

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6700 of 2024

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Shashi Ranjan Constructions Private Limited company registered under Companies Act, 1956 having its office at Puja Bazar, Motijheel, Muzaffarpur, Bihar-842001 through its Director Praveer Kumar Sahu (Male, aged about 53 years), son of Shri Ashok Kumar Sahu resident of Kedar Nath Road, Sahu Pokhar, Vill-Muzaffarpur, Musahri Farm, Muzaffarpur, Bihar-842002.

... .. Petitioner/s

Versus

1. Union of India through the Secretary, Finance, North Block, New Delhi-110001.
2. Central Board of Indirect Taxes and Customs through its Secretary having its office at 47 B, CBIC, Department of Revenue, North Block, New Delhi 110001.
3. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Kar Bhawan, Birchand Patel Marg, Patna-800001.
4. Asst. Commissioner of State Tax, Muzaffarpur West, Tirhut, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Sr. Advocate
For the UOI	:	Dr. Krishna Nandan Singh, ASGI
		Mr. Anshuman Singh, Sr.SC, CGST and CX
		Mr. Shivaditya Dhari Sinha, Advocate
		Mr. Alok Kumar, Advocate
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 05-05-2025

Heard Mr. D.V. Pathy, learned senior counsel for the petitioner, learned ASG for the CGST & CX and Mr. Vikash Kumar, learned SC-11 for the State-respondent.

2. Petitioner in the present writ application is a Private Limited Company engaged in the business of construction of



buildings/apartments in the State of Bihar.

3. By filing this writ application, the petitioner-company is questioning the order dated 30.11.2023 and the summary of order in Form GST DRC-07 (Annexure-P2 series) passed by the Assistant Commissioner of Assistant Commissioner of State Tax, Muzaffarpur (respondent no.4) under Section 73(9) of the Bihar Goods and Services Tax Act (hereinafter referred to as the 'GST Act').

4. The respondent no.4 has held the petitioner liable to pay a total amount of Rs.4,61,72,628/- on account of the CGST/BGST and IGST to the tune of Rs.2,37,59,706/-. The petitioner has been held liable to pay interest thereon at the rate of 1.5% per month i.e. Rs.20017554/- and penalty of Rs.2,39,5368/-.

Challenge to the Notifications

5. The petitioner has also challenged the Notification No.09/2023 dated 31.03.2023 as contained in Annexure-P8 and the Notification No.56 of 2023 dated 28.12.2003 present at Annexure-P9 to the writ application. By these two Notifications, the respondent no.2 has extended the time limit specified under sub-section (10) of Section 73 of the CGST Act for issuance of order under sub-section (9) of Section 73 of the GST Act for re-



covery of tax not paid or short paid or input tax credit wrongly availed or utilized upto 31st March, 2024 for the Financial Year 2018-19.

6. Mr. D.V. Pathy, learned senior counsel for the petitioner submits that so far as challenge to the validity of the Notifications contained in Annexure-P8 and P9 are concerned, the same is pending consideration before the Hon'ble Supreme Court in Special Leave to Appeal © No(s). 5864-5869/2025 (M/S. Turbo Megha Airways Private Ltd. vs. Deputy Commissioner of State Tax-III & Ors.

7. The aforesaid contention of Mr. D.V.Pathy, learned senior counsel for the petitioner has been contested by Mr. Vikash Kumar, learned SC-11 for the State saying that so far as the two Notifications are concerned, those would not have any bearing upon the present case. It is submitted that the petitioner has claimed that the Notifications are beyond the powers conferred by Section 168A of the CGST Act inasmuch as there was no force majeure in existence at the time of bringing out the notifications. It is submitted that the impugned assessment order dated 30.11.2023 has been passed within three years from the due date for filing of Annual return for 2018-19, as stipulated under Section 73(10) of the CGST/BGST Act. Since the ex-



tended date for filing annual return for 2018-19 was 31.12.2020, the assessment order under Section 73(9) has to be completed up to 31.12.2023. In this case, it has been completed on 30.11.2023 within the deadline, therefore, the issue raised by the petitioner in this regard is irrelevant, redundant, superfluous and only an attempt to mislead this Court.

8. Mr. Vikash Kumar, learned SC-11 has pointed out to this Court from the order dated 03.03.2025 passed by the Hon'ble Supreme Court in Special Leave to Appeal © No(s). 5864-5869/2025, copy of which is enclosed with the rejoinder of the petitioner, that in the said case the issue relates to the Financial Year 2019-2020. It is submitted that in the present case the issue relates to Financial Year 2018-2019.

9. We find much substance in the submission of Mr. Vikash Kumar, learned SC-11 for the State. The specific answer to the submission of learned senior counsel for the petitioner in this regard may be found in paragraph '26' of the counter affidavit which has not been controverted by the petitioner in its rejoinder.

10. Thus, the challenge to the Notification No.09 of 2023 and Notification No.56 of 2023 in the present writ application is misconceived and the same is found irrelevant and super-



fluorous.

11. The contention of learned senior counsel for the petitioner that the order, as contained in Annexure-P2 series, has been passed beyond the time limit set out in Section 73(10) of the GST Act is liable to be rejected. This Court finds substance in the submission of learned SC-11 for the State that the impugned order has been passed within a period of three years from the last due date of filing of the return for the Financial Year 2018-19.

Taxability of the Transaction of Execution of Development Agreement

12. Learned senior counsel for the petitioner has further argued that in case of a development agreement registered prior to coming into force of the GST laws with effect from 01.07.2017, the land stood transferred in favour of the builder. According to him, once the land stood transferred prior to 01.07.2017, the transaction under the development agreement would not fall within the purview of the CGST/BGST Act and the notifications issued thereunder. According to him, the development agreement was executed on 27.11.2014 and though the project was completed on 20.12.2018, the liability to pay tax in respect of such development agreement was notified under Notification No.04/2019 dated 29.03.2019.



13. Learned senior counsel submits that the Notification No.04 of 2019 is prospective in nature and the petitioner could have been made liable to pay tax in respect of transfer of development rights only on or after 01.04.2019. This Notification, however cannot form basis of an order of assessment for the Assessment Year 2018-19.

14. It is submitted that project in question was completed on 20.12.2018 and the petitioner had handed over the portion of the immovable property to the land owner on the basis of the development agreement after issuance of the completion certificate. According to him, at the point of handing over of the immovable property/flat, the same would be classified as land and building falling under Schedule II of the CGST/BGST Act which in terms of Section 7(2) is to be treated neither a supply of goods nor supply of services.

15. Learned senior counsel has argued that in the case of **Commissioner of Income Tax vs. Balbir Singh Maini** reported in **(2018) 12 SCC 354**, it has held that with the registration of the development agreement, the land stood transferred to the builder. It is, thus, a submission that in this case the transfer of land had already taken place during pre-GST period, therefore, no tax may be levied by way of Reverse Charge Mechanism (in



short 'RCM') upon the builder-petitioner who is giving this supply of construction services to the land owner. It is submitted that since this is a pure question of law, therefore, despite being a remedy of statutory appeal to the petitioner, the petitioner has approached this Court in its extraordinary writ jurisdiction. Learned senior counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **Govind Saran Ganga Saran vs. Commissioner of Sales Tax & Others** reported in **1985 Supp SCC 205**.

16. A counter affidavit has been filed on behalf of the respondent no.2. It is stated that the petitioner has taken registration under the GST Act in Muzaffarpur West 1 Circle of Tirhut Division. A proceeding was initiated by issuing a show cause notice under Section 73 of the Bihar GST Act, 2017 on 09.10.2023 by the Assistant Commissioner of State Tax, Muzaffarpur West, Tirhut on the grounds inter-alia that the petitioner had received non-monetary consideration towards allotment of 36 flats under development agreement. The notice mentions that there is an element of supply of service and receipt of consideration under development agreement which is liable to tax under the Act. A summary of show cause notice was also issued in Form GST DRC-01 quantifying the amount of tax, equivalent



penalty and interest.

17. It is stated that the order dated 30.11.2023 and the summary of order in Form GST DRC-07 passed by the Assistant Commissioner of State Tax, Muzafarpur West under Section 73(9) of the GST Act charging tax, interest and imposing penalty three fold the amount of tax payable. It is submitted that pursuant to the SCN, Order-in-Original has been passed by the concerned State GST authority.

18. On behalf of the State GST authority, a counter affidavit has been filed through the Deputy Commissioner, State Tax. On this point, it is stated that the petitioner is misleading this Court by claiming that liability to pay tax on supply of development rights was introduced through Notification No.04/2019 dated 29.03.2019. The submission is that in fact, in the instant matter, it is the supply of construction services (SAC code 9954) by the petitioner that has been taxed and not the supply by way of transfer of development rights (SAC code 9972). The supply of construction services was very much exigible to tax in accordance with Notification No.11/2017 dated 28.06.2017 which has been admitted by the petitioner in paragraph '10' of the writ application. It is submitted that the petitioner has only tried at best to confuse the Court by using the



term 'transfer of development rights' in place of the correct term 'supply of construction services'.

19. It is submitted that the petitioner cannot claim exemption from tax on the ground that he had handed over the constructed property to the land owner after receiving the completion certificate. No exemption is available in case of transfer of built-up property by a developer against consideration received from the land owner in the form of development rights. The tax is imposed on the construction service supplied by the petitioner to the land owner and not on the immovable property as such. The suppl of service by way of construction of real estate which is intended to be conveyed to the land owner in lieu of transfer of development rights by the land owner attracts GST.

20. Learned SC-11 has relied upon a judgment of the Hon'ble Telangana High Court in the case of **Prahitha Construction Private Limited Vs. Union of India and Others (WP 5493/2020)** reported in **2024 SCC OnLine TS 3994**. It is submitted that the Hon'ble Division Bench of Telangana High Court has categorically held that a development agreement between the land owner and the builder consists of two sets of transactions to be met in its entirety. It has been held that one



component of the development agreement is between the land owner and the builder and another is the supply of construction services by the builder to the land owner and only thereafter sale of constructed area may be made to a third party buyer. It has been held that both these transactions qualify as supplies made and would attract GST subject to clause (b) of paragraph 5 of Schedule II and both these supplies would fall under Section 7 of the GST Act i.e. construction services further read with Entry 5(b) of Schedule II. Learned SC-11 has submitted that the assessment order is in accordance with law. There is no good ground to call in question the impugned order (Annexure-P2 series).

21. Learned counsel has also relied upon the order of this Court in **CWJC No.18149 of 2023 (M/S Adarsh Construction Vs. State of Bihar)** wherein this Court finding no reason to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India took a view that there are alternative remedies available and the assessee has not been diligent in availing such alternate remedies within the stipulated time. Learned counsel has also relied upon the order of this Court in **CWJC No.18168 of 2023 (M/S Radhika Packing and Printers vs. The State of Bihar and Others)**.



Consideration

22. Having heard learned senior counsel for the petitioner, learned ASG for the CGST and CX assisted by Sr. Standing Counsel for CGST and CX and learned SC-11 for the State Tax Authorities, this Court finds that while assailing Annexure-P2 series to the writ application, the main contention of learned senior counsel for the petitioner is that the impugned order has been passed without consideration of the provisions of the Act, the rules made thereunder and also notification fixing the liability only in respect of the development agreement on or after 01.04.2019. The petitioner had also filed a review before the respondent no.5 which stood rejected on the ground that there was no mistake of fact apparent on the record.

23. On facts, there is no dispute that the petitioner entered into a development agreement on 27.11.2014 for construction of a multi-storied building in which the petitioner agreed to built, deliver and give possession to the owner 43% of the total built-up area in the shape of shops/offices/flats and reserved car parking spaces and/or any other built-up area(s) in the said building to be constructed on the said land by the developer. Paragraphs 4.1, 4.2 and 5 of the development agreement are as under:-

“4.1. As consideration for 57% (Fifty Seven percent)



of the undivided share in the said land to be conveyed/transferred by the owner of the first part to the developer or its nominee(s) in terms of clause 5 below the developer agrees to build, deliver and give possession to the owner of the First part 43% (Forty percent) of the total built-up area in the shape of Shops/offices/Flats and reserved car parking spaces and/or any other built-up area(s) in the said building to be constructed on the said land by the developer hereinafter referred to as the “OWNER’S AREA”. The construction specification and services and amenities to be provided for the owner’s area.

4.2. 57% (Fifty Seven percent) of the total built-up area of the said building (after excluding the said Owner’s area as stipulated in Clause 4.1 above) shall exclusively belong to the Developer and shall hereinafter be called the “DEVELOPER’S AREA” to which the Developer alone shall be entitled to, for having constructed the entire building at its own cost and expense.

5. The Owner and their heirs/successors and/or nominee/s shall solely and exclusively be entitled to the Owner’s area and they shall have absolute right, title and interest over the Owner’s area and shall be fully entitled to use and enjoy the same either themselves individually or collectively or shall be fully entitled to transfer, convey, grant, otherwise alienate their interests, in any manner as deemed fit by them to any person or persons, association of persons, Firm, Body, Corporate, Co-operative Societies, Government’s agencies etc. on such terms and conditions as may be decided by the Owner individually or collectively.



6. The Developer and/or its nominee(s) shall and exclusively be entitled to the Developer's area, and they shall have absolute right, title and interest over the Developer's area and they shall be fully entitled to transfer, convey, grant, otherwise alienate their interest, in any manner as deemed fit by them to any person or persons, Association of persons, Firms, Body, Corporate, Cooperative Societies, Government's agencies, etc. on such terms and conditions as may be decided by the Developer or its nominee(s) individually or collectively."

24. It is evident upon a bare reading of the registered development agreement that the land owner has granted exclusive license to the developer to enter upon the said land and to take up and proceed with the development, planning and construction of the said building in terms of this agreement. In this regard, paragraph '9' of the development agreement may be referred to.

25. In this case the completion certification (Annexure-P/4) enclosed with the writ petition has been issued on 20.12.2018. The date of transfer of the owners' share in the project has not been disclosed in the writ petition.

26. We find it important to take note of the observations of the Hon'ble Supreme Court in the case of **Super Poly Fab-riks Limited vs Commissioner of Central Excise, Punjab** reported in **(2008) 11 SCC 398**, wherein Their Lordships have



held as under:-

“There cannot be any doubt whatsoever that a document has to read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive.”

27. In view of the aforementioned covenants present in the development agreement, the submission of learned senior counsel for the petitioner that by virtue of the execution and registration of the development agreement, the owner had already transferred the ownership in the land to the developer is only a misconceived submission.

28. In **Balbir Singh Maini** (supra) the questions which had fallen for consideration were, inter-alia as under:-

“(i) Whether the transactions in hand envisage a “transfer” exigible to tax by reference to Section 2(47)(v) of the Income Tax Act, 1961 read with Section 53-A of the Transfer of Property Act, 1882?

(ii) Whether the Income Tax Appellate Tribunal, has ignored rights emanating from the JDA, legal effect of non-registration of JDA, its alleged repudiation, etc.?

(iii) Whether “possession” as envisaged by Section 2(47)(v) and Section 53-A of the Transfer of Property



Act, 1882 was delivered, and if so, its nature and legal effect?

(iv) Whether there was any default on the part of the developers, and if so, its effect on the transactions and on exigibility to tax?

(v) Whether amount yet to be received can be taxed on a hypothetical assumption arising from the amount to be received?”

29. There was a tripartite unregistered Joint Development Agreement (‘JDA’) for transfer/development of the property. There was some dispute, matters were pending in the High Court. Necessary permissions for development were not granted, as a result of which ‘JDA’ did not take off the ground. The Assessee had a 1000 Sq. feet plot, the full value of consideration was Rs. 3.675 crores. The Capital Assessee had offered gains of Rs.27,58,436/- received from Developer in the Assessment Year 2007-08 and Rs.36 lakhs received during 2008-09 for tax under head “capital gains”. The Assessing Officer, however, took a view that since physical and vacant possession were handed over under the ‘JDA’, the same would tantamount to “transfer” within the meaning of Sections 2(47)(ii), (v) and (vi) of the Income Tax Act.

30. While dealing with the issues involved in the case, the Hon’ble Supreme Court has discussed the relevant provi-



sions of the transfer of property Act (Section 53A-Part performance), the definition of the word “transfer” in clause (47) of Section 2 and the “Capital gain” under Section 45 of the Income Tax Act. Paragraph ‘25’ and ‘26’ of the judgment reads as under:-

“**25.** The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression “enabling the enjoyment of” takes colour from the earlier expression “transferring”, so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof.⁴ The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.

26. A reading of the JDA in the present case would show that the owner continues to be the owner throughout the agreement, and has at no stage purported to transfer rights akin to ownership to the developer. At the highest, possession alone is given under the agreement, and that too for a specific purpose—the purpose being to develop the property, as envisaged by all the parties. We are, therefore, of the view that this clause will also not rope in the present transaction.”

4. The maxim “*noscitur a sociis*” has been repeatedly applied by this Court. A recent application of the maxim is contained in *Coastal Paper Ltd. v. CCE*, (2015) 10 SCC 664 at p. 677, para 25. This maxim is best explained as birds of a feather flocking together. The maxim only means that a word is to be judged by the company it keeps.



31. In the context of the case, the Hon'ble Supreme Court held in paragraph '30' as under:-

“**30.** In the facts of the present case, it is clear that the income from capital gain on a transaction which never materialised is, at best, a hypothetical income. It is admitted that for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under Section 45 read with Section 48 of the Income Tax Act.”

32. This Court is of the consideration opinion that the judgment in the case of **Balbir Singh Maini** (supra) would not help the petitioner.

33. Having gone through the development agreement (Annexure-3 to the writ application), we are of the considered opinion that in fact the petitioner does not get any right on the said property until the completion of the project. After the project is completed and completion certificate is issued, the petitioner gets a right to sell the area of the property which is called “Developers Area”. We do not find any substantial material to establish that with execution of the development agreement, the petitioner got ownership in the land. It is held that the transfer of development rights as it stands is amenable to GST



and cannot be brought within the purview of sale of land subject to clause (b) of Paragraph 5 of Schedule II, sale of building (as per Entry 5 of Schedule-III of the GST Act).

34. At this stage, this Court would reproduce Paragraph no.5(b) of Schedule II of the CGST/BGST Act as under:-

“5. Supply of services.-

(a)

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

Explanation.—For the purposes of this clause—

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

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

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

(c)

(d)

(e)

(f)

35. The petitioner has not controverted the submission



of the State that vide notification no.11/2017 dated 28.06.2017, construction of a complex, civil structure etc. intended for sale to a buyer was made exigible to GST except where the entire consideration has been received after issuance of completion certificate or after its first occupancy, whichever is earlier. In this case, it has been specifically pleaded by the State-responent that the consideration had been received by the petitioner in the form of transfer of development rights, which happened long before the issuance of completion certificate or first occupancy. This Court agrees that in this case, the petitioner cannot claim that it had received the consideration after the issuance of completion certificate or first occupancy.

36. At this stage, we would take note of the Notification No.4 of 2018 dated 25.01.2018 as amended by Notification No.23/2019-Central Tax (Rate) dated 30.09.2019. It is evident on reading of the Notification No.4 of 2018 that it determines the time of supply by way of the transfer of development rights as well as supply of construction services. It has been brought with an aim to streamline the process for both land owners and developers, ensuring that taxation on transfer of development rights as well as supply of construction services occurs when the constructed area is handed over to the land owner upon project



completion.

37. We do not agree with the submission of learned senior counsel for the petitioner that the liability to pay tax on supply of development rights was introduced through Notification No.04/2019 dated 29.03.2019. The supply of construction services is falling under SAC Code 9954 and the petitioner has been taxed under this code. The petitioner has not been taxed for supply by way of transfer of development rights (SAC code 9972). It is evident that the supply of construction services was covered under Notification No.11/2017 dated 28.06.2017. In this regard, the statement of the petitioner in paragraph '10' of the writ application is quoted hereunder for a ready reference:-

“That a notification was issued by the Government of India on 28.06.2017 subjecting construction of 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 or after its first occupation whichever is earlier at the rate of 18%.”

38. We find that Notification No.4 of 2018 dated 25th January 2018 clearly provides that the liability to pay Central tax on the said services (a) and (b) shall arise when the developer/builder transfers possession and right in the constructed complex. The supply of services of transfer of development rights remained taxable since introduction of the GST but by



virtue of notification no.04/2018, the liability to pay Central tax shall arise only on the consideration received in form of construction services.

39. At this stage, we reproduce the Notification No.11 of 2017-Central Tax (Rate) dated 28.06.2017, Notification No.4 of 2018-Central Tax (Rate) dated 25.01.2018 and Notification No.4 of 2019-Central Tax (Rate) dated 29.03.2019 hereunder for a ready reference:-

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY,
PART II SECTION 3, SUB-SECTION (1)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 11/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E). In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

SI NO.	Chapter, Section or Heading	Description of Service	Rate (Per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954	(i) Construction of a complex, building, civil structure or a part thereof,	9	-



	(Con- struction Services)	including a complex or building in- tended for sale to a buyer, wholly or partly, except where the entire con- sideration has been received after is- suanace of completion certificate, where required, by the competent au- thority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this no- tification shall apply for valuation of this service)		
		(ii) composite supply of works con- tract as defined in clause 119 of sec- tion 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

(TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II
SECTION 3, SUB-SECTION (1)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 4/2018-Central Tax (Rate)

New Delhi, the 25th January, 2018

G.S.R...(E). In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely:-

- (a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- (b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the devel-



opment rights by entering into a conveyance deed or similar instrument (for example allotment letter).

[F. No.354/13/2018-TRU]

(Ruchi Bisht)
Under Secretary to the Government of India
(underline is mine)

(TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY,
PART II, SECTION3, SUB-SECTION (i)]
Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 04/2019- Central Tax (Rate)

New Delhi, the 29 March, 2019
G.S.R.....(E). In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 12/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 691(E), dated the 28th June, 2017, namely:-
In the said notification, -
(i) in the opening paragraph, for the word, brackets and figures "sub-section (1) of section 11" the word, brackets and figures", sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148," shall be substituted;
(ii) in the Table, -

(a) after serial number 41 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(1)	(2)	(3)	(4)	(5)
“41 A	Head- ing9972	Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1 April, 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, required, where the by the competent authority or after its first occupation, whichever is earlier. 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 TDR or FSI	Nil	Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, 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 TDR or FSI (including additional FSI) or both for construction of the residential apartments in the



		(including additional FSI) or both 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)		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) Provided further that tax payable in terms of the first proviso hereinabove 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 The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.
41B	Head- ing9972	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, on or after 01.04.2019, construction for 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, required, where the by competent authority or after its first occupation, whichever is carlier. The amount of GST exemp-	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 (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-



		tion 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).		[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), 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. 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.
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(iii) after paragraph 1, the following paragraphs shall be inserted, namely, -

"1.A. Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value



of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.

1B. Value of portion of residential or commercial apartments remaining unbooked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be."

(iv) in paragraph 3 relating to Explanation, after clause (iv), the following clause shall be inserted, namely: -

"(v) The term "apartment" shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

vi) The term "affordable residential apartment" shall have the same meaning as assigned to it in de notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1) dated 28th June, 2017 vide GSR number 690(E) dated 28 June, 2017, as amended.

(vii) The term "promoter" shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(viii) The term "project" shall mean a Real Estate Project or a Residential Real Estate Project.

(ix) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(x) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(xi) The term "carpet area" shall have the same meaning as assigned to it clause (k) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2017).

(xii) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xiii) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built."

2. This notification shall come into force with effect from the 1st day of April, 2019.

[F. No.354/32/2019-TRU]

(Pramod Kumar)

Deputy Secretary to the Government of India

Note: -The principal notification No. 12/2017 - Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, vide number G.S.R. 691 (E), dated the 28th June, 2017 and was



last amended by notification No. 28/2018-Central Tax (Rate), dated the 31 December, 2018 vide number G.S.R. 1272 (E), dated the 31 December, 2018.”

40. It is evident from a bare reading of the aforesaid notifications that the State-respondents are correct in contending that the construction of a complex, civil structure etc. intended for sale to a buyer was made exigible to GST except where the entire consideration has been received after issuance of completion certificate or after its first occupancy, whichever is earlier. There would be no ambiguity in the above-mentioned notifications. Reliance placed by learned senior counsel for the petitioner on the judgment of Hon’ble Supreme Court in the case of M/S Govind Saran Ganga Saran (supra) seems to be misplaced. We reproduce paragraph ‘6’ of the said judgment hereunder:-

“6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.”

41. In our opinion, all the essential components of tax which have been noticed by Hon’ble Supreme Court are present



in this case.

42. In the light of the discussions made hereinabove, we are of the opinion that there is no ambiguity with regard to liability of the petitioner on account of ‘GST’ on ‘RCM’ basis on the constructions services rendered by him in lieu of the developments rights under the Development Agreement dated 27.11.2014.

43. We find no reason to entertain the present writ application. No other and further ground has been pleaded before this Court.

44. This writ application is dismissed. However, there will be no order as to cost.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	29.04.2025
Uploading Date	05.05.2025
Transmission Date	

