AUTHORITY FOR ADVANCE RULING, TAMILNADU

DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX

5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,

CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri B. Senthilvelavan, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34
2. Tmt.T.Padmavathi, Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6.

ORDER No. 33/ARA/2021 Dated: 17.08.2021

GSTIN Number, if any / User id		33AAHFT8920F1Z6
Legal Name of Applicant		THIRU NEELAKANTA REALTORS LIMITED LIABILITY
Trade Name of the Applicant		THIRU NEELAKANTA REALTORS LIMITED LIABILITY
Registered Address / Address provided while obtaining user id		No 17/35,Second Main Road, Gandhi Nagar, Adyar, Chennai-600090
Details of Application		Form GST ARA-01 Application Sl.No.01/2021 ARA dt.03.02.2021
Concerned Officer		Centre: Chennai South Commissionerate State:
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Works Contract
B	Description (in brief)	The applicant is engaged in the business of providing works contract and construction services.
Issue/s on which advance ruling required		i. Applicability of a notification issued under the provisions of this Act ii. Determination of time and value of supply of goods or services

Question(s) on which advance ruling is required	1. Whether paragraph 2A of Notification No. 03/2019-Central Tax (Rate) dated 29thMarch, 2019, is applicable to those agreements entered on or before 29th September 2019 with unregistered persons? 2. If the answer to question (1) is affirmative, whether Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019 is applicable, when the actual cost of construction of services are known? 3. If the answer to the question (1) or (2) is negative, which valuation rule is applicable for identifying the value of supply for construction services rendered? 4. What will be the value of supply, in case, Applicant adopts Rule 30 of CGST Rule, 2017? 5. What will be the value of supply, in case, Applicant adopts Rule 31, instead of Rule 30 of CGST Rule, 2017 in terms of proviso to Rule 31 of CGST Rules? 6. Whether paragraph 2A of Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019, is ultravires Section 15(5) of CGST Act, 2017 and hence is inapplicable until there is prescription of rules in terms of Section 15(5) read with Section 2(87) of CGST Act, 2017?

Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

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

M/s Neelakanta Realtors LLP, 17/35, Second Main Road, Gandhi Nagar, Adyar, Chennai-600090 (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AAHFT8920F1Z6. They have sought Advance Ruling on the following questions:

1. Whether paragraph 2A of Notification No. 03/2019-Central Tax (Rate)dated 29th March, 2019, is applicable to those agreements entered on or before 29th September 2019 with unregistered persons?
2. If the answer to question (1) is affirmative, whether Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019 is applicable, when the actual cost of construction of services are known?
3. If the answer to the question (1) or (2) is negative, which valuation rule is applicable for identifying the value of supply for construction services rendered?
4. What will be the value of supply, in case, Applicant adopts Rule 30 of CGST Rule, 2017?
5. What will be the value of supply, in case, Applicant adopts Rule 31, instead of Rule 30 of CGST Rule, 2017 in terms of proviso to Rule 31 of CGST Rules?
6. Whether paragraph 2A of Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019, is ultravires Section 15(5) of CGST Act, 2017 and hence is inapplicable until there is prescription of rules in terms of Section 15(5) read with Section 2(87) of CGST Act, 2017.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are incorporated under the Limited Liability Partnership Act, 2008 and they are engaged in the business of providing works contract and construction services. They had entered into a Joint development agreement ("JDA" for short) with K. Alamelu and N. Rama (Hereinafter referred as "owners") who are the owners of the property measuring 2860 sq.ft situated at, 2nd cross street, Shastri Nagar, Adyar, Chennai – 600020 for construction of apartments. The applicant has stated that the owners approached them for developing the property and entered into an agreement for this purpose on 17th day of April 2019. They have furnished copy of the JDA,

containing the details of property, other terms and conditions between the owners and the Applicant. Some of the key terms of the JDA, that are significant for the questions raised in the application are reproduced for reference below:

- The Applicant is obligated to construct 5133 sq ft of saleable area in entirety;
- Out of the total area constructed, area measuring 3422 sq.ft, representing two flats will be allotted to the owners(each flat comprising 1711 sq. ft of constructed area);
- The Applicant will also pay a sum of Rs. 20,00,000 to the owners, in addition to the flats allotted to them;
- Balance 1711 sq.ft of saleable area representing one flat will be allotted to the Applicant or its nominees;
- As a consideration towards construction of the property by the Applicant, owners agree to convey / transfer 953.33 sq.ft of undivided share of land to the Applicant or its nominees;
- Applicant may market its share referred above to prospective purchasers;
- Applicant is duty bound to obtain all the necessary statutory approvals from the appropriate authorities for carrying out the construction;
- All the costs in relation to the construction of the property shall be borne only by the Applicant and that the owners are not obligated to contribute any sum of money including costs incurred for obtaining necessary approvals from authorities;
- Owners will continue to be title holders of the land until the sale deed conveying undivided shares are registered

The applicant has stated that as on date, pending minor works, the construction work for the owner's portion is substantially completed in all aspects. The transaction will be complete in all aspects, in terms of the JDA, once the key is handed over to the landowners.

2.2 On interpretation of law, the applicant has submitted that, Paragraph 2A in Notification no 03/2019-Central Tax (Rate) is applicable only when a registered person transfers development right. They have further stated that paragraph 2A

was amended vide Notification No. 20/2019- Central Tax (Rate) dated 30th September, 2019, wherein, the word 'registered' mentioned in Notification no 03/2019-Central Tax was omitted.; it is evident from the above that, for the period commencing from 29th March 2019 until 29th September, 2019, paragraph 2A was applicable only to a registered person transferring development rights; however, with effect from 30th September, 2019, paragraph 2A was applicable to any person transferring the said development rights. The applicant is of the view that, Notification no.03/2019- Central Tax (Rate) dated 30th March, 2019, prescribing a notional value of construction service is not applicable to the Applicant's case since the actual cost of construction is very much available. They have also stated that Notification no 03/2019-Central Tax (Rate) dated 29th March 2019 is not applicable until rules are prescribed in terms of Section 15(5) of CGST Act 2017. They have submitted that, there is no power for the government to notify the value of supply under Section 15(5) of CGST Act, 2017. Value of supply can be prescribed only via rules. Further for exercising powers conferred u/s 15(5), government must do the following

a. Government has to first notify the nature / class of supplies for which rule has to be prescribed; and

b. For the above notified service, value has to be determined in the manner as prescribed by the rules

However, Notification no 03/2019-Central Tax (Rate) prescribes both the nature and manner of determination of value of construction service, which is clearly beyond the powers conferred by Section 15(5) of CGST Act, 2017. Further, there are no rules prescribed in respect of construction services provided in lieu of development rights. Considering the above submissions, the Applicant has submitted that, Notification no 03/2019- Central Tax (Rate) is ultra vires Section 15(5) of CGST Act, 2017 and consequently Applicant has to resort to valuation rules.

2.3 In view of the facts, the applicant has stated that Notification no 03/2019-Central Tax (Rate) is inapplicable to the instant case and the Value of supply for the services provided by them have to be the cost of construction plus 10% or actual cost of construction in terms of Rule 30 or 31 of CGST Rules, 2017 as the case may be.

3.1 Due to the prevailing pandemic situation and in order not to delay the proceedings, the applicant was addressed through the email address mentioned in their application to seek their willingness to participate in the digital hearing vide email dated 10.02.2021. The authorized representative appeared for the hearing virtually on 19.02.2021. On admissibility of questions it was informed that Q.No.6 raised by them is not admissible and the same was accepted. They reiterated the submissions made in their application and also stated that the construction service has been availed by them against UDS and not for TDR, FSI and on this account the Notification No.03/2019 is not applicable to their case. The AR undertook to furnish the Joint Development Agreement, paperbook (referred by him), construction agreement with owners/others and the method of valuation proposed by them with workings and proof.

4.1 In furtherance to the hearing held on 19.02.2021, the applicant submitted the copy of agreement dt. 17.04.2019 entered into between them and the land owners Mrs Alamelu & Mrs Rama Swaminathan, for provision of construction services in lieu of UDS along with excerpts of relevant notifications, provisions of law and the case law they relied upon. They further submitted the following documents on 25.03.2021.

- Synopsis of Advance ruling application filed
- Copy of construction agreement between developer and third party
- Workings for the proposed valuation to be adopted by the applicant
- Self-attested copy of actual cost incurred for construction service rendered by them.

4.2 In their additional submissions the applicant has inter-alia stated as follows;

- Following points emerge from the analysis of Para 2A of Notification 03/2019

  i. A person must transfer development right or FSI to a promoter;
  ii. For transferring such development rights or FSI, land owner must receive consideration in the form of constructed apartment;

iii. For the construction services so rendered, value of supply shall be total amount charged for similar apartments in the project from the independent buyers;

iv. Based upon the value arrived in (iii) above, value of land can be deducted as per paragraph 2;

v. In terms of paragraph 2, value of land is presumed to be 1/3rd of the total amount charged for such supply

- A perusal of the agreement entered between them and the land owner clearly indicates that, in consideration of the landowners agreeing to convey proportionate share of UDS in favour of those who buy flats from them (from out of Applicant's share of flats), specified number of flats would be handed over by Applicant to the landowners.
- Notification no 03/2019 would become applicable if, and only if, construction services are provided by the promoter to a land owner in lieu of transfer of development rights. However, it is clearly evident from the perusal of the agreement that, construction services are provided by Applicant to the land owner(s) in lieu of the transfer of UDS by the land owners.
- Incidentally, for executing its obligation, the Applicant gets permission from the land owner to enter the land and develop the same in the form of constructed apartments. It is obvious that, without land owners permitting the Applicant to enter the land and develop the property, Applicant's obligation cannot be fulfilled. Merely because the land owners permit the developers to enter the land, it cannot be construed that, land owners have transferred development rights against consideration in the form of the constructed apartments.
- It is also important to note that, both parties to the agreement have to fulfil / perform list of other obligations as specified in the agreement. Each and every obligation / activity to be performed by the either parties cannot be dissected and construed as rendition of separate service by either parties. In other words, it is the substance and object for which the parties enter into a contract, which is relevant in determining the nature of service provided by either parties.
- The applicant has relied upon the following case laws to substantiate their contentions

i. M/s. Super Poly Fabrics Ltd Vs Commissioner Of Central Excise,

Punjab

ii. Assam Small Scale Ind. Dev. Corp. v M/s J.D. Pharmaceuticals and Another. 2005 (10) TMI 494-Supreme Court

4.3 Registry issued a letter dt. 12.04.21 requiring the applicant to submit proof of valuation and certified copy of valuation which were required to be submitted. Applicant vide their letter dt.14.07.21 submitted a certified copy of valuation, CA Certificate to substantiate veracity of cost workings and proof of valuation. They also submitted that the delay in submission of documents was due to lock down restrictions.

4.4 The applicant was addressed vide letter dt.28.07.21 offering them another Personal hearing in view of the change in the constitution of the bench due to change in the state authority for Advance ruling. Accordingly another PH was fixed on 10.08.21, wherein the authorized representative of the applicant, Shri.J.Srinivasan, Tax consultant, appeared and reiterated their submissions. Further he emphasized that the development rights have been transferred before 29th September 2019 and as the owners are not registered, Notification no.3/2019 dt. 29.03.2019 is not applicable to their case. Decision of the Hon'ble Supreme Court in the case of M/s. Wipro Ltd was referred wherein it has been pronounced that whenever actual value is not ascertainable, notional value will not be applicable; that the consideration is non-money and therefore section15 (1) is not applicable and valuation rules are to be applied; that Rule30 of the GST Rules is applicable and as per the proviso, the service providers have been given the option to follow Rule31 instead of Rule30. They requested for a ruling on the value to be adopted.

5.1 The Central Jurisdictional authority reported that there are no pending proceedings on the issue raised by the applicant in their Advance Ruling application.

5.2. The State jurisdictional authority has not furnished any comments and it is construed that there are no proceedings pending on the issue raised by the applicant.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant, all the additional submissions made during the hearing and

thereafter and the submissions of the Jurisdictional authorities. The applicant has stated that they are incorporated under the Limited Liability Partnership Act, 2008 and they are engaged in the business of providing works contract and construction services. They had entered into a Joint development agreement with K. Alamelu and N. Rama who are the owners of the property measuring 2860 sq.ft situated at, 2nd cross street, Shastri Nagar, Adyar, Chennai - 600020. The applicant has stated that the owners approached them for developing the property and entered into an agreement for this purpose on 17th day of April 2019. They are before this forum for obtaining a ruling regarding the aspect valuation of the transaction and have filed the application for the following questions: -

1. Whether paragraph 2A of Notification No. 03/2019-Central Tax (Rate) dated 29th March, 2019, is applicable to those agreements entered on or before 29th September 2019 with unregistered persons?

   2. If the answer to question (1) is affirmative, whether Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019 is applicable, when the actual cost of construction of services are known?

   3. If the answer to the question (1) or (2) is negative, which valuation rule is applicable for identifying the value of supply for construction services rendered?

   4. What will be the value of supply, in case, Applicant adopts Rule 30 of CGST Rule, 2017?

   5. What will be the value of supply, in case, Applicant adopts Rule 31, instead of Rule 30 of CGST Rule, 2017 in terms of proviso to Rule 31 of CGST Rules?

   6. Whether paragraph 2A of Notification no 03/2019-Central Tax (Rate) dated 29th March, 2019, is ultravires Section 15(5) of CGST Act, 2017 and hence is inapplicable until there is prescription of rules in terms of Section 15(5) read with Section 2(87) of CGST Act, 2017.

Of the above questions, Q.No.6 is not applicable under Section97(2) of the CGST Act, which has already been communicated to the applicant in the first Personal hearing held on 19.02.2021 and accepted by the applicant. Hence the ruling in respect of Questions 1 to 5 being sought on the applicability of notification issued under the provisions of the CGST Act, 2017 and also on determination of time and value of supply of goods or services or both is found admissible under the provisions of the CGST Act, 2017.

7.1 The Applicant is obligated to construct 5133 sq ft of saleable area in entirety, out of the total area constructed; area measuring 3422 sq.ft, representing two flats will be allotted to the owners (each flat comprising 1711 sq. ft of constructed area). The Applicant will also pay a sum of Rs. 20,00,000/- to the owners, in addition to the flats allotted to them. Balance 1711 sq.ft of saleable area representing one flat will be allotted to the Applicant or its nominees. As a consideration towards construction of the property by the Applicant, owners agree to convey / transfer 953.33 sq.ft of undivided share of land ('UDS' for short) to the Applicant or its nominees. Applicant may market its share to prospective purchasers. Applicant is duty bound to obtain all the necessary statutory approvals from the appropriate authorities for carrying out the construction. All the costs in relation to the construction of the property shall be borne only by the Applicant and that the owners are not obligated to contribute any sum of money including costs incurred for obtaining necessary approvals from authorities. Owners will continue to be title holders of the land until the sale deed conveying undivided shares are registered. From these facts stated by the Applicant, it is seen that the owners have transferred the UDS and also engaged the Applicant to develop the property into apartments comprising of 3 flats. The applicant has been vested with the responsibility of obtaining necessary approvals and paying necessary statutory fees and also bearing all cost incurred for such construction / development. Further the owners have entered into a Joint Development Agreement with the applicant. Thus it is seen that in the instant case, vide the JDA, the applicant is vested with the responsibility of developing the land into apartment for which by the clauses of JDA, the applicant gets a share of UDS in the land and right to construct an area of 1711 sq.ft.

7.2 Applicant has stated that there should be transfer of development rights or FSI to a promoter and for transferring such rights/FSI, land owner must receive consideration in the form of constructed apartment. They have submitted that in this case, in consideration to the landowners agreeing to convey proportionate share of UDS in favour of those who buy flats from the applicant, specified number of flats will be handed over to the land owners by the applicant. They also have stated that the object and purport of the transaction was never to transfer any development rights in lieu of construction services to be rendered by them.

Hence they contend that the construction services are provided in lieu of the UDS of land transferred and no transfer of development rights is involved as stipulated in the notification no.3/19 cited supra. Further they state that such transactions will fall in the purview of para 2A of the said notification if and only if there is transfer of development rights.

7.3 The term development right has not been defined in the GST Law or the notification issued in this regard. However as per **The Real Estate (Regulation and Development) Act, 2016,** Development is defined under Section 2(s) as follows:

> *(s) "development" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;"*

It is a general practice for the landowner to transfer development rights in the land to the promoter. In lieu of such rights, along with the proportionate share in the land, the developer provides money and/ or a fixed quantity of flats to the land owner or share in the revenue from sale of the flats or combination of three. For the construction services provided by the developer to the landowner, the landowner would not make any monetary payment to the developer, but only grant development rights concomitant to the land coupled with the agreement to transfer the proportionate land. The promoter would then be entitled to develop a complex or an agreed number of flats on such land and be entitled to sell his proportionate undivided share of land, remaining the proceeds from such sale. Thus, Development Right (DR) refers to the rights that permit promoters to modify or improve their property within the limitations of the law. These rights add value to a property as they represent the development potential of the property. In case of joint development agreement, the landowner transfers proportionate land coupled with Development Right (DR) for construction. Generally, these two rights cannot be separated and intention of the landowner is to transfer proportionate FSI for a consideration in the form of constructed flats/units., which has been done in the instant case. The owners have transferred the UDS of land along with the development rights as consideration for the construction. In this respect, Joint Development Agreement dt. 17.07.2019 entered into between the land owners and

the Applicant has to be analysed. The following is the extract of points agreed upon:

" **JOINT DEVELOPMENT AGREEMENT**

.....

E. The Owners approached the DEVELOPER who has sufficient construction experience, knowledge and expertise to develop the Schedule A property a desired by the owners in to a Residential Building complex (hereinafter referred to as THE SAID BUILDING) and ***the DEVELOPER has agreed to develop the schedule A property****.*

F. After detailed study and planning, the DEVELOPER has agreed to construct 5133 sq.ft of saleable area in the Schedule A property consisting of stilt floor plus three floors, consisting of one flat per floor. ***All the approvals cost and development cost shall be borne by the developer****. .....*

NOW THIS JOINT DEVELOPMENT AGREEMENT WITNESSETH AS FOLLOWS:-

.....

2. The Developer hereby ***agrees that it will at its own cost and expense will obtain*** *approval* ***for construction from CMDA and Corporation of Chennai*** *and construct the said building.....*

6. In lieu of the DEVELOPER having agreed to construct and allot flats as mentioned above to the OWNERS, ***the OWNERS agree to convey/transfer 953.33 Sq.ft undivided share of land in the Schedule A property*** *to the DEVELOPER or their nominee/s by executing and registering a power of attorney in favour of the DEVELOPER or its nominee simultaneously upon DEVELOPER obtaining approval from statutory authorities. .....*

8. The OWNERS ***shall at no point of time be liable to contribute any moneys for or towards the construction of the building*** *or any part thereof. The OWNERS shall also not be liable to pay any further money s to the DEVELOPER on account of any escalation in the cost of construction of the Building.*

9. ***All the cost incurred in obtaining necessary sanctions, permits and approvals for*** *the* ***construction of the new building shall be borne by the DEVELOPER.*** *All expenses such as Architect fees, scrutiny fees, legal*

charges, development charges, deposits, vector charges etc., shall be borne by the DEVELOPER.

*18. **The Stamp duty, Registration Fees and other expenses incidental to the transfer of the Saleable undivided interest to the DEVELOPER or its nominees shall be borne by the DEVLOPER or its nominees**."*

Thus from the above conditions of the JDA, it is observed that there is a transfer of development rights from the owners to the applicant in as much as the owners approached the applicant to develop the property and the applicant agreed to it. The consideration has been the transfer of UDS of land. Further the cost of construction and all statutory fees have been agreed to be borne by the developer completely and also the stamp fee and registration fee are to be paid by the developer. The developer has agreed upon to obtain all necessary approvals and permissions for construction of the new building. Thus the entire work of developing the residential complex has been vested with the developer by the owners.

7.4 Para 2A of the Notification provides the value to be taxed where a person transfers development rights or FSI to a promoter against consideration and does not limit itself to the transfer of development rights alone to be the taxable event as stated by the applicant. Here in the instant case, the owners have vested the rights to develop the immovable property owned by them, into a residential apartment, with the applicant. So the contention of the applicant that this para would not be applicable to this transaction as it does not involve transfer of development rights is not sustainable.

8.1 The legal provisions as applicable is to be analyzed for clarity.

(i) Para 2A was inserted on 29.03.2019 to the existing Notification no.11/2017-CT(Rate) dt.28.06.2017 which is as follows: -

"(iv) after paragraph 2, the following paragraph shall be inserted, namely, -

"2A. Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI

(including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above.".

(ii) Para2A was inserted vide notification no.3/2019-CT (Rate) dt. 29.03.2019 and this notification has added Section 148 of the CGST Act in the Preamble of the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 along with Section 9(3),9(4), 11(1),15(5), 16(1) of the CGST Act. Section 148 of the Act is as below:-

> *" 148. The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons".*

From the above, it is seen that Section 148 allows the Government, on the recommendations of the GST Council, to notify a certain class of registered persons and to prescribe special procedures with regard to payment of tax and administration of such persons.

8.2 GST council in its 34th Meeting decided as under:

"Decisions taken by the GST Council in the 34thmeeting held on 19thMarch, 2019 regarding GST rate on real estate sector

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

7. The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

7.1 Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).

7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease(premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

7.4 The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion."

Payment of Tax encompasses value to be adopted for payment of such tax (measure) and time of payment of such tax (point of taxation). Vide Para 2A, the value to be adopted for construction service in respect of apartment handed over to the landowners against the development right received from such land owners are prescribed and the Time of Supply is notified vide Notification No. 06/2019-Central Tax (Rate), which is extracted below:

"Notification No. 06/2019-Central Tax (Rate) dt. 29th March, 2019

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:-

(i) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

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as the registered persons in whose case the liability to pay central tax on, -

(a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

(b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relatable to construction of residential apartments in project;

(d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI), -

shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier."

Above provisions notifies the class of persons i.e., the promoters who receive development rights for construction against consideration payable in the form of construction of commercial or residential apartments or in any other form including cash and the value to be adopted for such construction services and the 'time of Supply' for payment of tax on such construction services rendered.

8.3 The very basis for the charge of tax in any taxing statute is taxable event, i.e., the point of time when tax will be imposed. The tax becomes payable when liability to pay tax arises and liability to pay tax arises by the happening of the taxable event. The taxable event under GST Act is supply of goods or services or both. In the instant case, the taxable event is the completion of construction of the building, though the applicant states that the developer has received the development rights on 17.04.2019 and the same date should be the date on which the levy is liable to be imposed. However from the above excerpts, it is now clear that the time of levy would be the date of issuance of completion certificate by the competent authority or the date of first occupation and not the date on which such rights to develop is transferred or the date on which the agreement to develop is entered into. In the case at hand, from the submissions of the applicant, it is evident that the applicant though had entered into the JDA with the landowners, who are unregistered before September 2019, when the clause 2A of the Notification No. 11/2017-C.T (Rate) dated 28.06.2017 as amended, was amended to 'person' instead of 'registered person', the time of supply in the case at hand falls after such amendment only. Here the date of completion is yet to arrive and so the developer being the taxable person would be liable to pay the tax on such date of completion.

8.4 In the instant case, the applicant who is registered has received the development rights and the consideration being the UDS of 1711 sq.ft has been allotted to him. The applicant is rendering services of construction of residential apartment and has also paid monetary consideration to the landowners as provided in clause (a) and (b) of Notification No.06/2019 above. The value and rate to be

applied is that available at the Time of Supply. In the instant case, the 'Time of Supply' falls after the amendment in the Para 2A making the method of valuation to be adopted for the construction service extended to the land owners both registered or unregistered against the development rights and therefore, the applicant has to adopt the value as per Para 2A to the Notification and the liability to tax arises on the date of issuance of completion certificate for this project or the date of first occupation. The value to be adopted for construction services provided to land owner, when such land owner is not registered is provided in FAQ (part-II) dated 14th May 2019, the relevant portion is extracted as under:

"FAQs (Part II) Dated the 14th May, 2019 on real estate issued by the CBIC vide F. No. 354/32/2019-TRU vide Point no.26 clarifies as follows:

Sl. No.	Question	Answer
26.	How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?	Value of construction services provided by the promoter to land owner in such cases *shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter,* less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017."

From the above, it is very clear that the Value of construction services provided by a promoter to land owner being a non-registered person shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017.

9. The second question of the application is whether the notification no.03/2019 cited supra is applicable, when the actual cost of construction of services is known. In this regard, applicant submits that in lieu of owners parting ownership of land, they provide construction services and therefore the amount on

which tax is liable to be paid is the total cost incurred for construction of the apartment for the landowners. They contended that Para 2A notionally assumes the value of construction services to be the total amount charged for similar apartments charged on the independent buyer, whereas the actual cost of construction is available for the apartments built for the land owners. They have relied on the judgment of the Hon'ble Supreme Court in the case of Wipro Ltd Vs. Assistant Collector of Customs& Others [2015 (4) TMI 643], wherein it has been held that provisions of deemed valuation will apply only in case where the actual cost is not ascertainable/ available. They also submit that these provisions of GST have been borrowed from the provisions of customs laws and hence the said judgment of the Apex Court becomes applicable to the case in hand. Hence they wish to obtain ruling as to whether Notification no.3/2019 prescribing a notional value of construction will be applicable when the actual cost of construction is available with them. In this case, it has been brought out clearly that the provisions of Para 2A has been included in Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as per the provisions of Section 15(5) of the CGST Act, which is as under:

> *(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.*

In the instant case, the date of levy being the date of issuance of completion certificate, Para 2A becomes applicable to them and so the value should be calculated only as prescribed in the said para. The said para prescribes that the value of construction in respect of such apartments shall be deemed to be equal to the Total amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development rights/FSI. From the wording of this para, it is seen that the only value which can be adopted is as prescribed, there being no choice of adoption of any other value. As the law has provided for such valuation, the contention that para 2A is not applicable when the actual cost of construction is available does not hold water as we cannot go beyond the law pronounced. Hence the valuation as prescribed in the said para 2A becomes squarely applicable in the present case.

10. From the above, it is clear that Para 2A of the Notification no.3/19 is applicable to the transaction between the applicant and the owners of the land and the valuation shall be done as stipulated therein. Applicant has preferred questions 3 to

5 in case the answer to question (1) and (2) is negative. Now that the answer to questions (1) and (2) being affirmative, the questions 3 to 5 become redundant and hence are not required to be answered. In respect of question no.6, the same being in the nature of discussing the legality of the provisions of law, it was found inadmissible under Section97 (2) of the CGST,2017 , which fact was communicated to the applicant during the Personal Hearing held on 19.02.2021 and the applicant agreed on the same being inadmissible. Hence the same also is not answered herein.

11. In view of the above, we rule as under:

RULING

1. Paragraph 2A the Notification no.3/2019-Central Tax (Rate) dt. 29.03.2019 is applicable to the agreement entered into between the applicant and the owners of the land in as much as the levy is imposable on the date of completion of the construction as per Notification No. 06/2019 -Central Tax (Rate) dated 29.03.2019.

2. Notification no.3/2019-Central Tax (Rate) dt. 29.03.2019 is applicable to this transaction even if the actual cost of construction is available.

17/8/2021

Tmt. T.Padmavathi
(Member SGST)

17/8/21

Shri B. Senthilvelavan
(Member CGST)

To
Thiru Neelakanta Realtors Limited Liability Partnership
No 17/35,Second Main Road, Gandhi Nagar, Adyar,
Chennai-600090 //BY RPAD//

Copy Submitted to:
1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

23/8/21

Received by (illegible)
23/8/21

2. The Additional Chief Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST &Central Excise, Chennai South Commissionerate,
MHU Complex , No. 692, Anna Salai, Nandanam, Chennai 600 035.

4. The Assistant Commissioner (ST), Adayar Assessment Circle,
Integrated Commercial Taxes & Registration Department,
South Tower, Room No. 244, 2nd Floor, Government Farm Building,
Nandanam. Chennai. 600 035.

5.Master File/ Spare-2

o/c