

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING
FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/DS-RM/ 19 /2022-23

Date- 30.03.2023

BEFORE THE BENCH OF

(1) Shri. Dr. D.K. Srinivas, MEMBER (Central Tax)

(2) Shri. Rajeev Kumar Mital, MEMBER (State Tax)

Name and Address of the Appellant:	M/s Puranik Builders Limited, Puranik One Kanchanpushp Complex Opp Suraj Water Park, Kavesar Ghodbunder Road Thane, 400615.
GSTIN Number:	27AABCP0109R1Z9
Clause(s) of Section 97, under which the question(s) raised:	(a) Classification of any goods or services or both;
Date of Personal Hearing:	10.11.2022
Present for the Appellant:	Shri. Gaurav Sugani, Advocate
Details of appeal:	Appeal No. MAH/GST-AAAR/04/2021-22 dated 02.11.2021 against Advance Ruling No. GST-ARA- 68/2019-20/B-52 dated 27.08.2021.
Jurisdictional Officer:	Deputy Commissioner, THA-VAT-E-005,Thane Division

**(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and
the Maharashtra Goods and Services Tax Act, 2017)**

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is made in respect of such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.



2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “CGST Act” and “MGST Act”] by M/s. M/s Puranik Builders Limited, Puranik One, Kanchanpushp Complex Opp Suraj Water Park, Kavesar Ghodbunder Road Thane, 400615. (“hereinafter referred to as “the Appellant”) against the Advance Ruling No. GST-ARA-68/2019-20/B-52 dated 27.08.2021., pronounced by the Maharashtra Authority for Advance Ruling (hereinafter referred to as “MAAR”).

3. FACTS IN BRIEF.

3.1. M/s. Puranik Builders Limited, having its corporate office at Puranik One Kanchanpushp Complex Opp. Suraj Water Park, Kavesar Ghodbunder Road Thane, 400615, is, inter-alia, engaged in the business of construction and sale of residential apartments, wherein the appellant discharges Goods and Services Tax (GST) in respect of supply of construction of residential apartments sold prior to receipt of the Occupancy / Completion Certificate. The Appellant has obtained registration and holding valid registration certificate issued under CGST Act, 2017.

3.2. The terms of sale of an under construction residential apartments by the Appellant are governed by an “Agreement for Sale” entered between the Appellant and the customers, which upon completion of construction is supplemented by a sale deed.

3.3. The construction services provided by the appellant are classified under SAC code 9954 and are covered under Entry 3 of Notification No.11/2017- (Central Tax-Rate), (hereinafter referred as Rate Notification). As per Paragraph 2 of Rate Notification, value of transfer of land or undivided share of land is deemed to be 1/3rd of the total value of construction services and the same is deducted from the total value of the construction services to arrive at the taxable value, for the purpose of levy and collection of GST.

3.4. As a part of terms of Agreement for Sale between appellant and customers, the Appellant is to provide certain other services (hereinafter referred as “other services”). The consideration towards the other services is provided for in the sale agreement which is collected under the respective heads. They are distinctly identified in the sale agreement.

3.5. As per the documents submitted, the residential project doesn't fall under affordable housing category and the appellant is collecting GST and discharging the liability at the rate of 12%.

3.6 Presently the appellant has been collecting and discharging GST at the rate of 18% on the Other Charges collected from its customers in respect of the sale of residential apartments.

3.7 The appellant has submitted a list of heads of charges generally recovered from the customers. A list of such charges generally recovered by the appellant for their various projects is as under-

Sr. No.	Description of charges	Brief explanation
1	Electric meter installation and deposit for meter	Paid by the appellant to Maharashtra Electricity Board for each unit at construction stage and later reimbursement is claimed from the customer.
2	Water connection charges	Paid by the appellant for each unit at construction stage and later reimbursement is claimed from the customer.
3	Share of municipal taxes	Pertains to property tax required to be paid for period post receipt of Occupancy Certificate. The amounts are used for paying such tax.
4	Advance maintenance	Collected on behalf of the society yet to be formed. These amounts are used for maintenance till the time society is formed and upon formation of society, any unspent amount is transferred to the society.
5	Club house maintenance	Collected on behalf of the society yet to be formed. These amounts are used for maintenance till the time society is formed and upon formation of society, any unspent amount is transferred to the society.
6	Development charges	Additional charges for development of the project computed based on premium paid to the Municipal Corporation for the project and various other factors.
7	Share money. Application & entrance fee of the organization	charges of making application for allotment, share money for future society of residents, etc.
8	Formation and registration of the organization and legal charges in connection therewith	Charges in respect of formation of future society of residents and associated legal cost.
9	Infrastructure charges	Additional charges for development of common area infrastructure.
10	Legal fees	Charges for legal cost of the transaction of sale of residential apartments.

4. The order of Advance Ruling Authority: -

4.1 The Appellant had filed an application before the Advance Ruling Authority (AAR) to seek the answers for following two questions in respect of other charges recovered from the customer.

(a) *Whether the Other Charges received by the company will be treated as consideration for construction services of the Company and classified under HSN 9954 along with the main residential construction services of the Company or whether the same will be treated as consideration for independent service(s) of the respective head?*

(b) *Consequently, what will be the applicable effective rate of GST on services underlying the Other Charges?*

4.2. The AAR passed an order rejecting the contention of the appellant that other services are part of a composite supply with construction services being the principle supply. It held that "other charges" will not be treated as a consideration for construction services and will be treated as consideration received against supply of independent services of the respective heads. It is further held that other charges would be taxable as per the respective SAC codes prescribed under Rate Notification and taxable @ 18% without any abetment.

4.3. The AAR rejected the contention of the appellant on following grounds.

- The contract entered into vide impugned agreement is for supply of construction services.
- For payment of stamp duty consideration towards construction services is only taken into account. The appellant cannot take different and conflicting stand about considerations for the same activity before the two independent authorities.
- The agreement was intended to transfer the ownership right in flats only and not of the adjoining area and other amenities for which charges are collected.
- The charges for construction of residential unit and other services are shown

separately.

- These facilities/ amenities provided by the applicant to its customers for the limited period because, for these facilities created the customers haven't been given perpetual rights as per the said agreement. Therefore, it is held that the impugned transactions are not part of a composite supply.
- Therefore, these other services do not part of original construction service.

5. Appeal before the Appellate Authority of Advance Ruling (AAAR) :-

5.1 Being aggrieved by the order of AAR, the Appellant has filed an appeal before the Appellate Authority of Advance Ruling (AAAR). The appeal needs to be filed within 30 days from the date of communication of AAR order. The order of AAR was passed on 27.8.2021 while the Appeal against the said order is filed on 02/11/2021. Thus the appeal is filed late by 36 days. Section 100 provides for condonation of delay up to further 30 days. The appeal has been filed after the stipulated 30 days. So it is liable to be rejected on the ground of barred by limitation. However, the appellant has found support in the Supreme Court order in SMW(C) No.3 of 2020 dt.23.9.2021. The relevant part of the Supreme Court order is reproduced below:-

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.3.2020 till 2.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.3.2021, if any, shall become available with effect from 03.10.2021.

5.2 Thus, the period from 27.8.2021 to 3.10.2021 will stand excluded from the period of limitation. As a result, appeal application filed on 02/11/2021 is treated as filed in time and it is admitted for disposal.

6. The Grounds of Appeal: -

6.1 The impugned order is erroneous and bad in law and has not properly appreciated the

factual and legal position.

6.2 The AAR has overlooked the submissions made by the Appellant and has mechanically ruled that services supplied in respect of “other charges” are not naturally bundled.

6.3 The impugned order is liable to be set aside as it is arbitrary and based on fallacious presumptions.

7. Personal Hearing :-

The personal hearing in the matter was conducted on 10.11.2022. It was attended by Mr. Gaurav Sugani, Advocate on behalf of the Appellant. Shri. Sugani, reiterated the submissions made in writing. He described the services provided by the Appellant and emphasised that supply of construction services and other services is a composite supply, supplied in conjunction with each other, naturally bundled and supplied in the ordinary course of business. He also submitted that the payment of stamp duty shouldn't be considered for determining the nature of services.

8. Contention of the Appellant:-

8.1 The primary contention of the appellant is that the supply of construction services and consideration in respect of other charges (for electricity meter connection and water charges, property tax payment. Infrastructure development, legal fees etc.) is a composite supply. The appellant has reproduced the definition of Composite supply as provide in section 2(30). It has tried to interpret the concept by analyzing the attributes of composite supply. There are three attributes, namely,

- a) The supply should consist of **two or more taxable supplies**, where the supply may be of goods or services or both, or any combination thereof;
- b) Such supplies should be **naturally bundled** and supplied in conjunction with each other **in the ordinary course of business**
- c) One of the supplies should be **a principal supply**.

8.2 Appellant has submitted that there is no dispute that supply of construction services and supply of other services are two taxable supplies.

8.3 The Appellant has referred to the Education Guide to Taxation of Services dt.20.6.2012

published by the Tax Research Unit, Central Board of Excise & Customs. Whether the services are bundled in the ordinary course of business is dependent on following indicators/ characteristics.

a) *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.*

b) *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*

c) *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.*

d) *Other illustrative indicators, not determinative but indicative of bundling services in ordinary course of business are –*

- *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*
- *The elements are normally advertised as a package*
- *The different elements are not available separately*
- *The different elements are integral to one overall supply- if one or more is removed, the nature of the supply would be affected.*

8.4 The Appellant has submitted that principles laid down in the Education Guide are applicable in the present case in terms of,

a) perception of the service receiver,

- b) majority of service providers provide similar bundle of services,
- c) other charges are in the nature or incidental or ancillary services,
- d) they are advertised as single package, and
- e) further it is claimed they are not available separately.

8.5 The Appellant has relied upon the Supreme Court observations in respect of “dominant intention test” in case of composite contracts (BSNL vs Union of India (2006) 145 STC 91 (SC). The Court observed, “***The test for composite contracts remains to be – did the parties have in mind or intend separate rights arising out of the sale of goods. The test for deciding whether a contract falls into one category or the other is as to what is “the substance of the contract”. We will for the want of a better phrase, call this the dominant nature test.***” The Appellant emphasizes that the primary dominant intent of the customer is to purchase the resident apartment and all other facilities/ services are incidental to the main supply of construction of residential apartment.

8.6 The Appellant has relied upon Maharashtra AAR in the case of M/s Joyville Shapporji Housing Private Limited (hereinafter referred to as “Joyville”). It is submitted that the facts in the said AAR are identical to the facts in the present case.

9. DISCUSSIONS AND FINDINGS: -

9.1 We have carefully gone through the entire appeal memorandum containing the submissions made by the Appellant vis-a-vis the Advance Ruling passed by the MAAR, wherein the MAAR has held that services in respect of other charges are independent of construction services. Other charges don’t form part of a composite supply. Therefore, the moot question in the present appeal is the nature of and rate of tax on other charges received from customers by the Appellant. The Appellant has stressed that it is a composite supply with construction of residential apartment as the principle supply and other services provided are incidental to the main supply.

9.2 The perception of the consumer or the services receiver is an important factor in

determining whether the services provided are bundled or not. In the construction of residential apartment sector, services in relation to water supply connection charges, electricity meter installation and security deposit for meter, development charges paid to Government authority/local authority, legal fees for transaction of sale of residential apartments can reasonably be expected to be supplied by the builder/ developer/ promoter of a residential project. They are inextricably linked to a residential apartment or dwelling. Without these aspects, the property may not be used. However certain other charges like advance maintenance, club house maintenance, infrastructure charges, share money application and entrance fee of the organization are not expected by every customer. These are not inextricably linked to the construction services in respect of residential projects.

9.3 In the said education note on which the appellant has relied heavily, other illustrative indicators which are indicative of bundling of services in ordinary course of business are provided (cited supra). The analysis of indicative indicators of bundled services show that they are largely not applicable to the case in hand. The other charges are received separately. It means indicator no a) and c) of para 8.3 are not complied with/ fulfilled. All the aspects may be or may not be advertised as a package. The submission of the appellant is silent on this aspect of the transaction. In fact, he has submitted that the charges are received separately to ensure transparency with the customer. Therefore first part of the indicator no. d) is absent i.e. ***there is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use*** in the present case.

9.4 In the present case, the different elements of transactions are available separately. The type of supplies or charges received in this case like advance maintenance charges, club house charges, share of municipal taxes (pertaining to period after occupancy), share money, application & entrance fee of the organization, formation and registration of the organization and legal charges in connection therewith and infrastructure charges (for development of common area infrastructure) are independent from construction service. Even though any one or all of them is removed from the contract, the supply of services of construction of residential apartment / dwelling goes unabated. Therefore, the test that different elements are integral to one overall supply, even if one or more is removed, the

nature of the supply would be affected, is not satisfied in the present case. So the nature of the other charges in respect of the above said independent services / activities which are not inextricably linked to a residential apartment shows that they don't fulfill the various tests of composite supply.

9.5 In view of the Supreme Court observations in respect of "dominant intention test", the intention of the contracting parties is of paramount importance. In the present case, the covenants (contained in the agreement for a sale of flat) in respect of other charges, demand consideration.

9.6 As per clause 33 (c), all open spaces, road, club house, garden, utility areas and common amenities, lobbies, staircases, terraces shall remain the property of the Promoter until the said property is transferred to the Apex body as herein mentioned but subject always to the rights, reservations, covenants and easements in favor of the Promoter as herein provided.

9.7 Clause 33 (d) states that Promoter shall have absolute and exclusive right and authority to use, utilize and consume present and future FSI and/or TDR which will be made available to them, by the concerned local authorities and the Allottee shall not have or claim any rights and/or claim any rights and/or benefits of whatsoever nature in respect thereof. These two clauses bring out the intention of the parties that customer will not have any claim other than the Apartment agreed to be taken by him/her. Even the benefits arising out of building will be available to promoter/Appellant only.

9.8 There is another clause that grants Promoter the right to use some of the common areas and external facilities to adjoining plot or any other plot in the vicinity of the said property (clause 33 (g)). All these clauses bring out the real nature of the services provided other than construction services. The property in such services (in terms of use, ownerships, etc.) isn't fully transferred to the customers. Hence it is logical and legal to treat such services as not having any inextricable link to the construction services and need to be treated as independent supply of services.

9.9 The Appellant has relied upon the case of Advance ruling authority order dated 26.12.2019 in respect of M/s Joyville Shapoorji Housing Private Limited (herein after referred as "Joyville"). However the facts of the case are different from the present matter.

Firstly, the project of the appellant doesn't fall under Affordable House Category while "Joyville" was a project under affordable housing category. In said case, the issue before authority was to decide whether the expression "the gross amount charged" provided in definition of affordable residential unit includes all charges paid to builder in respect of units with area less than 60 sq.Mtrs. only. The AAR decided in affirmative relying on the explanation provided in Notification no.11/2017 which is applicable to Affordable Housing segment only. The Advance ruling authority in the said order made amply clear that 18% will be applicable on such amounts collected by Joyville from buyers of unit with area greater than 60 sq.Mtrs. Therefore the Joyville advance ruling order is not applicable in the present case.

Further the services provided would be considered as provided even when the entire consideration for the immovable property is received after issuance of Completion Certificate or Occupation Certificate. Here the services provided are clearly identifiable separately from the construction service. Further, other services provided can be offered only once and the purchaser of flat cannot offer such a service to a buyer from him during the resale.

Hon. High Court of Delhi in SURESH KUMAR BANSAL Versus UNION OF INDIA [2016(43) S.T.R. 3(Del.)] has held the Preferential Location Service as a taxable service.

54. Insofar as the challenge to the levy of service tax on taxable services as defined under section 65(105) (zzzzu) is concerned, we do not find any merit in the contention that there is no element of service involved in the preferential location charges levied by a builder. We are unable to accept that such charges relate solely to the location of land. Thus, preferential location charges are charged by the builder based on the preferences of its customers. They are in one sense a measure of additional value that a customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of the customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provided in the complex etc. As stated earlier, service tax is a tax on value addition and charges for preferential location in one sense embody the value of the satisfaction derived by a customer from

certain additional attributes of the property developed. Such charges cannot be traced directly to the value of any goods or value of land but are as a result of the development of the complex as a whole and the position of a particular unit in the context of the complex. Thus, it is an attempt on part of the appellant to subsume various other charges collected on the guise of Construction Services provided by him. The other charges collected by the appellant is clearly distinguishable from the main services provided.

10. Hence, in view of the above facts and discussion, it is clear that charges in respect of some services are inextricably linked while other services are independently provided to the customer. The dominant intention test and principles for determination of naturally bundled services point out the independent nature of some of the services. Therefore, following services are clearly identifiable as bundled services:

- (i) Water connection charges;
- (ii) Electric meter installation and deposit for meter;
- (iii) Development charges;
- (iv) Legal fees.

These aforesaid services are considered as naturally bundled services and taxable as per the rate of construction services. On the other hand, services of:

- (i) Club House Maintenance;
- (ii) Advance Maintenance;
- (iii) Share of Municipal Taxes (pertaining to period after occupancy)
- (iv) Formation and registration of the organization and legal charges in connection there with;
- (v) Share money, Application & entrance fee of the organization;
- (vi) Infrastructure charges

are determinable as independent supplies. The rate of tax thereon would be as per the respective service codes as mentioned in rate notification. The rate of tax on the inextricably linked services would be 12%

11. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

We, hereby, partly set aside the MAAR Order No. GST-ARA-68/2019-20/B-52 dated 27.08.2021 by holding that, in the facts and circumstances of the case, the other charges which are inextricably linked to services by way of construction of residential apartment /dwelling are part of a bundled service with principle service of construction of residential apartment /dwelling. The rate of tax applicable on such services would be 12% as applicable to the construction service. The other charges that don't pass the muster of indicators of a bundled service are held as supply of independent services. They are to be taxed as per the respective SAC codes and rate of tax thereon. As per the submission of the appellant, he has collected 18% of GST on the supply of such services. In respect of services which are allowed as bundled services, the present decision implies an excess collection of tax. It is hereby directed that the Appellant to refund the excess tax collected to the customers. Thus, the appeal filed by the Appellant is, hereby, partly allowed.



(RAJEEV KUMAR MITAL)
MEMBER



(Dr. D.K. SRINIVAS)
MEMBER

Copy to the:

- 1. Appellant;**
- 2. AAR, Maharashtra**
- 3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.**
- 4. Commissioner of State Tax, Maharashtra.**
- 5. Deputy Commissioner THA-VAT-E-005, Thane.**