

 <p>सत्यमेव जयते</p>	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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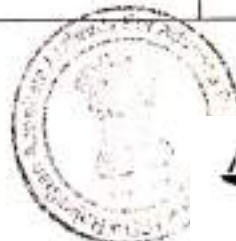
Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Pramod Kumar Singh, Member (Central Tax)
2. Sh. Abhishek Bhagotia, Member (State Tax)

ORDER NO. RAJ/AAAR/03/2020-21 DATED 18.11.2020

Name and address of the Appellant	:	M/s Hazari Bagh Builders Private Limited, 104 LIC Colony, 1st Floor, Vaishali Nagar, Ajmer-305001
GSTIN of the appellant	:	08AAECH7175C1ZL
Issues under Appeal	:	<ol style="list-style-type: none"> i. Whether the Lease Agreement between the Appellant Company i.e. the Lessee and RLDA for a period of 99 years is exempt from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017? ii. Whether the amount of Rs.158657105.00 which is transferred by the Appellant Company as Security Deposit in pursuance to the tender and lease agreement dated 08.11.2019 is exempt under GST in view of the Notification No. 04/2019-Central tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017? iii. Whether the amount of Rs.158657105.00 deposited during February, 2019 is exempt under Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?
Date of Personal Hearing	:	03.11.2020
Present for the appellant	:	<ol style="list-style-type: none"> 1. Sh. Pankaj Ghiya, Authorised representative 2. Sh. Ribhav Ghiya, Authorised representative 3. Sh. Ajeet Kumar Jain, Director, M/s Hazari Bagh Builders Private Limited
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/03/2020-21 against Advance Ruling No. RAJ/AAR/2020-21/05 dated 30.06.2020



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(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s Hazari Bagh Builders Private Limited, 104 LIC Colony, 1st Floor, Vaishali Nagar, Ajmer-305001 (**hereinafter also referred to as 'the Appellant'**) against the Advance Ruling No. RAJ/AAR/2020-21/05 dated 30.06.2020 on 21.08.2020.

BRIEF FACTS OF THE CASE

3.1. M/s Hazari Bagh Builders Pvt. Ltd., 104, LIC Colony, Vaishali Nagar, Ajmer-305001 is holder of GST Registration No. 08AAECH7175C1ZL.

3.2. Rail Land Development Authority (hereinafter referred to as "RLDA"), a statutory authority under Ministry of Railway, Government of India having its office near Safdarjung Railway Station, Moti Bagh-I, New Delhi issued a Request for proposal (RFP) (enclosed at Page 134 in the Lease Agreement Executed between RLDA and M/s Hazari Bagh Builders Pvt. Ltd) which was publicized by RLDA for grant of lease of Railways land at Hazari Bagh, Ajmer for 99 years on 15.02.2018 for Residential Purpose. M/s. H.S. Mehta Infra Pvt. Ltd. Ajmer submitted the bids for Plot A at Rs.159818170.00 lease premium and for Plot B as Rs.319074800.00 lease premium. It was mentioned in the financial bid Form-12 of both Plots A and B that the applicable taxes / duty /GST, if any shall be payable extra by the bidder in addition to the above quoted / offered rates (lease premium and annual lease rent). After the bids were submitted the Letter of acceptance (LOA) (Page 16-17 of lease Agreement) was issued on 26.09.2018 by RLDA to the consortium of M/s. H.S. Mehta Infra Pvt. Ltd. Ajmer (Lead Member), M/s G.S. Build State Private Limited and M/s Sankalp Realmart Pvt. Limited., 104, LIC Colony, Vaishali Nagar, Ajmer for combined land parcels of two plots A and B having quoted combined lease premium of both plots as Rs.478892970.00 with their letter No. 371 dated 26.09.2018. As per LOA, the Appellant will also have to deposit 'Annual lease Rent' which is Rs.200000/- for both the plots, to be revised upwards by 15% every three years. It was requested by RLDA to the Appellant to Form a new SPV as per conditions mentioned in the bid and pay Rs.143667891/- towards the payment of first installments of lease premium along with interest as applicable with applicable GST if any or as applicable on the date of deposition of the said payments. M/s. H.S. Mehta Infra Pvt. Ltd. Ajmer as lead partner with consortium formed a new SPV as per bid conditions named M/s Hazari Bagh Builders Pvt. Ltd. Ajmer and received its GST No. as 08AAECH7175C1ZL as mentioned at Page 52 of the lease agreement. New SPV i.e. Appellant deposited the amount of Rs.158657105/- by various RTGS as given detail on page No. 3 of lease agreement during February, 2019 as lease premium and interest. As per the terms of the Lease Agreement by way of Clause 26 (Page 399 of agreement), certain conditions have been enlisted where the lease agreement can be terminated if the same are not fulfilled. Appellant Company is registered in the State of Rajasthan and having GSTIN in State of Rajasthan. The Appellant Company has entered into a long term Lease Agreement of 99 years with RLDA for undertaking residential development as on 08.11.2019.

3.3 The appellant filed an application for Advance Ruling before the Rajasthan Authority for Advance Ruling seeking clarification for the following question:



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i. Whether the Lease Agreement between the Appellant Company i.e. the Lessee and RLDA for a period of 99 years is exempt from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?

ii. Whether the amount of Rs.158657105.00 which is transferred by the Appellant Company as Security Deposit in pursuance to the tender and lease agreement dated 08.11.2019 is exempt under GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?

iii. Whether the amount of Rs.158657105.00 deposited during February, 2019 is exempt under Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?

3.4 The Rajasthan Authority for Advance Ruling, (hereinafter also referred as 'the AAR') vide Advance Ruling No.RAJ/AAR/2020-21/05 dated 30.06.2020 passed the following order:

i. The Lease Agreement between the Applicant Company i.e. the Lessee and RLDA for a period of 99 years is not exempted from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

ii. The amount of Rs.158657105/- which is transferred by the Applicant/SPV in pursuance to the tender and lease agreement dated 08.11.2019 is not exempted under GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

iii. The amount of Rs.158657105/- deposited during February, 2019 is not exempted from GST vide Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

4. Aggrieved by the Ruling above, the Appellant has preferred the present appeal before this forum. The Appellant in its Appeal has, inter alia, mentioned the following grounds of Appeal:

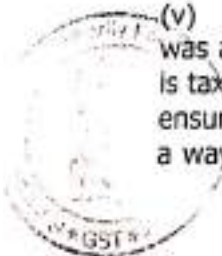
(i) Order dated 01.07.2020 passed by the learned Authority for Advance Ruling rejecting the contentions of the Appellant holding that the transaction is taxable under GST is improper and bad in law.

(ii) Order passed by the learned Authority for Advance Ruling is wrong, illegal and void per se as it is passed in a cryptic manner and completely ignoring the nature of the amount given by the Appellant to RLDA. The fact that the amount was paid prior to the entering of the Lease Agreement was not considered and that it was only a Security deposit which was fully refundable.

(iii) Authority has erred in passing the order in a routine manner without considering the illegal imposition of tax.

(iv) There are no findings given by the learned authority for holding that the amount paid is premium which is liable to tax and is liable to be set aside.

(v) The learned authority has considered in their Order that the Lease Agreement was already entered into and therefore, the amount payable was lease premium which is taxable. However, they themselves agree to the fact that security of the contract was ensured by way of payment of Security deposit. The said payment of amount was only a way to secure the bid by fulfilling the conditions of the same. The amount was paid



only to confirm the execution of the contract and not as a premium. The learned authority misinterpreted the terms of Letter of Acceptance and wrongly held that the amount was premium and not security.

(vi) As per the terms of the Lease Agreement by way of clause 26, certain conditions have been enlisted where the execution of lease agreement can be terminated if the same are not fulfilled. Clause 26.3 clearly states that any amount paid before the execution of the Lease agreement, is refundable in case of breach except the bid security submitted by the Applicant without prejudice to any other rights or remedies. This implies that amount which is paid in the month of February, 2019 before the execution of lease agreement i.e. 08.11.2019 is totally refundable and do not form part of the consideration and is only a deposit made for confirmation of contract and is in nature of Security. Therefore, it is not eligible to GST.

(vii) The Appellant Company has entered into a long term Lease Agreement of 99 years with RLDA for undertaking residential & commercial development along with development of financial infrastructure as on 08.11.2019. The Appellant Company paid a sum of Rs.158657105.00 in parts by way of RTGS on separate days in the month of February, 2019 as Security deposit which, in case of breach is refundable after forfeiting the bid security deposited separately for both the Plots as per the terms of the lease agreement which is Rs.3300000.00 for Plot A and of Rs.5200000.00 for Plot B. The issue to be examined before the learned Authority for Advance Ruling was whether the amount paid prior to 29.03.2019 in pursuance to the lease agreement of 99 years executed on 08.11.2019 are exempt from levy of GST or not.

(viii) The transaction in question is between RLDA and the Appellant Company to whom the land is given for undertaking commercial and development of financial infrastructure on a long term lease of 99 years vide a lease agreement A certain amount has been paid by the Applicant Company before entering into the lease Agreement as Security Deposit. The Long term Lease Agreement has been entered into between the Appellant Company and RLDA on 08.11.2019. It is important to note here that the amount paid by the Appellant Company in the month of February, 2019 was neither an advance nor a lease premium but is in the form of Security and if the Lease agreement is not entered then as per clause 26 of the agreement such amount is refundable in full. The said amount payable was paid after the bid was confirmed but before the execution of Contract of lease.

(ix) Long term lease agreement dated 08.11.2019 Clause 26 enlists certain conditions on breach of which the execution of lease agreement would stand terminated and the bid security paid by the Company would stand forfeited. However, it is to be noted that the amount otherwise paid to RLDA is fully refundable and the said arrangement is without prejudice to any other rights or remedies. It is quite clear that the amount which is paid without even executing the agreement could not possibly be construed to be a premium paid for such lease agreement. The amount so paid is only to secure and confirm the execution of the contract.

(x) As per agreement clause 26 as mentioned at page 399 of lease agreement the bidder whose bid is accepted shall be required to fulfill the mentioned point i.e. (a) to (e) in clause 26. As per clause 26.3 failure to fulfill any of the conditions specified therein shall constitute a breach of bid submitted by the bidder in which case the full value of only the bid security shall stand forfeited without prejudice to any other rights of remedies.

(xi) It can be stated that the payment against the lease agreement paid before 31.03.2019 as additional security. In the present case it is security on which no GST is applicable. As per clause 26.3 of the tender bid and lease agreement page 400 the said amount is refundable after forfeiting the security bid submitted by bidder during the bid in case of any default from (a) to (e) as mentioned on page 399 before execution of lease agreement. As agreement was executed on 08.11.2019 and paid amount before

this date is totally refundable in case default by bidder after only forfeiting the bids security it should be exempted from GST.

(xii) The said amount is not a premium and only a security by way of which the contract is confirmed it cannot attract the liability of GST. The payment of premium would commence only after the said agreement has been entered into and not prior to that. Any amount paid before entering into the contract and where no services are provided it cannot be considered as premium. Such amount is only for confirmation by the parties to enter into the Long term lease Agreement. The said amount does not fall under the scope of consideration as there was neither any contract between the parties nor any services provided. Hence, such amount is beyond the scope of GST.

(xiii) If the said amount is considered as "lease premium: It is to be pointed out here that the Government, Ministry of Finance by way of Notification NO. 4/2019- Central Tax Rate date 29.03.2019 has exempted any upfront amount payable for grant of long term lease of thirty years. Certain conditions have been prescribed in the said Notification which have not been violated by the Applicant and hence is squarely covered under the said Notification and is exempt from any GST liability for the amount paid in lieu of the agreement executed on 08.11.2019.

(xiv) The agreement has been executed on 08.11.2019, and the said notification covers any amount which becomes payable on or after 01.04.2019. In the present case as the agreement has been executed on 08.11.2019, the lease premium in pursuance to such an agreement is squarely covered under the said Notification and is totally exempt from the levy of GST. It is again submitted here that neither the agreement was executed nor any services of lease were extended by RLDA in the form of possession to the applicant therefore the amount if paid as premium after the exemption Notification came into effect.

(xv) Lease Agreement was entered into on 08.11.2019. Any amount paid before that was totally refundable and was only paid to secure the bid and was not a premium. Even if the amount is to be considered as premium it is not taxable by virtue of the above mentioned Notification as the transaction amount became a lease premium only after the execution of the contract and not prior to that. The learned Authority for Advance Ruling erred in interpreting the Notification and considering the amount as premium even before the execution of the Contract.

(xvi) Applicant is also involved in the development of Infrastructure on the land given on long term lease by the RLDA. Along with the development of residential plots, the Applicant is also engaged in developing the roads, sewage system, laying of the street lights, etc. The said transaction and any upfront amount paid in this respect (whether in installments or otherwise) is exempt under the provisions of CGST Act, 2017 by virtue of Entry No. 41 under Notification No. 12/2017- Central Tax(rate) date 28.06.2017.

(xvii) As per Government of India, Ministry of Finance, Circular No. 101/20/2019-GT dated 30.04.2019 it has been clarified that GST had been exempted on the upfront amount payable whether paid in installments or otherwise for long term lease of plots (of thirty years, or more) under Notification No. 12/2017- Central Tax Rate, Serial No. 41 dated 28.06.2017. Upfront amount called as premium payable in respect of service by way of grant of long term lease (of 30 years or more) of plots for development of infrastructure for financial business provided by undertakings having 50% or more ownership of Central Government to the developers in financial business area. As such through this circular no GST is applicable on the RLDA land.

(xviii) Authority for advance ruling has wrongly interpreted the Notification and the facts of the present case as all the condition of the said Notifications are fulfilled where along with residential plots, industrial plots and financial business area are also included and therefore all the conditions of the Entry in the Circular are fulfilled and the



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Appellant squarely falls under the said Circular exempting the amount paid even otherwise.

(xix) Learned AAR has wrongly on Page 17 of the order in para 10 observed that it is a rental or leasing service and accordingly taxable as such and mentioned the HSN Code which is contrary to the facts of the case and the application given for AAR. The question was the Upfront amount being charged by the RLDA was taxable before 01.04.2019 which was deposited by the assessee as it was in the nature of refundable security as if the Lease agreement conditions amount was refundable. The agreement was entered after 01.04.2019 and hence it was covered by the later notification no. 04/2019 - CT (Rate) Dt. 29.03.2019 under entry no. 41B which exempted or mentioned NIL rate for the upfront amount by any name. The relevant notification has not been considered while coming to conclusion.

(xx) Further in Para 11 of the order the Learned AAR has referred to the renting of immoveable property which was not the issue under consideration and the Learned AAR has without any basis and contrary to the lease agreement Dt. 08.11.2019 has observed or held that renting of immoveable property is liable to GST.

(xxi) The issue was regarding the upfront amount being collected by the RLDA which was specifically exempt in view of entry no. 41B inserted by notification no. 04/2019 Dt. 29.03.2019.

(xxii) In Para 13 of the order the Learned Authority has considered entry no. 41B and had held that as the upfront amount had been collected prior to 01.04.2019 the same was taxable but in conclusion in Ruling-1 has held that the amount is not exempted after 01.04.2019 also as they had referred that the lease agreement is not exempted. Thus there is a contradiction in the order itself and therefore the order is bad in law.

(xxiii) The entry no. 41 of the notification dt. 12/2017 CT (Rate) dt. 28.06.2017 squarely covers the issue and the transaction is exempt under it as the ownership is 100% of Central Government whereas the Notification mention only 50% ownership Requirement. Further the said notification mentions that it should be in Financial Business Area and that condition is also satisfied. Reference may be made to the Railways Act, 1989 and particularly Chapter IIA which deals with the RLDA who has leased the land to assessee. As per the provisions contained in Chapter IIA clause 4D defining Functions of Authority the sub clause 4D (2) (ii) is important and it says "to develop railway land for commercial use as may be entrusted by the Central Government for the purpose of Generating revenues by non tariff measures".

(xxiv) The transaction for the railway is Commercial or financial business and hence covers it under entry no 41. The wrong interpretation has been taken by AAR of Residential contrary to the Railways ACT and the provisions contained in the lease agreement. Further it is in Financial business Area and hence also covered under it.

(xxv) In the agreement at page 377 in para 1(i) it has been mentioned that it will be for commercial development of vacant railway land. In the next para it is mentioned that it is for developing any railway land for commercial use.

(xxvi) It can therefore be seen on perusal of the Entries in the Notification and the nature of activity undertaken by the Applicant Company that the present transaction of long term lease is squarely covered under Entry No.-41 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 and is exempt from GST from the very inception of CGST Act, 2017.

(xxvii) The questions posed by the appellant in their Application for advance ruling were only confined to interpretation of Notification and its applicability on the amount received by RLDA. The learned authority for advance ruling erred by going beyond scope of the questions asked and held that only because the amount is paid prior to



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01.04.2019 the Notification is not applicable. The question before the learned Authority was only related to whether the transaction is of the nature as mentioned in the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 and not regarding the time period.

(xxviii) In view of above, appellant submitted that no GST is applicable on the amount paid prior to 31.03.2019 and also after 01.04.2019 in pursuance of long term lease by the Appellant Company to RLDA and the said transaction is exempt from the levy of GST.

(xxix) They submitted that other submissions will be argued at the time of arguments.

5. PERSONAL HEARING

A personal hearing in the matter was held on 03.11.2020. Sh. Pankaj Ghiya, Authorized Representative, Sh. Ribhav Ghiya, Authorised representative and Sh. Ajeet Kumar Jain, Director of the appellant, appeared for personal hearing on 03.11.2020. They reiterated the submissions already made under grounds of appeal. They also submitted additional submissions on 06.11.2020, inter-alia, besides giving facts also contended:-

- a. That the learned lower authority failed to consider the said fact of the exemption notification being applicable in the present case and wrongly laid down that because the Notification No. 04/2019-Central tax(rate) dated 29.03.2019 covering residential accommodation came into effect after the payment was already made, the said Notification has no application and hence, time of payment was taken into consideration and not the nature of transaction for deciding the Application for advance ruling.
- b. That the questions posed by the appellant in their Application for advance ruling were only confined to interpretation of Notification and its applicability on the amount received by RLDA. The learned authority for advance ruling erred by going beyond the scope of the questions asked and held that only because the amount is paid prior to 01.04.2019 the Notification is not applicable. The question before the learned Authority was only related to whether the transaction is of the nature as mentioned in the Notification No. 04/2019-Central tax (rate) dated 29.03.2019 and not regarding the time period.
- c. That the learned Authority for Advance Ruling did not take into consideration any contentions of the Appellant and ruled against the Appellant holding that the amount deposited by the Appellant is taxable under GST at the rate of 18%. The Order is illegal and bad in law.
- d. That the learned AAR has wrongly on Page 17 of the order on para 10 observed that it is a rental or leasing service and accordingly taxable as such and mentioned the HSN Code which is contrary to the facts of the case and the application given for AAR. The question was the Upfront amount being charged by the RLDA was taxable before 01.04.2019 which was deposited by the assessee as it was in the nature of refundable security as if the lease agreement condition were not fulfilled then in such case the complete amount was refundable. The agreement was entered after 01.04.2019 and hence it was covered by the later notification no. 04/2019 - CT (Rate) Dt. 29.03.2019 under entry no. 41 B which exempted or mentioned NIL rate for the upfront amount by any name. The relevant notification has not been considered while coming to conclusion.



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- e. That further in para 11 of the order the Learned AAR has referred to the renting of immoveable property which was not the issue under consideration and the learned AAR has without any basis and contrary to the lease agreement Dt. 08.11.2019 has observed or held that renting of immoveable property is liable to GST.
- f. That the issue was regarding the upfront amount being collected by the RLDA which was specifically exempt in view of entry no. 41B inserted by notification no. 04/2019 Dt.29.03.2019.
- g. That in Para 13 of the order the Learned Authority has considered entry no. 41B and had held that as the upfront amount has been collected prior to 01.04.2019 the same was taxable but in conclusion in Ruling -1 has held that the amount is not exempted after 01.04.2019 also as they had referred that the lease agreement is not exempted. Thus there is a contradiction in the order itself and therefore the order is bad in law.
- h. That the entry no 41 of the notification dt 12/2017 CT (Rate) dt. 24.6.2017 squarely covers the issue and the transaction is exempt under it as the ownership is 100% of Central Government whereas the Notification mentions only 50% ownership Requirement. Further the said notification mentions that it should be in Financial Business Area and that condition is also satisfied. Reference may be made to the Railways Act 1989 and particularly Chapter IIA which deals with the RLDA who has leased the land to assessee. As per the provisions contained in Chapter IIA clause 4D defining Functions of Authority the sub clause 4D (2) (ii) is important and it says "to develop railway land for commercial use as may be entrusted by the Central Government for the purpose of Generating revenues by non tariff measures".
- i. That the transaction for the railway is Commercial or financial business and hence covers it under entry no. 41. The wrong interpretation has been taken by AAR of Residential contrary to the Railways Act and the provisions contained in the lease agreement.
- j. That in the agreement at page 377 in para 1(i) it has been mentioned that it will be for commercial development of vacant railway land. In the next para it is mentioned that it is for developing any railway land for commercial use.
- k. That reference may be made to clause No. 2A and 2B at page 2 of the Agreement which clearly says that "Development on Railway Land for Commercial use". Similarly the other clause also narrates the same. Further reference may be made to clause G on page 3 of the Agreement regarding the description of the lease. That reference may be made to page 377 in clause 1, 1(i) and 1(ii) which talks about the commercial use of Railway Land. Further reference may be made to page 379 of clause j, k, n and o about the description the definition. Thereafter reference may be made to page 399 at clause 26 and then clause 26.3 regarding the refund and the conditions to be fulfilled for the execution of lease agreement. It states that in case of cancellation of lease agreement the amount would be refunded. Thereafter reference may be made to page 415 and clause 2.3, 2.3.1, 2.3.3 and 2.3.4 about the grant of lease rights. Further reference to be made to page 416 and clause Article 3 and particularly Article 3.1 to 3.3.
- l. That on perusal of the Long term lease agreement dated 08.11.2019 (enclosed herewith and marked as Annexure-1) Clause 26 enlists certain conditions on breach of which the contract would stand terminated and the bid security paid by the Company would stand forfeited. However, it is



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to be noted that the amount otherwise paid to RLDA is fully refundable and the said arrangement is without prejudice to any other rights or remedies. It is quite clear that the amount which is paid without even executing the agreement could not possibly be construed to be a premium paid for such lease agreement. The amount so paid is only to secure and confirm the execution of the contract.

- m. That as per agreement clause 26 as mentioned at page 399 of lease agreement the bidder whose bid is accepted shall be required to fulfill the mentioned point i.e. (a) to (e) in clause 26. As per clause 26.3 failure to fulfill any of the conditions specified therein shall constitute a breach of bid submitted by the bidder in which case the full value of only the bid security shall stand forfeited without prejudice to any other rights or remedies.
- n. That it can be stated that the payment against the lease agreement paid before 31.03.2019 as additional security. In the present case it is security on which no GST is applicable. As per clause 26.3 of the tender bid and lease agreement page 400 the said amount is refundable after forfeiting the security bid submitted by bidder during the bid in case of any default from (a) to (e) as mentioned on page 399 before execution of lease agreement. As agreement was executed on 08.11.2019 and paid amount before this date is totally refundable in case of any default by bidder after only forfeiting the bids security it should be exempted from GST.
- o. That when the said amount is not a premium and only a security by way of which the contract is confirmed it cannot attract the liability of GST. The payment of premium would commence only after the said agreement has been entered into and not prior to that. Any amount paid before entering into the contract and where no services are provided it cannot be considered as a premium. Such amount is only for confirmation by the parties to enter into the Long term lease Agreement. The said amount does not fall under the scope of consideration as there was neither any contract between the parties nor any services provided. Hence, such amount is beyond the scope of GST.
- p. That in the alternate, without prejudice to the above contentions, even if the said amount is considered as "lease premium" it is to be pointed out here that the Government, Ministry of Finance by way of Notification No. 04/2019-Central Tax Rate date 29.03.2019 has exempted any upfront amount payable for grant of long term lease of thirty years. Certain conditions have been prescribed in the said Notification which have not been violated by the Applicant and hence is squarely covered under the said Notification and is exempt from any GST liability for the amount paid in lieu of the agreement executed on 08.11.2019.
- q. That it is submitted here that the lease agreement has been entered into on 08.11.2019 and the said Notification covers any amount which becomes payable on or after 01.04.2019. In the present case as the agreement has been executed on 08.11.2019, the lease premium in pursuance to such an agreement is squarely covered under the said Notification and is totally exempt from the levy of GST. It is again submitted here that neither the agreement was executed nor any services of lease were extended by RLDA in the form of possession to the applicant therefore the amount if paid as premium was in pursuance to an agreement executed after the exemption Notification came into effect.



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- r. That it is a well accepted fact that the Lease Agreement was entered into on 08.11.2019. Any amount paid before that was totally refundable and was only paid to secure the bid and was not a premium. Even if the amount is to be considered as premium it is not taxable by virtue of the abovementioned Notification as the transaction amount became a lease premium only after the execution of the contract and not prior to that. The learned Authority for Advance Ruling erred in interpreting the Notification and considering the amount as premium even before the execution of the Contract.
- s. That without prejudice to the above submissions, on perusal of the Long term lease Agreement, it can be seen that the Applicant is also involved in the development of infrastructure on the land given on long term lease by the RLDA. Along with the development of residential plots, the Applicant is also engaged in developing the roads, sewage system, laying of the street lights, etc. The said transaction and any upfront amount paid in this respect (whether in installments or otherwise) is exempt under the provisions of CGST Act, 2017 by virtue of Entry No. 41 under Notification No. 12/2017-Central Tax(rate) dated 28.06.2017.
- t. That further as per Government of India, Ministry of Finance, Circular No. 101/20/2019-GST dated 30.04.2019 it has been clarified that GST has been exempted on the upfront amount payable whether paid in installments or otherwise for long term lease of plots (of thirty years, or more) under Notification No. 12/ 2017- Central Tax (Rate), Serial No. 41 dated 28.06.2017. Upfront amount called as premium payable in respect of service by way of grant of long term lease (of 30 years or more) of plots for development of infrastructure for financial business provided by undertaking having 50% or more ownership of Central Government to the developers in financial business area. As such through this circular no GST is applicable on the RLDA land.
- u. That the learned AAR has wrongly on page 17 of the order in para 10 observed that it is a retail or leasing service and accordingly taxable as such and mentioned the HSN Code which is contrary to the facts of the case and the application given for AAR. The question was the upfront amount being charged by the RLDA was taxable before 01.04.2019 which was deposited by the assessee as it was in the nature of refundable security as if the lease agreement conditions were not fulfilled then in such case the complete amount was refundable. The agreement was entered after 01.04.2019 and hence it was covered by the later notification no. 04/2019 – CT (Rate) Dt. 29.03.2019 under entry no. 41 B which exempted or mentioned NIL rate for the upfront amount by any name. The relevant notification has not been considered while coming to conclusion.
- v. That the entry no 41 of the notification No. 12/2017 CT (Rate) Dt. 24.6.2017 squarely covers the issue and the transaction is exempt under it as the ownership is 100% of Central Government whereas the Notification mentions only 50% ownership Requirement. Further the said notification mentions that it should be in Financial Business Area and that condition is also satisfied. Reference may be made to the Railways Act 1989 and particularly Chapter IIA which deals with the RLDA who has leased the land to assessee. As per the provisions contained in Chapter IIA clause 4D defining Functions of Authority the sub clause 4D (2) (ii) is important and it says "to develop railway land for commercial use as may



be entrusted by the Central Government for the purpose of Generating revenues by non tariff measures".

- w. That the transaction for the railway is Commercial or financial business and hence covers it under entry no 41, The wrong interpretation has been taken by AAR of Residential contrary to the Railways Act and the provisions contained in the lease agreement. Further it is in financial business Area and hence also covered under it.
- x. That in the agreement at page 377 in para 1(i) it has been mentioned that it will be for commercial development of vacant railway land. In the next para it is mentioned that it is for developing any railway land for commercial use.
- y. That therefore, in view of the aforesaid facts, no GST is applicable on the amount paid prior to 31.03.2019 and also after 01.04.2019 in pursuance of long term lease by the Appellant Company to RLDA and the said transaction is exempt from the levy of GST.
- z. That reference may be made to the decision of the AAR Maharashtra in the case of E Square Leisure Pvt. Ltd. wherein it has been held that no GST is liable any amount of security which is refundable.

DISCUSSION AND FINDINGS

6.1 We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR, Rajasthan, oral submissions made by the authorized representative(s) of the Appellant, at the time of personal hearing held on 03.11.2020 and written submissions received on 06.11.2020. We find that the appellant vide its Application filed before the Rajasthan Authority for Advance Ruling, (hereinafter also referred as 'the AAR'), had requested for Advance Ruling as to:

- i. Whether the Lease Agreement between the Appellant Company i.e. the Lessee and RLDA for a period of 99 years is exempt from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?
- ii. Whether the amount of Rs.158657105.00 which is transferred by the Appellant Company as Security Deposit in pursuance to the tender and lease agreement dated 08.11.2019 is exempt under GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?
- iii. Whether the amount of Rs.158657105.00 deposited during February, 2019 is exempt under Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017?

6.2 The AAR, Rajasthan, vide Advance Ruling No. RAJ/AAR/2020-21/05 dated 30.06.2020 passed the following order:

- i. The Lease Agreement between the Applicant Company i.e. the Lessee and RLDA for a period of 99 years is not exempted from levy of GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.



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ii. The amount of Rs.158657105/- which is transferred by the Applicant/SPV in pursuance to the tender and lease agreement dated 08.11.2019 is not exempted under GST in view of the Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

iii. The amount of Rs.158657105/- deposited during February, 2019 is not exempted from GST vide Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

6.3 The Appellant being not satisfied with the above Ruling has therefore, filed the present appeal before this forum.

6.4 The Appellant has contended that amount of Rs.158657105/- paid in the month of February, 2019 before the execution of lease agreement i.e. 08.11.2019 is security deposit and not an installment of lease premium.

On perusal of Lease Agreement dated 08.11.2019 executed between RLDA and the appellant, we find that as per Letter of acceptance dated 26.09.2018 and bid form (Page 16-17 and 21-26 of Lease Agreement), M/s H. S. Mehta Infra Pvt. Ltd.- Lead Member of Consortium, the selected bidder has to deposit 1st installment of lease premium along with GST @ 18% (or as applicable) under reverse charge, within 60 days from the date of issue of LOA. The LOA later became integral part of the Lease Agreement executed on 08.11.2019. As per Page 3 of Lease Agreement, it is mentioned that the Appellant during the month of Feb 2019 has deposited Rs.158657105/- as 1st installment of the lease premium and interest as specified in LOA. As per Page 278 and 388 of Lease Agreement, bidder is required to deposit Rs.3300000.00 for Plot A and of Rs.5200000.00 for Plot B as bid security along with bid. In view of above document, the Appellant contention is not tenable. It is clear that amount paid during the period Feb 2019 is 1st installment of lease premium and not security deposit as amount of Rs.158657105/- has been deposited after issuance of LOA during the month of Feb, 2019 whereas security deposit Rs.8500000/- was required to be deposited at the time of submission of bid. Further, as per Page 3 of Lease Agreement, it is clearly mentioned that the Appellant during the month of Feb 2019 has deposited Rs.158657105/- towards the 1st installment of the lease premium as specified in LOA. Therefore, in view of above, we find that the amount deposited in the month of Feb, 2019 is an installment of the lease premium and not the security deposit. The Appellant has placed reliance on AAR Maharashtra order in case of M/s E Square Leisure Pvt. Ltd. It is noted that in the said case AAR Maharashtra, while answering the question Whether GST would be applicable on interest free security deposit and notional interest if any, has concluded as under:

'To sum up, we find that the applicant, for leasing of commercial property has, in addition to rent, also collected interest free deposit from their lessee which is returnable on the completion of the tenure of the lease. Since the entire amount is to be returned back to their lessee, such deposits cannot be considered as consideration for such supply of services as mentioned by them and hence will not be liable to tax. However at the time of completion of the lease tenure, if the entire deposit or a part of it is withheld and not paid back, as a charge against damages, etc. then at that stage such amounts not returned back will be liable to GST as per the present GST laws'

In view of above discussion, we find that the fact of the case is quite different from the instant appeal.

6.5 The appellant in his appeal memo has contended that as per the terms of the Lease Agreement by way of clause 26, certain conditions have been enlisted where the execution of lease agreement can be terminated if the same are not fulfilled. Clause 26.3 clearly states that any amount paid before the execution of the Lease agreement, is refundable in case of breach except the bid security submitted by the Applicant without prejudice to any other rights or remedies. This implies that amount which is



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paid in the month of February, 2019 before the execution of lease agreement i.e. 08.11.2019 is totally refundable and do not form part of the consideration and is only a deposit made for confirmation of contract and is in nature of Security.

We observe that the appellant has totally misconstrued the clause 26.3 which provides for forfeiture of bid security deposit in case of breach of the Bid by the Bidder. We are not in agreement with contention of the appellant that if any instalment of lease premium amount is refunded in case of breach of Bid, its nomenclature will be changed from Premium to Security amount. In the LOA and the Lease agreement it is clearly mentioned that the first instalment of lease premium shall be Rs.143667891/- and the Bidder has deposited an amount of Rs.158657105/- (Premium+ Interest) in the month of February, 2019. Lease agreement has acknowledged the payment of first instalment of lease premium in compliance of LOA which forms integral part of Lease Agreement.

We observe that every agreement is independent in itself and conditions may vary from each other except the conceptual facts and principles. The Appellant has deposited the amount as lease premium after issuance of LOA. Furthermore, in the main portion of lease agreement which occurs on 18.11.2019, both parties i.e. RLDA and Appellant themselves has found it as 1st installment of the lease premium. Therefore, we found no force in this contention that amount deposited in the month of Feb, 2019 is Security deposit. In view of above discussion, we hold that amount of Rs.15,86,57,105/- deposited in the month of Feb, 2019 is 1st installment of the lease premium and not a security deposit.

6.6 The appellant has contended that the present transaction of long term lease is squarely covered under Entry No. 41 of Notification No. 12/2017-CT(R) dated 28.06.2017 and is exempt from GST from the very inception of CGST Act, 2017.

For the sake of brevity, entry no. 41 of exemption Notification No 12/2017-Central Tax (rate) dated 28.06.2017 is reproduced as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
41	Heading 9972	"Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area."	NIL	NIL

We observe that following conditions are required to be fulfilled for availing exemption under this entry:

*service by way of granting of long term lease (of thirty years, or more);
of industrial plots or plots for development of infrastructure for financial business;*



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- entity having 50 per cent. or more ownership of Central Government, State Government, Union territory;
- to developers in any industrial or financial business area

On perusal of document attached with Lease Agreement, we observe that, conditions regarding long term lease and entity having 50% or more of ownership of Central Government may be satisfied as lease is for 99 years and RLDA is the statutory body of Government of India and having 100% ownership of Central government.

However, rest two conditions namely, industrial plots or plots for development of infrastructure for financial business and that to award such lease to developers in any industrial or financial business area needs to be examined. We find that the RLDA has not awarded industrial plots to the appellant but awarded a portion of land over which some residential infrastructures are meant to be built. An industrial plot is the one in which developer is granted permission by competent authority, be it Central Government or State Government in reference to some scheme of development. These plots are for a specific purpose and if plot-holders in future tries to engage in some other work or lease conditions of agreement are breached, then the developer has every right to eject that plot-holder. In the present case, RLDA is just providing a piece of land which is in its ownership and land use of which has been declared for Residential, therefore, the lease of the same cannot be categorized as meeting condition of industrial plot and for the purpose of financial business. RLDA has leased ordinary plots for residential purpose consequently these conditions of the said notification are not satisfied.

Further, the Appellant has submitted in their appeal that condition of financial area is satisfied as per Chapter IIA of Railway Act 1989 related to RLDA who has leased the land to assessee. As per provisions contained in Chapter IIA defining Functions of Authority the sub clause 4D (2) (ii) is important and it reads as "to develop railway land for commercial use as may entrusted by the Central Government for the purpose of Generating revenues by non tariff area. Further the appellant in his ground of appeal has contended that Appellant is also involved in the development of infrastructure i.e. roads sewage system, laying of the street lights, etc. on the land given on long term lease. The Appellant has also placed reliance on Circular No. 101/20/2019-GST dated 30.04.2019. In this regard we observed that activity of RLDA mentioned in Railway Act, 1989 is not relevant but what is relevant that RLDA has issued Request for proposal (RFP) (Page 134 in the Lease Agreement) for grant of lease of Railways land at Hazari Bagh, Ajmer for 99 years on 15.02.2018 for Residential Purpose and same has been leased to Appellant. Development of some infrastructure i.e. roads, sewage system, laying of the street lights, etc. may be an incidental activity and is a requirement of Development of residential project to make it useable. Due to this, it cannot be said that land has been leased for development of infrastructure for financial business. Therefore, we conclude that lease of land has been granted for development of land for residential purpose and Circular No. 101/20/2019-GST dated 30.04.2019 is also not applicable in this case. In view of above, we hold that lease agreement is not exempted under Entry No. 41 of exemption Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

6.7 The appellant has also contended that the amount paid is not taxable in light of the Notification No. 04/2019 dated 29.03.2019. We find that Entry No. 41B of exemption Notification No. 12/2017-Central Tax (rate) dated 28.06.2017 has been inserted vide Notification No. 04/2019 dated 29.03.2019 and effective w.e.f. 01.04.2019 which is reproduced as under:

41B	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount
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	<p>of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</p> <p>The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).</p>	<p>(called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner – [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project);</p> <p>Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.</p> <p>The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.</p>
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On plain reading of above exemption Notification, it is clear that the Notification exempts upfront amount payable for construction of residential apartments in view of entry No. 41B. As we have already concluded in Para 6.6 above that the lease has been granted for development of land for residential purpose. It is fact that according to LOA dated 26.09.2018 the bidders having GSTIN shall, deposit the applicable GST under



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Reverse Charge Mechanism, therefore Appellant got registration under GST and liable to deposit the applicable GST under Reverse Charge Mechanism on the premium paid/payable to RLDA. The Appellant has also not disputed this fact anywhere in appeal memo that they are not liable to pay GST under RCM. As the said Notification has been made effective from 01.04.2019, therefore, to decide the applicability of exemption in this case 'Time of Supply of Services' is required to be determined.

The 'Time of Supply of Services' for cases of Reverse Charge Mechanism, is defined in Section 13 (3) of the CGST Act, 2017 as under—

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: —

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier;

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply;

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

It is a fact that RLDA has issued LOA on 26.09.2018 addressed to M/s H. S. Mehta Infra Pvt. Ltd. Lead Partner of consortium. As per condition of LOA the consortium was required to create a SPC, therefore, appellant company has been incorporated as SPC. The Appellant in pursuance to LOA has deposited first installment of lease premium of Rs.15,86,57,105/- by various RTGS on different dates from 16.02.19 to 22.02.19. Therefore, in view of above facts and provisions of law, we observe that time of supply of service is 25.11.2018 which is after 60 days post to LOA and before the date of payment of premium. Even, the date of payment of lease premium is prior to 01.04.2019. Hence, We are of the considered view that the exemption under Entry No. 41B of the Notification No. 12/2017 dated 28.06.2017 inserted vide Notification No. 04/2019 dated 29.03.2019 is not available to the appellant.

6.8 Further, the appellant has contended that the agreement has been executed on 08.11.2019 and the said notification covers any amount which becomes payable on or after 01.04.2019 and that in the present case, as the agreement has been executed on 08.11.2019, neither the agreement was executed nor any services of lease were extended by RLDA in the form of possession to the Appellant, therefore, the amount if paid as premium was in pursuance to an agreement.

The contention of the appellant is not tenable as Section 13 (3) of the CGST Act, 2017 tells about issuance of invoice or any other document and date of payment to determine the time of Supply of Services. On perusal of LOA, we noticed that in para 6 of LOA, it is clearly mentioned that LOA shall constitute a binding contract till the lease agreement and remaining paras of LOA tell about total premium and many other things about lease. Therefore, instead of lease agreement, LOA issued on 26.09.2018 should be treated 'the document' to determine the time of Supply of Services. The payment schedule has been prescribed in the para 3 of the LOA dated 26.09.2018 itself, according to which the first installment of lease premium of Rs.14,36,67,891/- was required to be paid within 60 days of the date of issuance of LOA. Accordingly, the first installment was required to be paid by 25.11.2018. Our view is further strengthened from the fact that at the time of the payment through RTGS in the month of Feb. 2019, an amount of Rs.1,49,82,214/- has also been deposited as interest in addition to the lease premium installment of Rs.14,36,67,891/-. It transpires that the LOA dated




26.09.2018 is the document vide which M/s RLDA has conveyed the amount and due date of payment of first installment of lease premium. Hence, in our view, in absence of invoice, the date of LOA shall be taken into consideration for determining the time of supply of the service in view of Section 13 (3) (b) of the CGST Act, 2017 and SGST Act, 2017. Therefore, we hold that time of supply of service is 25.11.2018 i.e. immediately following sixty days from the date of issue of LOA which is prior to the date i.e. 01.04.2019 from which the exemption under Entry No. 41B of the Notification 12/2017 has been made effective.

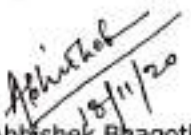
Further we found that as per Section 13 (1) of the CGST Act, 2017, liability to pay tax on services arises at the time of supply. As discussed above, time of supply of service in the instant case is 25.11.2018 whereas, Notification No. 04/2019 dated 29.03.2019 came into effect from 01.04.2019.

6.9 Therefore, in view of the above discussion and findings, we hold that the Lease Agreement between the Appellant and RLDA and the amount of Rs.158657105/- deposited during February, 2019 is not exempted from levy of GST under Notification No. 04/2019-Central Tax (rate) dated 29.03.2019 or Notification No. 12/2017-Central Tax (rate) dated 28.06.2017.

ORDER

7. The appeal filed by the Appellant has no merits and rejected accordingly.

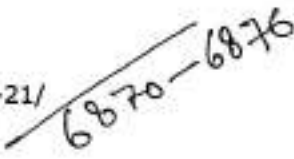

(Pramod Kumar Singh)
Member (Central Tax)


(Abhishek Bhagotia)
Member (State Tax)

SPEED POST

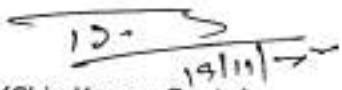
M/s Hazari Bagh Builders Private Limited,
104 LIC Colony, 1st Floor,
Vaishali Nagar, Ajmer-305001,
Rajasthan

F. No. IV(16)AAAR/RAJ./03/2020-21/
Copy to:


Dated: 1.12.2020

1. The Chief Commissioner of CGST & Central Excise, Jaipur Zone, Jaipur.
2. The Chief Commissioner, State Tax, Kar Bhawan, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Commissioner, CGST & Central Excise Commissionerate, Jaipur.
4. The Assistant Commissioner, CGST Division-J, C. R. Building, Jaipur Road, Ajmer
5. The Member, Rajasthan Authority for Advance Ruling, Goods & Service Tax, Kar Bhawan, Ambedkar Circle, C-Scheme, Jaipur-302005.
6. Guard File.




(Shriv Kumar Gupta)
Superintendent