
	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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**BEFORE THE AUTHORITY OF** : Shri. Sivaprasad .S, IRS &  
: Shri.B.S. Thyagarajababu, B.Sc, LL.M

Legal Name of the applicant	M/s. HABITAT TECHNOLOGY GROUP
GSTIN	32AAATH1726Q2ZK
Address	Near Mandapam, Poojappura, Thiruvananthapuram – 695012
Advance Ruling sought for	<p>1. Whether the services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units for flood-affected individuals in Kerala fall within the ambit of Serial number (i), (v) or (va) of Notification No. 11/2017- CT(R) dated 28.06.2017 as amended by Notification No. 3/2019 - CT (R) dated 29.03.2019.</p> <p>2. Whether services by the applicant are otherwise exempt from whole or part of GST leviable thereon by Notification 12/2017- CT (R) dated 28.06.2017 as amended.</p>
Date of Personal Hearing	10-03-2020
Authorized Representative	Mr. Mohankumar FCA

**ADVANCE RULING No. KER/93/2020 Dated: 20-05-2020**

1. Habitat Technology Group (hereinafter referred to as the “applicant”) is a non-governmental organization in the shelter sector having sustainable building solutions and green and humane architecture. They are registered as a charitable society. They are providing services in the field of construction of residences and affordable housing, architectural advisory services, execution of government contracts etc with special focus on environment friendly construction. M/s. Sri Sathya Sai Trust, Kerala a charitable organisation engaged in various charitable activities across Kerala has awarded a rehabilitation project to the applicant for providing affordable shelter to the 2018 flood victims.

2. The applicant has sought advance ruling on the following;
  - i. Whether the services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units for flood-affected individuals in Kerala fall within the ambit of Serial number (i), (v) or (va) of Notification No.11/2017-CT(R) dated 28.06.2017 as amended by Notification No. 03/2019 - CT (R) dated 29.03.2019.
  - ii. Whether services by the applicant are otherwise exempt from whole or part of GST leviable thereon by Notification 12/2017- CT (R) dated 28.06.2017 as amended.
  
3. The authorized representative of the applicant was heard. M/s. Sri Sathya Sai Trust, Kerala is a charitable organization engaged in various charitable activities across Kerala. They have received a grant from M/s. J.R.D Tata Trust for Rs.299.70 Lakhs exclusively for construction of housing for individuals in Kerala who have lost their homes in the severe floods of 2018. The trust is desirous of awarding the entire rehabilitation project in Ambalapuzha for providing affordable shelter to the flood victims. The applicant submits that the identification of the flood victims eligible for support has been done by the volunteers of the Sathya Sai Trust and the applicant has been entrusted with the activity of constructing the housing units on the land belonging to such individuals after getting all the statutory permits required for construction from the various authorities. Accordingly, the trust has identified 45 individuals whose houses have been eroded by the floods. The applicant will construct 45 low cost affordable housing units on the land belonging to such individuals as per the agreement dated 16.11.2019 entered by them with the Sri Sathya Sai Trust. The plinth area of the standard housing unit will be 450 Square feet and the estimated cost of constructing one such affordable low cost house shall be Rs. 6, 30,000/- excluding applicable taxes; if any. The project proposed to be implemented by the applicant for Sri Sathya Sai Trust is part of "Rebuild Kerala" Project and is with the sole intention of giving relief to the flood victims in the State.



4. It is contended by the applicant that the houses being constructed by them meet the definition of affordable housing as per Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended and accordingly the concessional rate of GST of 1.5% as per Sl No. 3 (i) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 is applicable for the services rendered by them.

5. The matter was examined in detail. As per the agreement dated 16.11.2019 entered by the applicant with Sri Sathya Sai Trust the applicant is awarded the work of construction of 45 residential units ad-measuring approximately equal to or less than 450 Square feet in different locations each along with residential facilities on the land belonging to the flood victims identified by the Trust. The applicant shall design the houses, obtain the statutory permits and construct the houses and hand them over on a turnkey basis.

6. The contention of the applicant is that the activity undertaken by them as per the agreement dated 16.11.2019 attracts GST at the rate of 1.5% as per Sl No. 3 (i) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019.

7. Sl No. 3 (i) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 reads as follows;

“3 (i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)”

8. On a plain reading of the above entry, it is evident that the rate of GST prescribed under this entry applies to construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer except where the entire consideration is

received after issuance of completion certificate. Further, the rate under this entry applies where the supply of the services involves transfer of land or undivided share of land and its value is included in the amount charged from the buyer.

9. Para 4 of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended provides the definition of the different terms used in the above entry. The relevant definitions are reproduced below;

(xiv) the term —apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xv) the term —project shall mean a Real Estate Project or a Residential Real Estate Project;

(xvi) the term —affordable residential apartment shall mean, - (a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

(xvii) the term —promoter shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016

(xviii) the term —Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xix) 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.

10. The relevant clauses of Section 2 of the Real Estate (Regulation and Development) Act, 2016 which contains the definition of the terms; “apartment”; “promoter” and “real estate project” are reproduced below;

(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or



godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

(zk) "promoter" means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

11. On a conjoint reading of the above provisions, it is evident that the activity undertaken by the applicant for Sri Sathya Sai Trust as per the agreement dated 16.11.2019 cannot by any stretch of imagination be construed as construction of affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer and hence the rate of GST prescribed under Sl No. 3 (i) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 is not applicable in respect of the activity. The activity undertaken by the applicant is construction of 45 individual residential houses at different locations on the land belonging to the individual beneficiaries and the activity squarely falls within the scope of works contract as defined in Section 2 (119) of the CGST Act, 2017 which reads as follows;

“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.”

12. Further, Sl No. 3 (v) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended reads as follows;

“(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the —Affordable Housing in Partnership component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.”

As per Para 2 (zze) of Notification No. 12/2017 CT (Rate) dated 28.06.2017; “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

13. The rate of GST applicable as per the above entry is 12% [6% CGST and 6% SGST]

14. Therefore, the activity of construction of 45 individual residential houses at different locations on the land belonging to the individual beneficiaries undertaken by the applicant as per the agreement dated 16.11.2019 is rightly classifiable as composite supply of works contract as defined in Section 2 (119) of the CGST Act, 2017 supplied by way of construction of single residential units otherwise than as a part of a residential complex and is liable to GST at the rate



of 12% [6%CGST and 6% SGST] as per Sl No. 3 (v) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

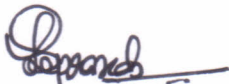
15. In view of the observations stated above, the following rulings are issued;

- i. Whether the services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units for flood-affected individuals in Kerala fall within the ambit of Serial number (i), (v) or (va) of Notification No. 11/2017-CT(R) dated 28.06.2017 as amended by Notification No. 03/2019 - CT (R) dated 29.03.2019.

The services provided by the applicant to Sri Sathya Sai Trust for construction of low cost housing units falls within the ambit of Sl No. 3 (v) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended and is liable to GST at the rate of 12% [6% CGST and 6% SGST].

- ii. Whether services by the applicant are otherwise exempt from whole or part of GST leviable thereon by Notification 12/2017- CT (R) dated 28.06.2017 as amended.

No.



Sivaprasad .S, IRS  
Joint Commissioner of Central Tax  
Member



B.S. Thyagarajababu, B.Sc, LL.M.  
Additional Commissioner of State Tax  
Member

To

M/s. Habitat Technology Group  
Near Mandapam, Poojappura,  
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