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Ref. No. : MCHI/PRES/17-18/092

January 8, 2018

To,
Hon'ble Shri Sudhir Mungantiwar
Minister of Finance, Planning and Forest Department
Government of Maharashtra
Mantralaya
Mumbai.

Subject : Eight Major Critical Points for amendment in GST

Reference : MCHI/PRES/17-18/084 Dt. 2nd January 2018

Respected Sir,

As per your suggestion in our last meeting we have submitted a detail representation with respect to the amendment in GST. But after review meeting with concerned officials of the State Tax Commissionerate and officer on Special Duty for Hon'ble Finance Minister we have prepared another revised representation with 8 major points along with its illustrations.

In context to the above, we would like to kindly request you to please recommend to the Chairman of GST Council to incorporate our attached suggestive points for the benefit of real estate industry.

Thanking you.

Yours Faithfully,
For CREDAI-MCHI



Mayur Shah
President



Domnic Romell
Hon. Secretary



S. S. Hussain, I.A.S. (Retd.)
Chief Executive Officer

CC:

To,
Shri Rajiv Jalota (I.A.S.)
Commissioner State Tax (GST)
Maharashtra State
Vikrikar Bhawan, 8th Floor,
829, Mazgaon
Mumbai - 400010

I. Issue: Deduction for land value

Explanation of the issue:

As per Paragraph 2 of Notification No. 11/2017 – Central Tax (Rate) dated 28 June 2017, in respect of a supply of under-construction property involving transfer of land, an abatement of 1/3rd of the total amount charged (including land value) has been provided. The applicable rate of GST on such supply is 18%. Such transactions also attract Stamp duty & Local Body Tax in the range of 6% to 8% depending on the relevant provisions of each State. The effective tax rate even after considering the abatement is therefore, around 18% to 20% (12% effective GST rate + 6% to 8% SD plus). This is being explained by way of an example -

Particulars		Amount
Unit Price	A	100
Less: Land Deduction	$B = A/3$	33
Value liable to GST	C	67

Add: GST	$D = C*18\%$	12
Add: Stamp duty (taken to be on the base price for ease of calculation)	$E = A*6\%$	6
Effective tax cost on supply of under construction unit	$F = D+E$	18

Housing is one of the basic necessities and levy of such a high rate of GST results in making it expensive and unaffordable for a common man.

It is a common practice that a construction project is undertaken on a land which has been given on a very long term lease by the Government / quasi government authorities. Considering the period of lease being very long (in some cases, even 99 years), the properties constructed on such land are valued at the same price as a property constructed on a free hold land. A strict reading of Paragraph 2 of Notification No. 11/2017 – Central Tax (Rate) dated 28 June 2017 indicates the possibility of 1/3rd abatement only when there is transfer of property in land. Since for all practical purposes, the treatment given to a property constructed on free-hold land and a property constructed on a land leased for a very long term is the same, the abatement should also be available on leasehold land.

Suggestion

- (1) (a) The rate of GST on Construction Service should be reduced to 12% instead of 18% with deduction towards land as currently provided;
 - (b) A higher deduction should be provided for projects in Metro cities Delhi, Mumbai, Chennai, Kolkata @ 50% to 60 % of total amount charged instead of 1/3rd value , as land prices & land related premiums paid during development is high.
- (2) A clarification should be issued that abatement towards land value is available on sale of under-construction properties made on land held under a long term lease (i.e. Lease for a period of 20

years or more) especially since the value of the property charged to the buyer includes the value of land & land related premiums .

II. Issue: GST on Affordable Housing Schemes

Explanation of the issue

The rate of tax for specified housing schemes has been notified as 12% vide Notification No 20/2017 Central Tax (Rate) dated 20 August 2017. Since the benefit of the lower rate does not apply to all affordable housing schemes, it turns to be a hindrance in achieving the target of the Government of 'Housing for All'. Further, taking into consideration the targeted sector for affordable housing schemes i.e. Economic Weaker Section and Lower Income Group, the rate of tax @ 12% on such schemes is very high and unaffordable.

Suggestion

The rate of GST for such scheme should be 5% and this rate should be applicable to all affordable housing schemes (i.e. for apartments having carpet area upto 30 sq. mtrs. in metro cities and 60 sq. mtrs. in non-metro cities)

III. Issue: GST on Development rights (DR's) in Joint Development Agreements (JDA) with landowners and Redevelopment Agreements with Societies, Transfer of Development Rights ('TDR') and Long Term Lease

Explanation of the issue

In a JDA, the landowner enters into a development agreement with the developer, wherein the landowner grants development rights for developing the building/layout and the land owner and developer agree for revenue sharing or area sharing of the property constructed. Similarly in a re-development project, a society enters into a development agreement with the developer and grants development rights to a developer for undertaking re-development project. There are situations wherein such projects are undertaken on long term leasehold land held by land owner or society. Typically, such long term lease hold land is provided by state development authority. While GST is payable on the constructed property, the issue is regarding taxability of such transfer of development rights by the land owner / society to the developer.

Besides this, in many situations, Transfer of Development Rights (TDR's) are allowed to be transferred from one project to another project and/or from one developer to another developer. Such Development Rights (DR's)/ or Transfer of Development Rights (TDR) attract stamp duty as these are rights arising out of land

The definition of goods under Section 2(52) of Central Goods and Services Tax Act, 2017 (CGST Act) covers movable property whereas the definition of services under section 2(102) of CGST Act covers anything other than goods. A combined reading of these sections indicates a possibility that DR/TDR is termed as service and hence attract GST. Schedule III of CGST Act provides for activities or transactions which shall neither be treated as supply of goods nor services and therefore outside the levy of GST. Entry 5 of Schedule III specifies sale of land and sale of building (post completion certificate).

The term 'immovable property' as defined in Section 3(26) of the General clauses Act, 1897, includes benefits arising out of land. It is pertinent to note that DR/TDR are nothing but a benefit arising out of land, which is used for construction, and hence should be given the same treatment as given to land. TDR were also not subject to Service tax under the pre-GST regime.

Long Term Lease – There are several pockets of land which are given on long term lease. Considering the period of the lease, the transactions are in the nature of conveyance of land and even for the purpose of stamp duty calculation on such lease, the value is virtually equal to the value of land.

Suggestion

Schedule III, Entry V should provide for exclusion of DR/TDR, long term lease and other such associated rights pertaining to construction related activities.

IV. Issue: High GST on commercial, Office / IT Premises on rental basis @ 18%

Explanation of the issue

A developer typically constructs a building for the purpose of sale or lease. A sale of under-construction building attracts GST and the renting of immovable property also attracts GST. However, while credit on procurement of goods and services for the building construction is available to a developer constructing a building for the purpose of sale, no credit is available to a builder who constructs a building for the purpose of lease. The only change in both the constructions is the revenue model for earning income for the developer. While in the sale model, the revenue is earned upfront, in the lease model, the revenue is earned over a period of time. A developer cannot earn the rent income (the output supplies which attract GST) unless he procures goods and services for the construction of the building (input and input services used for earning the rent income). 18 % GST is not justified at all, as for the same premises GST is charged twice, while construction and while renting.

Suggestion

Since GST is already paid during construction of premises, the rate of GST on leasing should be reduced to 6% considering the fact that there is no input credit available on procurement of goods and services for construction of such buildings.

V. Issue: Adjustment of cancellation of flat

Explanation of the issue

A strict reading of the relevant provisions of CGST Act (Section 34 pertaining to credit note) indicates that there is no effective mechanism for issuance of credit notes on account of cancellation of flats. Under the Service tax regime, Service tax paid on such cancelled flats was allowed to be adjusted against the liability of subsequent month. A similar clarification must be provided in GST regime. It may also be relevant to note that while a credit note is permitted for sales return qua goods, no such adjustment has been provided for service return.

Suggestion

GST paid on a cancelled flat must be allowed to be adjusted against the liability of subsequent months.

VI. Issue: Tax on Advance Payment**Explanation of the issue**

GST was payable at the time of receipt of advance payments for goods or services. However, subsequently while payment of GST on advance for goods has been done away with, advance for services still attract GST. The credit of such GST paid on advance for services is available only after the receipt of the said services. In a construction industry, a developer typically makes advance payment to a works contractor for procurement of material. However, works contract transactions have been deemed to be services under GST by virtue of Entry 6 under Schedule II of CGST Act. Accordingly, such advances (although typically for material) attract GST without any corresponding credit till the services are actually rendered by the contractor. It is important to note that the services of works contractor spills over two-three years because of the nature of service. This leads to substantial working capital blockage for a developer.

Suggestion

GST should not be payable on advances paid for works contract services or alternatively, if payable, credit on the same should be immediately available on payment of advance.

VII. Issue: Time of supply for developers**Explanation of the issue**

As a matter of fact, there is a lot of time gap between raising of demand to the end customers and receipt of consideration from them. Since GST is payable on accrual or receipt whichever is earlier, it results in GST being paid to the Government by the developers from their own pocket. This results into blockage of large working capital.

Suggestion

GST should be payable on receipt of consideration from the end customers and not on accrual basis.

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Ref. No. MCHI/PRES/17-18/084

January 02, 2018

To,
Hon'ble Shri Sudhir Mungantiwar
Minister of Finance, Planning and Forest Department
Government of Maharashtra
Mantralaya
Mumbai.

Sub: Suggestions on GST issues related to the Real Estate Sector

Respected Sir,

Greetings from CREDAI-MCHI!

CREDAI-MCHI wishes you a Very fruitful, Happy & prosperous New Year 2018

At the outset, we CREDAI-MCHI members would like to sincerely thank you for taking time for understanding the issues faced by the real estate sector.

With respect to our last meeting held at your residence "Devgiri" on 27 December 2017, you briefly discussed all the points related to the GST issue which are creating the distressing situation to the developer's fraternity. So as per your advice in this meeting, we are sending our suggestions to you after discussing the points with Shri Rajiv Jalota (I.A.S.) State Tax Commissioner and GST Commissioner of Maharashtra.

In this mail we are enclosing our suggestions herewith the following documents:

- 1) Copy of the slide deck highlighting the issues.
- 2) A one pager summary of the issues that were highlighted at the time of the presentation.
- 3) Additional supporting (in bullet form) for the various issues as per the meeting and discussion with ELP representatives on 28th December 2017.
- 4) Copy of the representation that has been made by CREDAI-MCHI.
- 5) A report highlighting the rates in Maharashtra and other states of the country.
- 6) An excel sheet highlighting ready reckoner rates across MCGM from 2010.

Therefore, we would like to humbly request you to kindly take cognizance of all the points and consider them and give justice to the real estate sector for the bright future.

Thanking you

Yours faithfully,
For CREDAI-MCHI



Mayur Shah
President



Dornic Romell
Hon. Secretary



S. S. Hussain, I.A.S. (Retd.)
Chief Executive Officer

CREDAI - MCHI