description of charges	Brief Description	Group of SAC	SAC
1.	JDA Lease charges	Amount recovered for payment made by the applicant towards Lease charges payable to Jaipur Development Authority (JDA)	Trade services of buildings	997213
2	Electrification charges :	Amount charged by the applicant to lay down wires and cables from electricity consumption	Installation services	995461

		meter to the apartment.		
3	Sewage treatment plant charges	Amount charged by the applicant towards construction, maintenance and operation of sewage treatment plant in the building.	Sewerage and sewage treatment services	999411
4	Non-refundable IFMS (interest free maintenance security)	Additional charges recovered by the applicant until the formation of Resident's welfare Association (RWA) for maintenance, upkeep and security of the complex.	Other services nowhere else classified.	999799
5	Club Membership	Amount charged by the applicant towards construction and maintenance of Club House in the complex.	Services provided by other membership organizations nowhere else classified.	999599

18. Considering the above, in our opinion, the 'Construction services' and the 'ancillary services' provided by the applicant are not naturally bundled and are not supplied in conjunction with each other in the ordinary course of business

with main supply. These are the facilities/amenities provided by the applicant to its customers for the limited period because, for these facilities created the customers have not been given perpetual rights. The amount or consideration is charged separately for different services. Therefore, the other charges for the ancillary services provided is not covered under the scope of 'Composite supply of services'. Therefore, the contention of the applicant is found not acceptable.

19. In view of above, the other charges to be charged for ancillary services' mentioned as above are held taxable as per their SAC under the GST Act, at 18% in terms of the respective and appropriate entries (against the SAC mentioned in the Table at Para No. 17 above) in Notification No. 11/2017 CT (R) dated 28.6.2017 as they are covered under services, other than construction services.

20. Therefore, in our view, the consideration for providing the construction services by way of construction of residential unit and the consideration for the ancillary services (i.e. other charges collected) are considerations against separate independent services being provided by the applicant. Considering the nature of supplies in question, the services for each of the service head/description are covered under Notification No. 11/2017 CT (R) dated 28.6.2017 mentioned above and therefore, the Other Charges would attract GST @18%. Thus, the 1/3rd deduction from total value as per Sr. No. 2 of the Notification (as claimed by the applicant) cannot be allowed as deduction from the Other Charges. A plain reading of the items or the list of other charges itself shows that ancillary services supplied against the said charges have no connection with land and therefore, question of considering the 1 /3rd deduction or rebate towards land cost does not arise, particularly, as the entries applicable to both of the above services are different.

21. As far as availability of Input Tax Credit (ITC) on goods & services received for supply of the 'ancillary services' is concerned, we are of the view that as 'ancillary services' are subject to outward tax liability at the rate of 18% (without any abatement) therefore, as per Section 16 of the CGST and RGST Act, the applicant shall be eligible to take ITC of the GST paid on goods or services used or intended to be used in the course or furtherance of business subject to the conditions as prescribed and the provisions of sub section 5 of the Section 17 of the GST Act.

22. In view of the extensive deliberations as hereinabove, we rule as follows: -

### **RULING**

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)**

For reasons as discussed in the body of the order, the questions are answered thus:

**Question No.1:-** Whether recovery of charges for 'the ancillary services' by builders would be considered as a 'composite supply' naturally bundled with 'Construction Services' under Section 8 of CGST and RGST Act, 2017?

**Answer No. 1:** NO, 'the ancillary services' would not be considered as a 'composite supply' naturally bundled with 'Construction Services under Section 8 of CGST and RGST Act, 2017. The applicable rate of GST on 'the ancillary services' would be as per the SAC prescribed under Notification No. 11/2017 CT (R) dated 28.6.2017 and are liable to GST @ 18%. Further, the applicant has to pay GST on the entire consideration received as charges on account of 'the ancillary services', without any abatement.

**Question No.2.** If answer to Question No. 1 is YES, whether the charges for 'the ancillary services' would attract GST at the rate specified for 'Construction Services' (principal supply), i.e., 1% or 5% as the case maybe?

**Answer No. 2:** Not applicable as per Answer No. 1.

**Question No.3:** Further, if answer to Question No. 1 is YES, whether recovery of the charges for 'the ancillary services' by builders, after completion certificate would not attract GST liability considering them to be composite supply naturally bundled with Construction Services which does not attract GST once completion certificate is issued?

**Answer No. 3:** Not applicable as per Answer No. 1.

**Question No.4:** If answer to Question No. 1, 2 and 3 is NO and GST is levied on charges for 'the ancillary services' as individual respective service (considering 18% GST rate) then whether Input Tax Credit can be claimed in respect of GST paid on expenses incurred to provide the said ancillary services?

**Answer No. 4:** As per Section 16 of the CGST and RGST Act, the applicant is eligible to take Input Tax Credit (ITC) of the GST paid on goods or services used or intended to be used in the course or furtherance of providing 'the ancillary' services' subject to the conditions as prescribed and the provisions of sub section 5 of the Section 17 of the CGST and RGST Act. 2017.

26/11/2021	
(J. P. MEENA)	(M. S. Kavia)
Member	Member



(Central Tax)	(State Tax)
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