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Jesal Shah

To,
Shri Sanjay Mangal
Principal Commissioner (GST)
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes and Customs,
GST Policy Wing, Government of India
North Block, New Delhi - 110001

Subject: Representation for issuance of clarification in relation to the non-applicability of GST on premium/ fees paid to Municipal Corporations or other Local or Governmental Authorities by real estate developers.

Respected Sir,

CREDAI-MCHI is an apex body consisting of members from the Real Estate Industry among Mumbai Metropolitan Region (MMR). With a strong Membership of over 1800 leading Developers in Mumbai, CREDAI-MCHI has expanded across MMR, having its own units in the region of Thane, Kalyan-Dombivli, Mira-Bhayandar, Vasai-Virar, Raigad, Navi Mumbai, Palghar-Boisar, Bhiwandi, Uran- Dronagiri, Shahapur-Murbad, Alibag, Karjat-Khalapur-Khopoli, Pen. CREDAI-MCHI is the Government recognised body for private sector developers in MMR and consistently working to make the industry more organised and progressive. CREDAI-MCHI under the aegis of CREDAI National which is an apex body of 13000 developers from across the nation has developed into a preferred platform with regard to a regional discourse on housing and habitat through its close and deep networking with the Government.

At the outset, we wish to express gratitude to the GST Council for always being receptive to the requests of the real estate sector.

By virtue of this representation, we wish to draw your kind attention to the non-applicability of Goods and Services Tax (GST), in relation to the payment towards the statutory functions such as fees/premium towards Free Sale Index ('FSI'), Development Charges, Scrutiny Fees, other approvals etc., by Municipal Corporations, Slum Rehabilitation Authority ('SRA') or other Local or Governmental Authorities ('relevant public authorities').

A. PAYMENTS TO THE RELEVANT PUBLIC AUTHORITIES FOR CONSTRUCTION OF THE PROJECT

- During the course of developing real estate projects, the Developers are legally obligated to make payments to the relevant public authorities in relation to the construction and development of area under project of the Developers.
- The GST Council has been appreciative of the fact that the statutory functions of the relevant public authorities are *per se* not taxable. Therefore, it has rationally and laudably exempted or excluded such functions from the purview of GST. The said exemption and exclusion are provided vide the following Notifications:
 - Notification No. 14/2017-Central Tax (Rate), dated 28.06.2017('Notification no. 14/2017'), as amended by Notification No. 16/2018-Central Tax (Rate) New Delhi, the 26.07.2018.
 - Entry 4 of Notification No. 12/2017 - Central Tax Rate, Dated 28.06.2017 ('Notification no. 12/2017')]

Maharashtra Chamber of Housing Industry

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CREDAI-MCHI CHAPTERS : THANE | KALYAN-DOMBIVLI | MIRA BHAYANDAR | RAIGAD | NAVI MUMBAI |
BHIWANDI | PALGHAR BOISAR | SHAHAPUR-MURBAD | URAN-DRONAGIRI |
VASAI VIRAR | ALIBAG | KARJAT-KHALAPUR-KHOPOLI | YOUTH NMR

3. Vide the said Notifications, it has been provided that the services supplied by Central or State Governments, Local Authority or Governmental Authority by way of any activity in relation to a function entrusted to a Municipality under Article 243W of the Constitution, will either be exempted from GST or will be treated neither as a supply of goods nor a supply of service and accordingly GST will not be eligible on the same.
4. The relevant public authorities i.e. the Municipal Corporation qualifies as a Local Authority by virtue of Section 2(69) of the Central Goods and Services Tax Act, 2017 and SRA qualifies as a Governmental Authority in terms of para 2 (zf) of the Notification no. 12/2017.
5. Thus, the function entrusted to a Municipality under Article 243W of the Constitution, when performed by the relevant public authorities, qualify for exemption from the imposition of GST or are beyond the scope of supply on which GST can be charged.
6. Article 243W *inter alia* lays down the powers of the Municipality to perform the functions which are listed in the Twelfth Schedule of the Constitution of India. The Twelfth Schedule *inter alia* contains the following entries:—

"TWELFTH SCHEDULE

[Article 243W]

1. *Urban planning including town planning.*
2. ***Regulation of land-use and construction of buildings.***
3. *Planning for economic and social development. (...)*
- .
- .
- .
10. *Slum improvement and upgradation*

[Emphasis supplied]"

7. The Twelfth Schedule of the Constitution of India includes '*Regulation of land use and construction of buildings*' within its ambit. In terms of Article 243W read with Twelfth Schedule of the Constitution of India, it is the constitutional duty of the Municipal Corporation to regulate the use of land and construction of buildings. The statutory functions such as FSI, approvals etc., by the Municipal Corporation in relation to the construction of the real estate project falls under the sphere of '*Regulation of land use and construction of buildings*'. Consequently, the service provided in relation to the same is an activity in relation to a function entrusted to a Municipality under Article 243W of the Constitution.
8. In this regard, one can place reference on the ruling of the Authority for Advance Ruling, West Bengal in Re : **Newtown Kolkata Development Authority, [2020 (35) G.S.T.L. 416 (A.A.R. - GST - W.B.)]**, wherein the following was held:

"(..)In the sphere of town planning and development NKDA shall control all building operations and regulation of building uses, maintain public parks, squares, gardens, water-bodies and recreation centres, take measures for beautification of the township and similar activities related to development of a planned township. NKDA, therefore, performs such functions as are listed under the Twelfth Schedule and entrusted to a Municipality under Art. 243W of the Constitution. (...)"
9. Reference can also be placed on the case of M.C. Mehta v. Union of India [2004] 6 SCC 588, wherein the Hon'ble Supreme Court observed that:

"38. The Municipal Corporation has the responsibility in respect of matters enumerated in the Twelfth Schedule of the Constitution of India, regulation of land use, public health, sanitation, conservancy, solid-waste management being some of them(...)"

10. The Hon'ble GST Council will also appreciate that the said Article *inter alia* grants Municipalities the authority and responsibilities in relation to the matters specified in the Twelfth Schedule, without imposing any condition that these functions must be attributable only to non-commercial purposes. The said condition is also not stipulated in any statute through which the powers of Municipalities under Article 243W are conferred. Furthermore, the conditions for exemption/exclusion from GST, as per Notifications 14/2017 and 12/2017, also do not impose any restrictions regarding the recipient using services provided by the Central Government, State Government, Local Authority and Governmental Authority, for commercial purposes.
11. Consequently, the services provided by the relevant public authorities in relation to the construction of a real estate project is an activity in relation to a function entrusted to a Municipality under Article 243W of the Constitution and is eligible for exemption/exclusion from the purview of GST in terms of the Notification no.'s 12/2017 and 14/2017.
12. In the erstwhile Service Tax regime also, the Government had appropriately exempted the services provided by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution, vide Entry No. 39 of the Notification No. 25/2012-Service Tax, dated 20th June 2012, as amended from time to time.

B. PRAYER

We humbly pray that a suitable clarification be issued elucidating that the services provided by the relevant public authorities in relation to the construction of a real estate project such as FSI, approvals etc., to real estate developers, are exempted/excluded from the levy of GST.

Thanking you,

Yours sincerely,
For CREDAI-MCHI



Domnic Romell
President



Dhaval Ajmera
Hon. Secretary

PS : Please feel free to reach out to Mr. Keval Valambhia, COO on keval@mchi.net Or + 91 9870985061 for any assistance or further information.