THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO. MAH/AAAR/SM-AS/01/2024-25 **Date- 22/07/2024**

BEFORE THE BENCH OF

(1) Shri. Srinivas Murty Tata, MEMBER (Central Tax)

(2) Shri. Asheesh Sharma, MEMBER (State Tax)

Name and Address of the Appellant:	M/s. Puranik Builders Limited, Puranik One Kanchanpushp Complex Opp Suraj Water Park, Kavesar Ghodbunder Road Thane, 400615.
GSTIN:	27AABCP0109R1Z9
Clause(s) of Section 97, under which the question(s) raised:	(a) Classification of any goods or services or both;
Date of Personal Hearing:	19.04.2024
Present for the Appellant:	Shri. Gourav Sugani, Advocate
Details of appeal/application:	Application dated 28.06.2023 filed for rectification of Advance Ruling bearing Order No. MAH/AAAR/DS-RM/19/2022-23 dated 30.03.2023 passed in the Appeal No. MAH/GST-AAAR/04/2021-22 dated 02.11.2021 filed against Advance Ruling No. GST-ARA-68/2019-20/B-52 dated 27.08.2021.
Jurisdictional Officer:	Deputy Commissioner, THA-VAT-E-005, Thane Division

(Proceedings under Section 102 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

Brief Facts of the Case

1. M/s. Puranik Builders Limited (hereinafter referred to as the "**Appellant**") has sought for the amendment in the **MAAAR Order No. MAH/AAAR/DS-RM/19/22-23 dated 31.03.2023** passed in the matter of appeal filed by the Appellant against the **MAAR Order No. GST-ARA/68/2019-20/B-52 dated 27.08.2021**.

2. The Brief facts of the case are as under:

   2.1 The Appellant is engaged in the business of construction and sale of residential apartments. The construction services provided by the Appellant are classified under SAC 9954. As a part of the overall scheme of transaction, the Appellant also collects various other charges which inter alia include electric meter installation and security deposit for meter, water connection charges, share of municipal taxes, advance maintenance, development charges, common area development charges, share money, application and entrance fee of the organisation, formation and registration of the organisation and legal charges in connection therewith, infrastructure charges, legal fees (collectively referred to as the "other charges").

   2.2 The Appellant had filed an Advance Ruling Application before the MAAR in respect of the following questions:

   2.2.1 Whether the "other charges" received by the company from the customers of the flats will be treated as consideration for the construction services, and will be classified under the HSN Code 9954 along with the main residential construction services or whether the same will be treated as consideration for independent services under the respective heads;

   2.2.2 Rate of GST on such "other charges";

   2.3 The MAAR vide its Order dated 27.08.2021 had ruled that the "other charges" collected by the Appellant would not be considered as consideration for

construction services, and hence, the same would not be classified under SAC 9954, and the same will be treated as consideration received against the supply of independent services of the respective heads. It was further observed by the MAAR that the said other services underlining the other charges would be as per SAC prescribed under Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, and are chargeable to 18% GST on the entire consideration received as "Other Charges".

2.4 Aggrieved by the aforesaid MAAR Order, the Appellant had filed an appeal before the MAAAR wherein the MAAAR vide the Order No. MAH/AAAR/DS-RM/19/22-23 dated 31.03.2023 partly set aside the impugned order, and observed as under:

2.4.1 The other charges, namely, water connection charges, electric meter installation charges and deposit for the meter, development charges, and legal fees, which are inextricably linked to the supply of construction services of the residential apartments/units, thereby, forming parts of the bundled services, wherein the principal supply will be the construction of residential apartments. Accordingly, the aforesaid "other services" will attract levy of GST at the rate of 12%, i.e., the rate applicable on the construction services;

2.4.2 "Other charges", namely, (i) Club House maintenance, (ii) Advance Maintenance, (iii) share of Municipal taxes (pertaining to period after occupancy), (iv) formation and registration of the organization and legal charges in connection there with, (v) share money, application & entrance fee of the organization, (vi) infrastructure charges, that don't pass the muster of indicators of bundled services, are held as independent supplies, and that they are to be taxed as per their respective SAC (Service Accounting Code);

2.4.3 Assessee have collected 18% of GST on supply of such services;

2.4.4 In respect of services, which are allowed as bundled services, the present decision implies an excess collection of tax;

2.4.5 the Appellant have been directed by the Appellate Authority to refund the excess tax collected by them, to their customers;

2.5 Aggrieved by the Order, the assessee submitted a letter dated 28.06.2023 for making rectification in the impugned MAAAR Order dated 30.03.2023. and contested as follows:

2.5.1 The MAAR vide Order No. GST-ARA/68/2019-20/B-52 dated 27.08.2021 had held that the "other charges" would be subjected to GST at the rate applicable to the respective heads, i.e., at the rate of 18%, and such advance ruling was binding on the Appellant in terms of section 103 of the CGST Act, 2017, GST at the rate of 18% was collected by them from the buyers on such services under "other charges";

2.5.2 The GST so collected was promptly paid to the exchequer within the stipulated time.

2.5.3 Therefore, they did not resort to collecting any excess tax or unjust enrichment. Accordingly, they cannot be made liable to refund the said tax from their own pocket;

2.5.4 That the Hon'ble AAAR has exceeded its jurisdiction in as much as the refunding of the alleged excess tax to the customers is outside the list of the issues covered under section 97 of the CGST Act, 2017 read with corresponding section of MGST Act, 2017, and that impugned order be modified to that extent, in terms of the provisions laid down under section 102 of the said Acts.

2.5.5 Further, the taxpayer requested for the grant of personal hearing before any decision is taken in this matter;

3. The comments from the Jurisdictional officer were called for, and the jurisdictional officer vide their letter No. DC-E-005/Thane City/Puranik Builder/B-32 Thane dated 06.09.2023 informed that as per taxpayer's submissions, it seems that the entire amount

of tax collected from the buyers of the flats has been deposited by them to the Government exchequer within stipulated timeline. In case, the taxpayer has collected the excess tax from their customers and the said tax has not been deposited to the Government treasury, then the taxpayer ought to refund the said excess amount of tax to their customers as per the ruling of MAAAR.

Personal Hearing

4. The personal hearing in the subject matter was held on 19.04.2024 which was attended by Shri Gourav Sogani on behalf of the Appellant, and by Shri Shivaji P. Dhainje, Dy. Commissioner of State Tax as the jurisdictional officer. Shri. Sogani, the representative of the Appellant, inter alia, reiterated the earlier submissions made by the Appellant.

5. Consequent to the aforesaid personal hearing, the Appellant have filed an additional submission dated 30.04.2024, wherein while referring to the MAAAR proposal to file refund claim of the excess GST amount collected and deposited with the government exchequer, they have submitted that they would file the refund application and refund the said excess GST amount to the respective customers only after the amount pertaining to the refund claim of the excess GST is received from the tax authorities.

Discussions and Findings

6. We have carefully gone through the submissions made in the application filed by the Appellant for rectification of the impugned MAAAR Order dated 30.03.2023 wherein the Appellant were directed to refund to the customers the excess GST amount collected from them. We have also carefully gone through the impugned Appellate Order.

7. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is made in respect of such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

8. For deciding the application under consideration, we would like to refer to the provisions of section 102 of the CGST Act, 2017, under which the present application for the

rectification of the error in the impugned MAAAR Order has been filed. The provision is being reproduced as under:

<u>Section 102. Rectification of advance ruling</u> -

The Authority or the Appellate Authority [or the National Appellate Authority] may amend any order passed by it under <u>section 98</u> or <u>section 101</u> [or <u>section 101C</u>, respectively,], so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority [or the National Appellate Authority] on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant [appellant, the Authority or the Appellate Authority] within a period of six months from the date of the order:

***Provided** that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.*

9. Now, since, the Appellant have filed this application for rectification on 28.06.2023, i.e., within the stipulated period of 6 months from the date of the Order, i.e., 30.03.2023, we, at the outset, proceed to decide whether the error, being pointed out by the Appellant in the impugned order, is actually **apparent on the face of the record, or not**.

10. In this regard, we would like to advert to the Hon'ble Supreme Court judgment in the case of ***T.S. Balaram, ITO Vs. Volkart Bros. [(1971) 82 ITR 50 (SC)]***, wherein the Hon'ble Apex Court, inter alia, has held as under:

    "A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions."

11. Another case law, which can be referred to for deriving the true and correct interpretation of the clause ***"error apparent on the face of record"*** used in section 102 of the CGST Act, 2017, is the decision of the Larger Bench of the Appellate Tribunal (CESTAT) in

the case of ***Dinkar Khindria v. CCE, New Delhi, 2000 (38) RLT 442; 2000 (118) E.L.T. 77 (T-LB)***, wherein it has been held as under:

> ***"rectification of mistake is by-no means an appeal in disguise whereby an order even if it is not valid, is re-heard and re-decided. Rectification of mistake application lies only for patent mistake. Only in a case where the mistake stares one in the face and there could reasonably be no two opinions entertained about it, a case for rectification of mistake could be made out." Larger Bench also held in that case that "the decision on a debatable point of law or facts is not a mistake apparent from the record and the debatable issue could not be the subject of an order of rectification. Rectification of mistake does not envisage the rectification of an alleged error of judgment."***

12. Thus, in all the above cited cases, it is invariably laid down that the mistake to be rectified must be one that is apparent from the record. A decision on a debatable point of law or on a disputed question of fact is not a mistake apparent from the record. The plain meaning of the word '**apparent**' is that it must be something which appears to be so ex facie that there cannot be any argument or debate in that regard. Thus, rectification of mistake does not envisage the rectification of an alleged error of judgment or a different interpretation.

13. Now, having regard to the aforesaid Court rulings, we would like to apply the *ratio decidendi* thereof in the facts of the present case. The Appellant has alleged that the MAAAR have exceeded their jurisdiction by giving direction to the Appellant to refund to their customers the excess GST amount collected from them. Their contention is that the aforesaid decision given by the MAAAR is beyond the scope of section 97 (2) of the CGST Act, 2017, which provides for the set of questions on which the advance ruling is sought under this Act. Further, the same is also beyond the issues referred to before the MAAAR, in the Appeal filed by them, thereby, committing an error in their Order dated 30.03.2023, which warrants rectification in terms of the provisions of section 102 of the CGST Act, 2017.

14. In this regard, first of all, we would like to refer to section 97 of the CGST Act, 2017, which is being reproduced as under:

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of-

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

15. Thus, it is apparent that the aforesaid provisions are pertaining to the questions on which the advance ruling can be sought for by an applicant. The said provisions do not restrict the authority in any manner from giving their rulings on any facts presented before them. Having come forth with a question, they should be prepared for answers on that as well as connected matters. They cannot pick and choose what suits them. Since, it is not in dispute that the Appellant have collected excess tax from their customers, therefore, the Appellate Authority deemed it completely proper and legal that the said excess GST amount be refunded back to the customers from whom such excess amount have been collected by the Appellant. Such a ruling was made by the Appellate Authority in the interest of equity and justice of such customers from whom the Appellant had collected

the said excess GST amount, thereby, seek to restore uniformity and parity among the flat buyers, irrespective of the residential projects and time, in which and during which, they are buying or have bought their residential apartments. Further, Section 101 of the CGST Act, 2017 provides for the requisite discretionary power to the Appellate Authority for Advance Ruling in deciding the advance ruling matters brought before them where they can pass such ruling based upon the facts and circumstances of the case as they may deem fit. Section 101 is being reproduced herein under for reference:

Section 101 (1) :

The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order ***as it thinks fit***, *confirming or modifying the ruling appealed against or referred to.*

16. Thus, from the foregoing, it is crystal clear that there is **no such error** which is apparent from the face of record, which would warrant rectification under section 102 of the CGST Act, 2017.

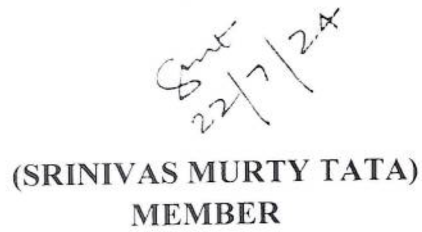
17. Further, as regards the Appellant's submissions made in the letter dated 30.04.2024 wherein they have contended that they would refund the said excess amount to their customers only when they get the refund of the said amount from the tax authority, it is observed that it is not legally viable as per section 54 (4)(b) of the CGST Act, 2017, which provides that ***the refund application shall be accompanied by such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.*** Thus, the Appellant will have to first refund the excess GST amount under question to their customers before they could file the refund claim to the tax authority so as to establish that the incidence of the tax claimed as refund had not been passed to any other person, thereby, ensuring the absence of the **unjust enrichment** in the refund claim. In view of the foregoing, the aforesaid proposal put forth by the Appellant is not legally viable, and hence, the same is not tenable.

18. Thus, in view of the above discussions and findings, we pass the following order:

ORDER

19. Since, we do not find any error in the impugned Order No. MAH/AAAR/DS-RM/19/2022-23 dated 30.03.2023, which is apparent on the face of record, we hereby, reject the subject application for rectification of error, filed by the Appellant in terms of section 102 of the CGST Act, 2017.

(ASHEESH SHARMA)
MEMBER



(SRINIVAS MURTY TATA)
MEMBER

Copy to the:

1. Appellant;
2. AAR, Maharashtra;
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone;
4. Commissioner of State Tax, Maharashtra;
5. Deputy Commissioner THA-VAT-E-005, Thane;
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN;
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