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BHIWANDI
SHAHAPUR-MURBAD
URAN-DRONAGIRI
ALIBAG
KARJAT-KHALAPUR-KHOPOLI

To,
Shri Vivek Johri ji,
Chairman,
Central Board of Direct Taxes,
Government of India.

Subject: Issuance of Clarification in relation to availability and validity of the benefit of concessional rate of GST under Entry 3(ie) of the Rate Notification.

Ref: Notification No. 03/2022- Central Tax Rate dated 13.07.2022

Respected Sir,

At the outset we, CREDAI-MCHI introduce ourselves as an apex body for private Real Estate Developers in Mumbai Metropolitan Region (MMR). We represent the voice of thousands of our real estate member developers engaged in business of construction of residential/commercial/warehousing/mix use buildings including undertaking Redevelopment projects such as Slum Redevelopment, MHADA redevelopment, redevelopment of dilapidated buildings etc. in the Mumbai, MMR region of Maharashtra.

We would like to draw your attention towards Notification No. 03/2022- Central tax rate dated 13.07.2022, wherein Entry (iv), (v) & (vi) which provided for concessional rate of GST on composite supply of works contract services with respect to specified projects like Housing for all, PMAY projects or projects granted Infrastructure status etc, were deleted.

Entry 3(ie) was introduced vide Notification 03/2019 dated 29.03.2019 providing for concessional rate of GST if the projects undertaken by them were under any schemes mentioned in Entry 3 (iv), (v) & (vi).

It is our understanding that basis the relevant judicial precedents, the principle of incorporation by reference and the manner in which the amendments are carried out, the deletion of Entry 3 (iv), (v) & (vi) shouldn't preclude the promoter from charging concessional rate of GST on under construction flats sold to its customers as the Entry 3(ie) was not amended/changed/deleted vide the said notification. It may also be worthwhile to mention that the intention of this amendment cannot be to put the end users in a disadvantageous position by making the units more expensive especially when such schemes are made with the intent of providing the basic necessity of housing.

We have attached the in depth explanation articulating the situation. It is our humble request to kindly issue a clarification affirming that Entry 3(ie) is still valid and the benefit of concessional rate continues to be available under the said Entry.

We request your urgent and immediate intervention in this matter.

Yours faithfully,
For CREDAI-MCHI


Boman Irani
President


Dhaval Ajmera
Hon. Secretary

CC

- 1) Shri Manoj Kotak, Hon'ble Member of Parliament,
Member of Parliamentary Standing Committee on Finance & Commerce

Maharashtra Chamber of Housing Industry

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel: 42121421, Fax: 4212 1411/407 Email: secretariat@mchi.net Website: www.mchi.net

DETAILED REPRESENTATION

By virtue of this representation, we wish to draw your attention to the possible misinterpretation, ambiguity and lack of clarity that may prevail in relation to the effect of the amendments made vide Notification No. 03/2022- Central Tax (Rate), dated 13.07.2022 ('Notification') amending Notification No. 11/2017-Central Tax (Rate), dated the 28.06.2017('Rate Notification') as per the recommendation of the GST Council at its 47th meeting.

A. AMENDMENTS MADE TO THE RATE NOTIFICATION

1. On the recommendation of the GST Council at its 47th meeting, CBIC has issued the Notification thereby amending the Rate Notification.
2. The Notification has *inter alia* omitted the Entry 3 (iv), (v), and (vi) (hereinafter collectively referred to as the 'Deleted Entries') of the Rate Notification, administering the concessional rate of GST on the composite supply of works contract services provided with respect to specified projects *inter alia* undertaken under specific schemes, namely, Housing for All(Urban) Mission/Pradhan Mantri Awas Yojana, Infrastructure Status etc.

B. POSSIBLE MISINTERPRETATION, AMBIGUITY AND LACK OF CLARITY

3. It is pertinent to note that, Vide Notification no. 3/2019 – Central Tax Rate, dated 29.03.2019 ('Notification no. 3/2019'), the promoter was given benefit of concessional rate of GST *inter alia* under Entry 3(ie) of the Rate Notification, on the output supply of construction services provided qua any of the schemes specified in Entry 3(iv) (b), (c), (d), (da) and (db); Entry 3(v) (b), (c), (d) and (da); and Entry 3 (vi) (c).
4. While Entry 3(ie) has remained unchanged even after the Notification, the Entries specified in the Entry 3(ie) of the Rate Notification have been omitted. In consequence thereof, there is a possibility / likely confusion as to the validity and availability of concessional rate of GST to the promoter providing construction services qua the schemes specified in the Deleted Entries 3(iv), 3(v) and 3(vi).
5. In this regard, the following factual position may assume importance: -
 - (a) Entry 3(ie) of the Rate Notification has not been omitted vide the Notification and hence it continues to remain available, subject to fulfilment of other conditions. Had the intention been to discontinue the benefit under the said Entry 3(ie), the same would have been explicitly provided.
 - (b) The schemes mentioned in the Deleted Entries 3(iv), 3(v) and 3(vi), such as Housing for All(Urban) Mission/Pradhan Mantri Awas Yojana, Infrastructure Status etc. qua which the benefit is given in Entry 3(ie), are still valid and have not been discontinued.
 - (c) The benefit under Entry 3(ie) is not inter-connected to the Deleted Entries and has been used only for the reference purpose to clarify which scheme will be eligible for concessional rate. It is a settled law by the Hon'ble Apex Court in a plethora of cases that if it is a legislation by incorporation, the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated.

C. PRAYER:

6. **It is humbly stated that the concessional rate to the developer vide Entry 3(ie) of the Rate Notification continues as can be certainly construed from the aforementioned factual positions. However, in order to avoid interpretational differences and confusion, we humbly request that a suitable clarification be issued elucidating that the Entry 3(ie) of the Rate Notification is still valid and the benefit of concessional rate of GST provided therein is still available to the developer.**