

(AAAR-MP) :(2022) 52 TLC(GST) 140

BHOPAL SMART CITY DEVELOPMENT CORPN. LTD., IN RE

IN THE APPELLATE AUTHORITY FOR ADVANCE RULING, MADHYA PRADESH

SHRI NAVNEET GOEL, AND SHRI LOKESH KUMAR JATAV, MEMBER

MP/AAAR/01/2022

Dated - 13-04-2022

Under Section 101

Counsel -

Name and designation of jurisdictional officer/concerned officer - Sh. Atul Shrivastava, Deputy Commissioner, State Tax Circle - I, Bhopal

Proceedings

(Under section 101 of the Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

JUDGMENT

The present appeal has been filed under section 99 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 (hereinafter also referred to as ('the CGST Act and MPGST Act') by Shri Atul Shrivastava, Deputy Commissioner, State Tax Circle - I, Bhopal, (hereinafter also referred to as the 'appellant') against the Order No. 16/2021, dated 22-11-2021 passed by the Authority for Advance Ruling, Madhya Pradesh, and the appeal is deemed to be an appeal under section 100 of CGST Act and MPGST Act. Since the provisions of both - the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions, therefore unless a specific mention is made to any dissimilar provisions, a reference to the CGST Act would mean a reference to the Page 1 of 16 similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.

2. Brief Facts of The Case

M/s. Bhopal Smart City Development Corporation Limited (hereinafter referred to as 'BSCDCL'), Zone - 14, Bhopal Municipal Corporation, BHEL Govindpura, Bhopal - 462023, had submitted application under section 97(1) of CGST Act & MP GST Act seeking Advance Ruling from the Authority for Advance Ruling, Madhya Pradesh, on the following questions;

(I) Whether GST is applicable on sale of developed plot of land for which consideration is received before the issuance of completion certificate (if any), under the following facts:-

(a) The sale of plot is after carrying out the development activities providing amenities such as drainage line, water line, electricity line, land leveling, and common facilities viz. road and street light etc. which are to be provided by BSCDCL; and

(b) remaining construction activities including civil foundation on the developed plot will be carried out by the buyer on their own account and cost.

(II) What is applicable rate of GST on the above Supply, if it is supply of goods or supply or both?

(III) What is HSN or SAC of GST on the above Supply, if it is supply of goods or service or both?

(IV) What is the Entry No. of the Notification on the above supply or activities or transactions?

(V) If answer to the Question No I is decided as supply of goods or services or both, whether the actual value of Land as per Government Guidelines can be excluded from the Total Consideration (or Gross amount charged) and remaining value (i.e. Gross amount charged less Value of Land as per Government Guidelines) Represented by value of Development carried out by applicant can be treated as taxable value of supply? If Yes, What will be the Taxable value and what will be rate of GST on such Taxable value?

(VI) If answer to the Question No V is negative and answer to the Question No 1 is decided as supply of goods or services or both, whether the benefit of Para-Z of Notification No 11/2017, dated 28-06-2017 regarding 1/3rd abatement/exclusion on account of the value of transfer of land or undivided share of land from the total amount charged is available to the applicant?

3. Ruling Pronounced by Authority For Advance Ruling (AAR)

3.1 In this case the AAR, MP, pronounced its ruling vide its Order No. 16/2021, dated 22-11-2021 ordering that undertaking development activities does not constitute a supply within the meaning of section 7 of the GST Laws and therefore GST is not applicable on such sale of developed land. The AAR in its order pronounced the following -

'8.1 On the basis of above discussion, in respect of Question - I regarding applicability of GST on sale of developed land (the applicant has declared that no completion certificate is required for the project) for the reasons stated above, it is ruled that the sale of developed land, by the applicant as per the facts provided by him where the development work is limited to providing common amenities (common drainage, water line, electricity line, land levelling, road and street light) and no development work will be done by the applicant after the sale of the developed land and if no advance from the customer for undertaking development activities is taken then it does not constitute a supply within the meaning of section 7 of the GST Laws and therefore GST is not applicable on such sale.

8.2 In respect of the other questions raised, in light of the ruling regarding Question - I, they have become redundant and therefore no ruling is required to be passed in respect of other questions raised.

8.3 The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under section 104 (1) of the GST Act.'

Being aggrieved by the said ruling of the AAR, the jurisdictional officer has 1/2021/1434, dated 23-12-2021.

4. Questions Raised Before the Appellate Authority for Advance Ruling (AAAR)

4.1 The appellant has challenged the above referred ruling of the AAR mainly on the following grounds

(i) The ruling has given consideration to the definition of land only and ignored other associated factors like changing of the character of raw land to developed land.

(ii) The sale of developed land by BSCDCL is not just a case of sale of land, but is altogether a different transaction. In this transaction, the monetary value of the facilities provided like water, road, electricity supply line, drainage line etc. are included in the value of Developed Land.

(iii) The respondents are not only selling the plot of land but also transferring the development works done on that plot as the right to use such development activities gets automatically transferred to the buyer.

(iv) The AAR has not given due consideration to the decision of Hon'ble Supreme Court in case of M/s. Name Construction Pvt. Ltd. (2013(29) STR3 (SC)).

(v) The cost of development activity is also charged to the buyer of plot by way of value addition.

(vi) Thus, this transaction falls under entry No. 5 (b) of Schedule II of the CGST Act 2017 and is thus liable for payment of appropriate GST.

The detailed contention of the appellant, as mentioned in their appeal is not being reproduced here for sake of brevity.

4.2 The respondent, M/s. BSCDCL, also made their written submission in which they relied on their interpretation of the legal provisions to contend that -

(i) Only building can be taxed under the provisions of GST as provided in para 5(b) of Schedule II.

(ii) Such building can be taxed only where there is requirement of issuance of completion certificate by the competent authority.

(iii) Sale of building after the issue of completion certificate by the competent authority is outside the scope and ambit of GST within the mandate of para 5 of Schedule III, which further provides that sale of land, subject to para 5(b) of Schedule II are outside the mandate of GST, which cannot be taxed under the provisions of GST. There is no limiting factor in respect of sale of land and sale of land as such is outside the taxability of GST.

(iv) The respondent also made reference to section 3(26) of the General Clauses Act, 1897, Section 54 of the Transfer of Property Act 1882 and para 2(a) of Schedule II of CGST Act, to contend that Sale of land, whether developed or not, cannot be taxed under the provisions of GST.

(v) The respondent also made reference to Para No. 2 of the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017, Section 2(k) of MP Land Revenue Code, 1959 to contend that the development work on the plot of land being sold is also subsumed in land itself and the development work have no separate entity.

(vi) The respondent also made reference to section 15(2) of CGST Act, to contend that anything done by the supplier i.e. development work at the time of delivery of services of goods, is part of value of supply.

(vii) The respondent also made reference to para 5 of Schedule III of CGST Act to contend that the sale of land is outside the ambit of GST and sale of building can be taxed only as provided in para 5(b) of Schedule II.

(viii) On the issue of reliance of the appellant on the decision of Hon. Supreme Court of India in the case of M/s. Name Construction Pvt. Ltd. v. Union of India (2013-29-STR3), the respondent has argued that the said judgment has been given in the context of section 2(1)(0) of the Consumer Protection Act, 1986 where the builder has failed to carry out the promise of development of plot to the buyers which was adjudged as failure to carry out the promise of service to the consumers, and is a beneficial legislation thus it would not be appropriate to apply the ratio of aforesaid case to decide an issue under taxation laws.

(ix) The respondent has contended that value addition in the sale price of the plot of land does not alter the basic character of transaction of sale of land.

(x) For the purpose of reference, the respondent has cited the ruling of the Authority for Advance Ruling, Kerala in the case of Dharmic Living (P) Ltd. (2021- 131-taxmann.com 164 (Ker), dated, 28-5-2021, the Authority for Advance Ruling, Goa in the case of Shantilal Real Estate Services, Advance Ruling No. GOA GAAR/02 of 2020-21 /340 dated, 18-5-2021 (AAR-Goa), and the Appellate Authority for Advance Ruling, Gujarat in the case of M/s. Shree Dipesh Anil Kumar Naik, dated, 22-12-2021.

(xi) The respondent contended that the appeal filed by the appellant does not call for any intervention in the order passed by the Authority for Advance Ruling.

The detailed submissions of the respondent, M/s. BSCDCL have been carefully considered, however the same is not being reproduced here for sake of brevity.

5. Personal hearing

5.1 The appellant was called for virtual personal hearing on 24-2-2022 and the PH was conducted which was attended by Shri Atul Shrivastava, Deputy Commissioner, State Tax, Circle - 1, Bhopal on behalf of the appellant and by Shri S. Krishnan, Authorised Representative, on behalf of Bhopal Smart City Development Corporation Limited, the respondent. The appellant reiterated his submissions made in the appeal, and the respondent M/s. BSCDCL referred to their detailed written submission as referred above.

5.2 During the course of personal hearing, M/s BSCDCL was asked to submit certain additional information regarding cost of procurement of the plot of land under ABD area, expenditure done for the said development work and the consideration at which it was transferred to the buyer. In this regard, vide their letter dt. 15-3-2022, M/s BSCDCL has submitted following-

1. Total project area (Area Based Development) - 4,49,678. 71 sq. meter.
2. Area of Plot No. 79B (In respect of which Advance Ruling was sought from AAR) - 9650.30 sq. meter.
3. Price quoted by the successful bidder for Plot No.79B- Rs. 72.40 crore
4. The allotment of plot was made to the successful bidder who participated in the tender for allotment of plot No.79(B) on freehold basis for ABD Area of Bhopal Smart City Development Corporation Limited.
5. As regards the price on which the land was allotted to Bhopal Smart City Development Corporation Limited (BSCDCL), they submitted that a total of 342 acres of land was allotted to BSCDCL on a free hold basis, vide Order dated, 23-5-2017 and the land was transferred without any cost.

5.3 During Personal hearing the respondent was requested to provide details of expenses incurred for carrying out the referred development activities, which was not provided by the respondent. A Letter, dated 23-3-2022 was sent to the respondent to provide these details and also to inform the circle rate of the land at relevant time. Reply from the respondent was received vide their Letter, dated 11-4-2022, wherein although they did not provide the prevailing Circle rate at the relevant time but informed that from the perusal of the minutes of the Board meeting of the respondent corporation held on 12-11-2020 it could be observed that the total expenses incurred under various heads of expenses are as under: -

S.No.	Particulars	Tender cost (Rs.)
1	Grading and leveling of ABD area	6.99
2	Smart Road - Phase III, IV & V	111.06
3	Modular rain water harvesting	8.79
4	Water supply system	50
5	Automated Solid waste management system	20
6	ICT and street lighting	30

7	Landscape	50
8	Sewage line/Water supply/ Electricity/Transit house	25
9	Per Sq. meter development (Rs. Per sq. meter)	8511

6. Discussion and findings

6.1 We have carefully gone through the submissions made by the appellant in their appeal, their submission made at the time of personal hearing, and the submissions made by the original applicant M/s BSCDCL (i.e. the respondent in this case) before, during and after the said personal hearing.

6.2 In this case, on the basis of facts provided by the applicant, the AAR, vide its Order No. 16/2021, dated 22-11-2021 has observed that undertaking development activities does not constitute a supply within the meaning of section 7 of the GST Laws and therefore GST is not applicable on such sale, subject to the conditions mentioned in the order of the AAR. AAR has also observed that in light of the ruling regarding Question -1, rest of the questions have become redundant and therefore no ruling is required to be passed in respect of other questions raised.

6.3 The jurisdictional officer of SGST, Madhya Pradesh has preferred this appeal before the AAAR against the said Order, dated 22-11-2021 of the AAR on the grounds which have been mentioned above. The appellant has challenged the order of the AAR mainly on the grounds that the sale of developed land by BSCDCL is not just a case of sale of land, but is altogether a different transaction. In this transaction, the monetary value of the facilities provided like water, road, electricity supply line, drainage line etc are included in the value of Developed Land but this aspect has not deliberated by the AAR. Accordingly the appellant has argued that this transaction falls under entry No. 5 (b) of Schedule II of the CGST Act 2017 and it attracts GST under 'construction services'.

6.4 The respondent M/s. BSCDCL has made arguments in its defence, contending on various grounds that GST is not applicable on sale of Developed land in their case. The main contentions of the respondent are discussed here in below -

6.5 The respondent has argued that the appellant mentioned that there is difference between plot of land and developed plot of land. In the developed plot of land, there is value addition due to addition of facilities, such as water, road, electricity lines, drainage lines etc. It is further mentioned in the said grounds that there is no sale of land, but there is sale of land along with development work. The development work is a separate project, apart from land. The appellant has further contended that the sale of developed plot is supply of service as per para 5(b) of Schedule II of CGST Act. The respondent argued that the appellant has failed to appreciate the relevant provisions of GST law with regard to sale of land and supply of construction services.

6.6 With respect to GST, the tax is levied on supply of goods/services. In this regard, the respondent M/s. BSCDCL, has made reference to clause (b) of paragraph 5 of Schedule II, of the CGST Act 2017, and also to Paragraph 5 of Schedule III of the CGST Act 2017.

6.7 Respondent has argued that 'It is evidently clear that sale of land and sale of goods is outside the ambit of GST. Sale of land is totally outside the scope of GST, while sale of building can be taxed only as provided in para 5(b) of Schedule II'.

7. The issues discussed above have been examined. In this case, the issue to be decided is whether GST is applicable on sale of developed plot of land and whether the activities undertaken for developing a barren land into a developed land with provision of amenities essential to make it inhabitable and fit for construction of a complex on the said land is a service and also whether it is a part of the service of construction of the complex and also whether this activity is covered under entry 5(b) of Schedule II of the CGST Act, 2017.

7.1 To understand this, first we have to understand whether Land, and developed Land are two different things. The obvious answer to this question is yes. This is because a barren plot of land, and a plot of land on which certain basic development works which suits the requirement of daily life of people, making it suitable for inhabiting, has been done, like making of roads, electricity infrastructure, drainage and sewerage systems etc, are clearly two distinct things; one is suitable for inhabitation by humans and other is not suitable for inhabitation. While discussing the provisions of para 5(b) of Schedule II of the CGST Act, the respondent has derived certain conclusions viz. –

'(a) only building can be taxed under the provisions of GST as provided in para 5(b) of Schedule II

(b) such building can be taxed only where there is requirement of issuance of completion certificate by the competent authority'.

The respondent has derived such interpretation as they wanted to see the said provision in the way that suited them. They failed to read the entire text of the provision which also talk about '..a part thereof..'. In this case the development works done on the particular plot of land, viz. Plot No. 79B, is a part of construction of the complex which is being developed thereon. The interpretation that only such building can be taxed where there is requirement of issuance of completion certificate, is also faulty and is not supported by the provision. The contention of the respondent that 'value addition in the sale price of the plot of land does not alter the basic character of transaction of sale of land' is also not valid and is not supported by

any logical reasoning. In fact value addition of the scale, as seen in this case, substantially magnifies the usability of land. The respondents have also placed reliance on certain rulings of AAR in different cases but in terms of Section 103 of the CGST Act, such rulings cannot be relied upon as they are applicable to the applicant and the jurisdictional officer only.

7.2 This appeal relates specifically to plot No. 79 (b) (Area: 9,650.30 Sqm. (0.96503Ha.)) which is located at Khasra No. 116 & 119, Gram Kotra Sultanabad, Patwari Halka T.T. Nagar, Tehsil Huzur, District Bhopal. In this case the respondent, vide their letter 15-3-2022, have submitted that the said land was allotted to them free of cost. As per Question No. 1 (a) of the application before the AAR, as mentioned in the order under consideration, the sale of plot by the respondent is after carrying out the development activities of providing amenities such as Drainage line, water line, electricity line, land levelling, and common facilities viz road and street light etc. which are to be provided by the respondent. Then, after calling for the bids, the land was transferred / sold to the successful bidder for a consideration of Rs.72.40 crores. During the course of personal hearing, and thereafter, the respondent was specifically asked to provide the details of expenses incurred by them for carrying out development activities in respect of the said plot of land. The respondent was also requested to provide the circle rate of land at the relevant time. The specific details, as called for, has not been provided by the respondent despite several opportunities, rather some figures, as claimed to be mentioned in the copy of the minutes of their Board meeting of the respondent corporation held on 12-11-2020 were provided without mentioning that this was the expense actually done towards development and also without mentioning the piece of land to which these expenses relate. The expenses on account of the above as intimated by the respondent is as follows:

S.No.	Particulars	Tender cost (Rs.)
1.	Grading and leveling of ABD area	6.99
2.	Smart Road - Phase III, IV & V	111.06
3.	Modular rain water harvesting	8.79
4.	Water supply system	50.00
5.	Automated Solid waste management system	20.00
6.	ICT and street lighting	30.00
7.	Landscape	50.00
8.	Sewage line/ Water supply/ Electricity/ Transit house	25.00
9.	Per Sq. meter development (Rs. Per sq. meter)	8511

Even though, the above details in the form of minutes of Board Meeting was provided, but still the original value of the said plot of land without development activities and the expenses incurred towards its development activities is not known. Only fact, as intimated by the respondent, is that the said plot of land was sold to the successful bidder for a consideration of Rs. 72.40 crores.

7.3 From the above reply of the respondent it is evident that for the development of plots, the respondent has undertaken the activities of Grading and leveling of ABD area, construction of roads, modular rain water harvesting, water supply system, automated solid waste management system, ICT and street lighting and sewage line/water supply/electricity/ transit house. On account of these activities relating to development of barren land into developed land, huge sum of money amounting to Rs. 301.84 crores has been spent, which appears to be a major and substantial chunk of the cost of project. The complex which is going to be built on this land either for residential or commercial use cannot be imagined without these basic development activities. Thus it would be apt to derive that these activities have been undertaken with the aim of developing the land into a complex and these activities are therefore part of construction of the complex being developed.

7.4 Here, one thing is indisputable that the basic character of the said plot of land, after doing the development work, has changed both in terms of its value and its usability. The respondent has also argued that 'Clearly there was no service supplier and service receiver relationship between respondent and purchasers of plot as development of plot was not done for or on behalf of the purchasers. If there was no supplier and receiver relationship, question of levy of GST does not arise'. We are of the opinion that the amount spent by the respondent was to inflate the value of the land and to change its character. Even though, while doing the development work, the prospective buyer was not known to the respondent, but whoever the buyer would have been, the respondent has offered him a service for a consideration which has Page been included in the price of the land. Just to say that when the buyer itself was not known at the time of developing the land how can a service be provided to him, is not acceptable as the inflated value of land, which was a result of development activity, was ultimately collected from the buyer.

7.5 Clause 'b' of para 5 of Schedule II of the CGST Act, 2017 is reproduced below:

Schedule II

5. Supply of services

The following shall be treated as supply of services, namely:-

(b) 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.

Explanation.- For the purposes of this clause-

(1) the expression 'competent authority' means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression 'construction' includes additions, alterations, replacements or remodelling of any existing civil structure;

7.6 In light of the provisions of clause 'b' of para 5 of Schedule II of the CGST Act, 2017 and also in light of the above discussions, we are of the opinion that this transaction squarely falls under clause 'b' of para 5 of Schedule II of the CGST Act, 17 as the process of developing a plot of land by providing amenities such as age line, water line, electricity line, land leveling, and common facilities viz. road and street light etc. are preparatory part of the activity of construction of whatever structure that is proposed to be constructed on that piece of land.

8. In its judgement in M/s Name construction P. Ltd. in Civil Appeal Nos. 4432-4450 of 2012, the Hon'ble Supreme court has discussed the issue of difference between virgin land and developed land, and the element of Service provided on account of this development. Even though this judgement deals with the definition of 'service' under the Consumer Protection Act, 1986, but the issue discussed in this case has full similarity with the issue in the present appeal. The contents of the above referred judgement of the Hon'ble Apex court is thus required to be elaborately discussed here.

8.1 The Hon'ble Apex Court, in the above judgement, has observed that 'undisputed facts in the context of which the question arises have been summed up by the High Court in the following words:

'The sale price was not for the virgin land but included the development of sites and provision of infrastructure. The opposite party has undertaken the obligations to develop the plots and obtain permissions/approvals of the lay outs. The opposite party itself pleaded in its counters that the plots were developed by spending huge amounts and subsequent to the amounts paid by the complainants also plots were developed. It pleaded that huge amounts were spent towards protection of the plots from the grabbers and developed roads, open drains, sewerage lines, streetlights etc. It is therefore, manifest that the transaction between the parties is not a sale simplicitor but coupled with obligations for development and provision of infrastructure. Inevitably, there is an element of service in the discharge of the said obligations. '

8.2 The Hon'ble Apex court observed that 'the High Court was perfectly justified in holding that the activities of the appellant-company in the present case involving offer of plots for sale to its customers/members with an assurance of development of infrastructure/amenities, lay-out approvals etc. was a 'service ' within the meaning of clause (o) of section 2(1) of the Act and would, therefore, be amenable to the jurisdiction of the fora established under the statute.... '

8.3 Thus it has been made amply clear by the Hon'ble Apex court in the above judgement that the legal position on the subject is fairly well-settled and the activity of Development of land involving offer of plots for sale to its customers with an assurance of development of infrastructure/amenities, lay-out approvals etc. is a 'service'.

9. Here, it is also necessary to discuss the relevant part of the Notification No. 11/2017-Central Tax (Rate) Dated 28-6-2017, as amended by Notification No. 03/2019-Central Tax (Rate), which is reproduced below --

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)

3	Heading 9954 (Construction services)	(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)	9	
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	
		(iii) construction services other than (i) and (ii) above.	9	-

2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value 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.

Explanation - For the purposes of paragraph 2, 'total amount' means the sum total of,-

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be.

9.1 Para 2 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, says that 'In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value 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'. Thus, the mechanism for quantification of service portion in transactions involving transfer of property in land has been clearly spelled out for levy of applicable GST.

10. In light of the above discussions and findings we are of the view that the AAR has not given due consideration to the crucial issues related to the difference between sale of barren land and developed land. Thus, the AAR in its Order No 16/2021, dated 22-11-2021 has erred in ordering that 'the sale of developed land, by the applicant as per the facts provided by him where the development work is limited to providing common amenities (common drainage, water line, electricity line, land levelling, road and street light) and no development work will be done by the applicant after the sale of the developed land and if no advance from the customer for undertaking development activities is taken then it does not constitute a supply within the meaning of section 7 of the GST Laws and therefore GST is not applicable on such sale '. Accordingly we quash the Order No 16/2021 dated 22-11-2021 passed by AAR, Madhya Pradesh, Indore.

10.1 In view of the above, we are of the opinion that the activity of the sale of developed land is covered under 'construction of a complex intended for sale to a buyer' and is thus covered under 'construction services' and GST is payable on the sale of such developed land in terms of CGST Act/Rules and relevant Notification issued from time to time. Having regard to the facts and circumstances of the case and discussions as above, we dispose of the instant appeal filed by Shri Atul Shrivastava, Deputy Commissioner, State Tax Circle - I, Bhopal, the Appellant, by passing the following order:

ORDER

11.1 The activity of purchase or allotment of land and selling the said land after undertaking development activities of providing amenities such as Drainage line, water line, electricity line, land leveling, and common facilities viz. road and street light etc. is liable to GST.

11.2 The activities of the respondent, M/s Bhopal Smart City Development Corporation Limited will fall under the clause (b) of paragraph 5 of Schedule -II of Madhya Pradesh Goods and Services Tax Act and Central Goods and Services Tax Act. Hence the activities of the respondent attracts CGST @ 9% and SGST @ 9% as per serial no 3 of Notification No. 11/2017 Central Tax (Rate), dated 28-6-2017, as amended. The value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value 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.