GST/WORKS CONTRACTS- RAMIFICATIONS.

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NEW DELHI
25TH AUGUST 2018 – CFO WORLD.

LEGAL PROVISIONS.

2(59) “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

2(60) “input service” means any service used or intended to be used by a supplier in the course or furtherance of business

2(62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—..

2(63) “input tax credit” means the credit of input tax;

2(86) “place of supply” means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

2(108) “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act;

LEGAL PROVISIONS

2(119) “works contract” **means** a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

LEGAL PROVISIONS

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;

LEGAL PROVISIONS

- 15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply

LEGAL PROVISIONS

INPUT TAX CREDIT

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person

LEGAL PROVISIONS- CRITICAL

17(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

LEGAL PROVISIONS- CRITICAL

Explanation.—

For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

LEGAL PROVISIONS

(69) "local authority" means—

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 of the Constitution;

or

(g) a Regional Council constituted under article 371A of the Constitution;

LEGAL PROVISIONS

SCHEDULE II [section 7] ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

5. Supply of services The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(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.

(c) Composite supply The following composite supplies shall be treated as a supply of services, namely:— (a) works contract as defined in clause (119) of section 2;

WC UNDER PRE GST PERIOD ARTICLE 366(29A) OF COI

VALUE ADDED TAX AND CST ACT 1956

VAT In the case of Gannon Dunkerly, the Hon'ble Apex Court had held that in case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act). The contract being one indivisible contract, it cannot be broken up to levy VAT on sale of goods involved in the execution of works contract. This decision led the Government to amend the Constitution of India and insert Article 366(29A) (b) which enabled the State Governments to levy tax (VAT) on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Service tax

- Service Tax could be levied only on the service element of the works contract. The principles of segregation of the value of goods were provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

Works contract under GST Regime

- Under GST laws, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered.
- *The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017*

WC is service.

As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

DIVISIBLE CONTRACTING – NO USE

- Applicant is engaged in execution of works contract awarded by Karnataka Power Transmission Corporation Limited (KPTCL) for construction of power lines, erection of transmission towers and transformers.
- The contract with KPTCL is a single contract with three connected agreements for supply of materials, erection and civil works respectively. All the three agreements were awarded in response to a single tender notification. The general terms and conditions are commonly applicable to all the three agreements.

AAR RULINGS.

- Ruling of the AAR
- The Authority referred to section 2(119) of CGST Act which defines ‘works contract’ to mean a contract to undertake specified activities like construction, repair etc. of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.
- In this case, three connected agreements for supply of materials, erection and civil works are under a single composite contract. They were awarded to the Applicant in response to a single tender notification and the general terms and conditions are applicable commonly to all three. Therefore, the contract is indivisible and falls under works contract.

PLACE OF SUPPLY

- Place of supply in case of WCT shall be governed by place of supply of service rules which are as follows:-
- Location of the immovable property is used to determine the taxability of a transaction involving supply of service. i.e. in case, the immovable property is situated in the same state as that of the place of registration , CGST and SGST shall be levied and in case, the immovable property is situated outside the state in which the registration is obtained , IGST will be levied.

Place of Supply in respect of Works Contract

- Works Contract under GST would necessarily involve immovable property. In view of the same the place of supply would be governed by Section 12(3) of the IGST Act, 2017, where both the supplier and recipient are located in India.

- The place of supply would be where the immovable property is located.

- In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of recipient as per proviso to Section 12(3) of the IGST Act, 2017.

- As per Section 13(4) of the IGST Act, 2017, in cases where either the Supplier or the Recipient are located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

Supply Of Services Of Immovable Property

- According to section 9(4) of IGST act, Place of a provision in case of immovable properties is where it is situated regarding the services of:
- Architect
- Surveyors
- Engineers
- Estate agents
- Interior decorators
- Coordination services for the construction work

Valuation

- Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract.
- In case of supply of service, 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 above purpose, “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

Position Maintenance of records:

- As per Rule 56 (14) of the CGST Rules, 2017, every registered person executing works contract shall keep separate accounts for works contract showing - (a) the names and addresses of the persons on whose behalf the works contract is executed; (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract; (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract; (d) the details of payment received in respect of each works contract; and (e) the names and addresses of suppliers from whom he received goods or services.

Input tax credit issues

- As per section 17(5) (c) of the **CGST Act**, **2017**, **input tax credit** shall not be available **in** respect of the **works contract services** when supplied for construction of an immovable property (other than plant and machinery) except where it is an **input service** for further supply of **works contract service**.

INPUT TAX CREDIT

- Thus, ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service.

INPUT TAX CREDIT

- if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company

INPUT TAX CREDIT

Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

SC Judgments overturned.

- The Hon'ble Supreme Court in the case of K Raheja Development Corporation vs State of Karnataka (2005) 141 STC 298 (SC) upheld by the larger bench in Larsen & Tourbo Ltd vs state of Karnataka (2013) 65 VST 1 (SC) para 101,Para 115 of the said order clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the state Government. However, this is overturned in the GST regime by virtue of clause 5(b) of Schedule II in which it is mandatory to pay the entire consideration after occupation or completion certificate to avail exemption from GST. Meaning thereby in the construction linked payment cases GST is leviable on the full value of sale irrespective of the stage of construction status.

INPUT TAX CREDIT AND WC IMPLICATIONS.

In terms of Sec. 17(5) (a)(ii) of the CGST Act, 2017, Input Tax Credit is allowed on Tippers and Dumpers which qualify as Motor Vehicles (under Clause (28) of Section 2 of the Motor Vehicle Act, 1988 read with Section 2(76) of the CGST Act, 2017) used for transportation of goods. Thus, the restrictions envisaged under Section 17(5)(a) ibid is not applicable in respect of Tippers, Dumpers & JCBs; and as such Input Tax Credit of GST paid on them, is admissible.

INPUT TAX CREDITSTOC AND WC IMPLICATIONS.STOCK TRANSERS

- BETWEEN THE SAME STATE AND SAME TIN NO…. NO TAX. DELIVERY CHALLAN WILL DO
- BETWEEN TWO DIFFERENT STATES – SECT 25(4)- TAX BUT ITC AVAILABLE TO THE TRANSFEREE BRANCH. VALUATION AS PER SECTION 15 READ WITH RULE 28

INPUT TAX CREDIT AND WC IMPLICATIONS.- SOME FLATS SOLD SOME NOT SOLD

Input Tax Credit in the above mentioned situation would be restricted to the amount as is attributable to the taxable supplies (flats on which GST is liable to be paid). The method of attribution of eligible ITC has been prescribed under the provisions of Rules 42 (for inputs and input services) and Rule 43 (for capital goods) of the CGST Rules, 2017. If claimed, reverse with interest.

INPUT TAX CREDIT AND WC IMPLICATIONS.

Cash Refund for inverted duty structure.

Notification No. 15/2017-CT (Rate) dated 28.06.2017 (54(3))

Not available

INPUT TAX CREDIT AND WC IMPLICATIONS. ITC FOR CLOSING STOCKS.

Whether Credit of duties/taxes paid on the inputs lying in stock as on the appointed day i.e. 01.07.2017 is allowed in respect of residential/commercial complexes which are under construction as on 1.7.2017?

In terms of Section 140(3) of the CGST Act, 2017, credit of eligible duties is allowed to the suppliers of construction services (builders/developers who were availing abatement in terms of Notification. No. 26/2012-ST dated 20th June, 2012) in respect of the inputs lying in stock as on 01.07.2017 provided that:

(i) such inputs or goods are intended to be used for making taxable supplies;
(ii) the said registered person is eligible for input tax credit on such inputs;
(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under CENVAT Credit Rules, 2004, in respect of such inputs; and
(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day i.e., 1.7.2017.

INPUT TAX CREDIT AND WC IMPLICATIONS LIABILITY TO PAY GST WHERE SERVICE TAX ALREADY PAID IN EARLIER LAW.

No.

In terms of Section 142 (11) (b) of the CGST Act, 2017, GST is not payable to the extent of the Service Tax was paid / payable under the provisions of chapter-V of the Finance Act, 1994. Nevertheless, the leviability of Service Tax on the subject services shall be determined by applying the Point of Taxation Rules 2011 as per which if services have been provided or deemed to have been provided on or before 30.06.2017, no GST is payable on the same

INPUT TAX CREDIT AND WC IMPLICATIONS ADDITIONAL CHARGES

BEFORE HANDING OVER (oc) WILL BE INCLUDED IN TRANSACTION VALUE AND ACCORDINGLY GST WILL BE PAID – 18 PERCENT ON 2/3 (MINUS LAND)

OTHERWISE FULL 18 PERCENT.

INPUT TAX CREDIT AND WC IMPLICATIONS.

Whether „other charges" collected by the builders/developers towards „ prime/preferential location", „ parking facility", „ firefighting installation" etc. can be deducted from the total consideration for payment of GST ?

WILL also attract GST as applicable to the principal supply (construction service)as they are naturally bundled and supplied in conjunction with the construction service. Therefore, GST at the rate of 18% on 2/3rd of the Value for such naturally bundled services is payable on the said charges also.

GST is payable in respect of on-going projects, for which neither occupancy certificate was received nor it is yet to be occupied, as on the appointed date i.e. 01.07.2017?

The Sec. 142(10) and 142(11) of the CGST Act, 2017

1. (i) when the total consideration was received prior to 30.06.2017 from the customers in respect of the property under construction (for which neither occupancy certificate was received nor it is yet to be occupied) - Service tax is/was payable on the consideration received @15% on 1/4th of the consideration; and there would be no GST on the same. (Sec. 142(11)(b)- refers);

PRE GST AND POST GST ISSUES

ii) when a part of the consideration was received prior to 30.06.2017 from the customers in respect of the property under construction (for which neither occupancy certificate was received nor it is yet to be occupied) - Service tax (ST) is/was payable on the consideration received prior to 01.07.2017 i.e.: @15% on 1/4th of the consideration; and there would be no GST to the extent of that amount for which ST was paid/payable. For the remaining consideration paid/payable on or after 01.07.2017, GST is payable with reference to the date of payment of the balance amount or the date of invoice issued by the builder, whichever is earlier (generally invoice reckons to the payment milestones as per the agreement between the builder/developer and the buyer).

PRE GST AND POST GST ISSUES

iii) In respect of an ongoing construction project(for which neither occupancy certificate was received nor it is yet to be occupied), when the milestone for payment was achieved by the builder/developer, who raised an invoice within 30 days from the same(as required by law) prior to 30.06.2017, but the payment is received from the customers in respect of the said invoice on or after 01.07.2017, - Service tax is/was payable on the consideration so received @15% on 1/4th of the consideration; and there would be no GST to that extent. On the balance amount payable or paid w.r.t the subsequent payment milestones falling on or after 01.07.2017, GST is payable, as mentioned at (ii) above.

PRE GST AND POST GST ISSUES

iv) when the total consideration is received, as per the agreed terms, on or after 01.07.2017 from the customers in respect of a property under construction (for which neither occupancy certificate was received nor it is yet to be occupied) - GST is payable @ 18%, on 2/3rds of the consideration.

Whether GST is payable on the owner's share of the flats/houses/portion of the building constructed by the builder/developer and given to the land owner as per the development agreement?

The builder/developer is liable to pay GST even on the share of the land owner and given in lieu of the land received for the development, besides GST on the builder/developer's share of the complex/building. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash. Thus the builder is liable to pay GST not only on his portion of the complex/building, but also on the share of the land owner

IMPORTANY SERVICES ENJOYING EXEMPTION

- The following exemptions are available to the construction services, under GST law:

- Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana. Sl. No. 10 of Not. No. 12/2017-CT (Rate) dated 28.06.2017
- Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex. Sl. No. 11 of Not. No. 12/2017-CT (Rate) dated 28.06.2017
- The services rendered by the departments of the Central/State Governments, Union Territories and local authorities (E.g.: CPWD or State PWD) to other Central/State Governments, Union Territories and local authorities (Recipients) are fully exempted as per Entry No. 8 of Notification. No. 12/2017-CT (Rate) dated 28.06.2017.

Whether Layout Charges/ Development Charges, plotting Charges /conversion charges collected by the Municipal/panchayat authorities from the builders/developers attract GST under reverse charge?

As per the entry at Sl. No. 4 of Notification no.12/2017-CT(R) the services by Central Government, State Government, Union Territory, Local Authority or Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution, are exempted. "Regulation of land-use and construction of buildings" is listed as one of the functions entrusted to Municipality at Sl.No. (b) of 12th schedule under Art. 243W of the Constitution. Since the subject Layout Charges/ Development Charges; plotting / land conversion charges, are collected under the authority of the respective state legislation, in relation to the said functions under Art. 243W, the said charges for the concerned services are exempted undersl.no.4 of Notification No. 12/2017-CT (R) dtd: 28.06.2017. Hence, such charges collected by municipality/town planning/ Revenue authorities, GST is not liable to be paid, since the such charges are collected for the services in relation to the functions under Art. 243W of the Indian Constitution.

Exempt Services under GST

Section II of the CGST Act and **Section 6 of the IGST Act**, gives the power to grant exemption from GST as well as the State Act consists the similar provisions relating to granting power to exempt SGST.

Exempt Services under GST

- Exemptions from GST (Health Care Services)
- Charitable and Religious Sector Exemptions from GST
- Exemptions from GST in Legal Sector
- Exemptions related to Agriculture Services
- Exemptions from Transport Sector
- Transportation of Goods Exemptions from GST
- Exemptions from GST relating to Renting of Immovable Property
- Exempted from GST related to Entertainment Sector
- Exemptions Related to Banking and Financial Sector
- Education and Training Sector Exemptions from GST

Exempt Services under GST

- Exemptions relating to Services Provided by Sportsman to Recognised Sports Body
- Exemptions from GST in Government Sector
- Exemptions from Services Provided by Government
- Exempted Services Provided to Government
- Other Government Sector
- Exemptions from GST in Construction Sector
- Exemptions in Life / General Insurance Sector
- Exemption to SEZ
- Exemption for the Services wherein Location of service provider is in a non-taxable territory
- Exemption received by RBI from outside India
- Services Provided by Tour Operator
- Other Goods and Services covered under Exemption from GST

Exempt Services under GST

- Services provided to Govt. of article **243G** in relation to any function entrusted to a Panchayat or article **243W** to Municipality.

S. No. 3 of Notification No. 9/2017 - Integrated Tax (Rate) dated 28.06.2017

- Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government or Union Territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution
- Thus, as per S. No. 3, the services are exempt from GST only if services offered are: (a) Pure services without any supply of material; and (b) Are in relation to any functions which are entrusted to the Municipality as per Article 243W of the Constitution of India.

Notification No. 2/2018 - Integrated Tax (Rate) dated 25.01.2018

Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Article 243W of the Constitution includes following services as municipality services

(a) **Urban Planning including town Planning.**

(b) Regulation of land-use and construction of buildings

(c) Planning for economic and social development.

(d) Roads and bridges.

(e) Water supply for domestic, industrial and commercial purposes.

(f) Public health, sanitation conservancy and solid waste management.

(g) Fire services

(h) Urban forestry, protection of the environment and promotion of ecological aspects.

(i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

(j) Slum improvement and upgradation.

(k) Urban poverty alleviation.

(l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.

(m) Promotion of cultural, educational and aesthetic aspects.

(n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

(o) Cattle pounds, prevention of cruelty to animals.

(p) Vital statistics including registration of births and deaths.

(q) Public amenities including street lighting, parking lots, bus stops and public conveniences.

(r) Regulation of slaughter houses and tanneries.

Article 243W

243W Powers, authority and responsibilities of Municipalities, etc. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-

(b) (i) the preparation of plans for economic development and social justice;

(c) (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule; (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule

Article 243W

The "Twelfth Schedule" of the Constitution of India reads as under:

1. Urban planning including town planning.
2. Regulation of land-use and construction of building.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial pusposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.

ARTICLE 243W

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds, cremation, cremation grounds and electric

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

ARTICLE 243W

- According to the Article 243W and Twelfth Schedule of the Constitution of India, the Municipalities have powers and responsibilities only with respect to the:
- (i) preparation of plans for economic development and social justice and (ii) performance of only those functions which may be entrusted to them by the Legislature of a State including those in relation to the matters listed in the Twelfth Schedule.

No other services could be covered. The question will vary from facts to facts of the case and we need to bring the case within the four corners of this Article to claim exemption.

Exemptions from GST in Construction Sector

- Services provided by way of pure labour contracts of Construction, Erection, Commissioning, installation, completion, fitting out, repair maintenance, renovation or alteration of –
  - Civil Structure or
  - Any other original works
- Pertaining to the beneficiary-led individual house construction or enhancement under the **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana**.
- Services of pure labour contracts of construction, erection, commissioning, installation of original work pertaining to a **single residential unit otherwise than as a part of a residential complex.**

Exempt Services.

- **Exemption to SEZ**
- Exemption for goods or services or both imported by a unit or a developer in the Special Economic Zone from the whole of the integrated tax leviable thereon under sub section (7) of section 3 of the Customs tariff Act, 1975 for authorised operations.
- (For the goods imported under SEZ, no IGST or Custom Duty will be levied on such

The FAQ : Government Services issued by CBEC clarified as follows

What is the scope of 'pure services' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

- BOT CONTRACTS AND GST –
- MY VIEW NO INPUT TAX CREDIT TILL OUTUT TAXABLE SUPPLY MADE.

JOINT DEVELOPMENT AGREEMENTS

A BRIEF CURTAIN RAISER ONLY.

JOINT DEVELOPMENT AGREEMENTS

BRIEF CONCLUSIONS

- **GST** is NOT **payable** on the sale and **purchase** of "residential premises", unless the **property** being sold is new **property**. ... So, in most ordinary sales of residential real estate the vendor will not be required to pay **GST**, and the purchaser cannot be made liable to pay an amount for **GST**.

- Under GST, the treatment of works contract has been much simplified, now considered purely as a service. Also, the GST rate for works contract has been fixed at 18 per cent. This not only eliminates the dual treatment of works contract, but also makes life easier for a contractor and sub-contractor by subsuming all the previously applicable taxes, again a positive GST impact on real estate developers

JOINT DEVELOPMENT AGREEMENTS

GST on rent

Under GST, the treatment of rentals is very clear. Those landlords, who are earning rental income by letting out their properties for residential use will not be taxed under GST – thus there is no GST on rent paid for homes. However, the GST rate on rent of commercial property will be 18 per cent, and will need to be levied only by those who are earning over Rs 20 lakh annually. In case the landlord is unregistered due to threshold limit, then the taxable person has to pay GST on rent under reverse charge – at the standard GST rate on commercial rent

JOINT DEVELOPMENT AGREEMENTS

When the entire sum is paid before the implementation of GST, but construction is completed after the introduction of GST.

If the invoice is raised pre-GST, then service tax will be charged on the full value of the agreement. So even if the construction is completed after implementation of GST, you will not have any further tax liability under the GST law. The GST is a substitute for the earlier taxation schemes of service tax and VAT.

- **No GST impact in case of resale property**
- Once a completion certificate is issued by a government authority, or if the property has undergone occupation, it means it is a case of resale. Hence, the tax should not be charged if the property is being bought after the issuance of completion certificate.

JOINT DEVELOPMENT AGREEMENTS

- **No GST on completed properties**
- Transfer of completed property is not considered as rendering services to a buyer and thus does not attract GST. According to the CBEC's recent clarification, “Sale of building is an activity or consideration which is neither a supply of goods nor a supply of services. (Para 5 of schedule III of the CGST Act, 2017).” So if you buy a completed property, it will help you save money in form of tax.

JOINT DEVELOPMENT AGREEMENTS

- **GST applies to under-construction properties**

If you are buying an under-construction property, it is considered as availing a service from the builder; hence, you are supposed to pay GST on it. According to the GST law, construction of a building, complex or a part of it, intended for sale to a buyer, attracts GST on the sale price. However, the tax should not be charged if the property is being bought after the issuance of completion certificate by a government authority or after the property has undergone occupation, which means it is a case of resale.

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An under-construction property attracts GST at the rate of 18%. But it is not charged on the entire value of the property; it is charged only on two-third of the value. One-third value of the property is considered as the cost of land. According to CBEC, “effective rate of GST payable on purchase of under-construction residential or commercial properties from builder involving transfer of interest in land or individual share of land to the buyer is 12% with full input tax credit (ITC).

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Also, real estate services which do not include transfer of land rights attract GST on the entire amount. According to CBEC, “consideration which doesn’t constitute transfer in land or undivided share of land as part of consideration, such as construction services provided by a sub-contractor to the builder, attract GST at the standard rate of 18% with full ITC

JOINT DEVELOPMENT AGREEMENTS

- Real-estate industry generally operates in various models such as

1. Joint-development Model
2. Slum Rehabilitation Projects
3. Redevelopment of Societies

JOINT DEVELOPMENT AGREEMENTS

- In case of joint development model,

- the land owner and the builder get into an agreement (Joint Development Agreement – JDA) to construct the building, sell the flats, and share the profits in a particular ratio. Under a JDA, the land belongs to the owner which is with the developer doing the construction. Once the developer has performed his obligation and completed the project, the two parties share revenues or the areas in a pre-requisite ratio. To illustrate, if under the revenue-share model the ratio is 25:75 and apartments in a project are sold for Rs 100 crore, out of the total revenue realized, 25% will go into an escrow account as part of the landlord's share. Under the area-share agreement in the same ratio, 25% apartments may form part of the landlord's share and the rest will go to the builder.

JOINT DEVELOPMENT AGREEMENTS

- **Slum Rehabilitation Projects**

- Under slum rehabilitation scheme, land of slum dwellers, that are eligible under the criteria of Slum Rehabilitation Authority (SRA), is given to a developer who builds a permanent structure for slum residents. The developer in return gets additional Floor Space Index who can then build a sale component and make profit.

JOINT DEVELOPMENT AGREEMENTS

- **Redevelopment of Societies**

- Under the redevelopment model, the land is owned by the society. Generally, society or the members of the society, enter into an agreement with the builder for re-construction/re-development of the property owned by the society or the members of the society. Under the redevelopment model, the builder/developer get consideration as under:

a. From existing tenant/society member in the form of development rights over the land including the permission to construct the additional flats and

b. From new flat buyers whom the builder/developer sells additional flats

JOINT DEVELOPMENT AGREEMENTS

GST IMPLICATIONS – MY VIEW

JOINT DEVELOPMENT AGREEMENTS

- **Redevelopment of Societies and GST implications**
- This can be explained well with the help of a practical example:

a. A society consists of 3 complexes and a slum area. The members of the society decide to redevelop the existing properties and rehabilitate the slum area. They get into an agreement with a builder who agrees to demolish the existing property and develop 4 new complexes and a slum area.

b. As per the terms of the agreement between the society and the builder, the existing owners of the 3 complexes and slum area shall get the additional 20% of the constructed area than the present area.

c. The builder will pay the rent and other compensation to the dwellers of the society for temporary accommodation during the construction period. The builder shall also pay some amount towards society's corpus fund.

- The additional complex constructed by the builder shall be sold by him to new buyers at his own discretion

JOINT DEVELOPMENT AGREEMENTS

Registration for development, plan passing and permission from local authority by builder

- 1. ***GST in the hands of builder*** –

Such services received from Local Authority shall be covered under Reverse charge and GST will be payable under reverse charge by the builder.

2. ***GST in hands of society/complex owners*** –

Not applicable

JOINT DEVELOPMENT AGREEMENTS

Payment towards Society's Corpus Fund

- ***GST in the hands of builder*** –
- Not applicable
- ***GST in hands of society/complex owners*** –

This payment received by the society/members towards the Corpus Fund constitute consideration for land development rights and cannot be taken into account in an isolated manner. Since the transfer of land rights is neither supply of goods nor supply of services and hence is out of the ambit of GST, consideration received for the same will also remain non-taxable

JOINT DEVELOPMENT AGREEMENTS

Rentals and other compensation paid to owners of Buildings and Society

- ***GST in the hands of builder*** –
- Not applicable
- ***GST in hands of society/complex owners*** –
- This rental amount and other compensation received by the society/members towards the Corpus Fund constitute consideration for land development rights and cannot be taken into account in an isolated manner. Since the transfer of land rights is neither supply of goods nor supply of services and hence is out of the ambit of GST, consideration received for the same will also remain non-taxable.

JOINT DEVELOPMENT AGREEMENTS

- **Collections from the new owners (Before and after completion certificate)**
- ***GST in the hands of builder*** –

a. **before completion certificate** –Consideration received from the new owners before completion certificate shall be taxable under GST. This will be regarded as supply of services under para 5 (b) of Schedule II – "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."

b. **after completion certificate** - Consideration received from the new owners after completion certificate shall not be taxable as this will be considered as sale of building which is neither treated as supply of goods nor a supply of services as per Schedule III, Para 5 of CGST Act.

JOINT DEVELOPMENT AGREEMENTS

- **Transfer of units to existing building owners**
- ***GST in the hands of builder*** –
- Units constructed by the developer for the existing owners shall be subject to GST. The time of supply shall be the date of agreement for transfer of rights by the owners and builder. The builder shall be liable to pay full GST on the units allotted to the existing owners. The valuation shall be done as per Valuation rules.
- ***GST in hands of society/complex owners*** –
- Not applicable

JOINT DEVELOPMENT AGREEMENTS

- **Valuation Rules in case of transfer of units to existing building owners**
- According to rule 1 of Determination of value of supply "Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,
- (a) be the open market value of such supply;
- (b) if open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 4 or rule 5 in that order.
- Further rule 4 states "Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services."

JOINT DEVELOPMENT AGREEMENTS

Transfer of Development Rights by land owner and society to builder

- ***GST in the hands of builder*** –Not applicable
- GST in hands of society/complex owners –TDR

All the activities specified in Schedule III under Section 7 shall be treated neither as supply of goods nor supply of services. Entry No. 5 of Schedule III covers sale of land. Land development right is a right to carry out development or to develop the land or building or both (see Girnar Traders v. State Of Maharashtra [2011] 3 SCC 1)

My take: transfer of land rights is neither supply of goods nor supply of services and hence is out of the ambit of GST

JOINT DEVELOPMENT AGREEMENTS

- **GST rate on supply of services to existing flat owners/society members**
- There are two possible views on rate of tax at which GST would be levied on supply of services (by way of transfer of units) to existing flat owners/society members.
- i. One view is that, as the land is owned by the society and only development right are transferred to builders and **no point in time the land is conveyed to developer**, the rate of tax shall be **18% without any deduction for value of land**.
- ii. Other view is that, transfer of development right in land being the benefit arising from land, thus the same shall be considered as benefit arising from immoveable property. Therefore even the development rights in land shall be considered as immovable property i.e land. According to this view there being two transactions, the first being transfer of rights in land by the existing society members to the builder/developer and second being the free sale of flats by the builder/developer to exiting society members along with interest in land and the rate of tax under the GST will be **18% with 1/3rd deduction towards the value of land.**

JOINT DEVELOPMENT AGREEMENTS

- **Valuation Rules in case of transfer of units to existing building owners r.w Rule 27**
- According to rule 1 of Determination of value of supply "Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,
- (a) be the open market value of such supply;
- (b) if open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 4 or rule 5 in that order.
- Further rule 4 states "Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services."

Simple illustration.

- **Let us take an example to understand the above better.**
- **Total No. of flats in the project : 50**
- **Flats for Builder : 25**
- **Flats for Landowner : 25**

- Builder is selling his flats for : Rs.50 lakhs each.
- Out of the above, value of UDS land : Rs.10 lakhs.
- For paying GST for the services provided by the builder to his buyers, he has the following options:

(i) 18 % on 2/3 of Rs.50 lakhs per flat = Rs.6,00,000 (S.NO. 3 (i) of Notification 11/2017)

(ii) 18 % on Rs. 40 lakhs (excluding UDS value) = Rs.7,20,000 (S.NO.3(ii) of Notification 11/2017).

- For paying GST for the services provided by the builder to the landowner, irrespective of whatever method he followed for payment of GST for buyers,
- As and when he receives the UDS value from each of his buyers, such UDS value would be treated as value of service supplied to the landowner and GST would be payable on such UDS value @ 18 %. The total GST liability in respect of landowner would thus be 25 flats X Rs. 10 lakhs X 18 % = Rs.45,00,000.