MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax,(Member)

<table>
<thead>
<tr>
<th>GSTIN Number, if any/ User-id</th>
<th>URD /271900000172ARV</th>
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<tbody>
<tr>
<td>Legal Name of Applicant</td>
<td>Yash Nirman Engineers &amp; Contractor</td>
</tr>
<tr>
<td>Registered Address/Address provided while obtaining user id</td>
<td>D6/N 14, M. G. COMPLEX, SECTOR-14, VASHI, NAVI MUMBAI-400703</td>
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<tr>
<td>Corresponding Address</td>
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<td>Details of application</td>
<td>GST-ARA, Application No. 143 Dated 39.03.2019</td>
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<td>Concerned officer</td>
<td>Division-II, Commissionerate Belapur.</td>
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<td>Nature of activity(s) (proposed / present) in respect of which advance ruling sought</td>
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<td>A Category</td>
<td>Works Contract</td>
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<tr>
<td>B Description (in brief)</td>
<td>Application of Lower Rate of GST@12%, files attached 1) Acknowledgement of Online Advance Ruling Application 2) Covering letter dated 17-01-2019, 3) Work Order by M/s. Lakhani Builders Pvt. Ltd. 4) Letter from M/s. Lakhani Builders Pvt. Ltd dated 10-07-2018</td>
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<td>Issue/s on which advance ruling required</td>
<td>(ii) applicability of a notification issued under the provisions of the Act</td>
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<td>Question(s) on which advance ruling is required</td>
<td>As reproduced in para 01 of the Proceedings below.</td>
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PROCEEDINGS

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act”] by M/S. YASH NIRMAN ENGINEERS & CONTRACTOR, the applicant, seeking an advance ruling in respect of the following question.

Whether the construction service provided by M/S. Yash Nirman Engineers and Contractors to M/s. Lakhani Builders Pvt. Ltd under the project "La-Riveria" qualifies for application of lower rate of CGST@6% and SGST @ 6% as provided in Sl. No: 3- Item (V) - sub item(da) vide notification no: 01/2018-CT (Rate) dated 25-01-2018?

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 specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a
reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression ‘GST Act’ would mean CGST Act and MGST Act.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

Statement of relevant facts having a bearing on the question raised.

1) M/s. Yash Nirman Engineers & contractors having registered office at D-6/N-14, M.G. Complex, Sector-14, Vashi, Navi Mumbai-400703 and registered under GST at Maharashtra bearing Registration No. 27ABLPV1823EIZK, engaged in the business of providing Works Contract Services more particularly construction services.


3) M/s. Lakhani Builders: Pvt.Ltd. has been undertaking development of Residential project “La-Riveria” in Panvel having its “RERA No. P520000001858” with the intention of sale to the prospective apartment buyers wholly or partly.

4) Residential Project “La-Riveria” consisting of two wings namely ‘La-Riveria A Wing’ and “La-Riveria B Wing having ground floor plus podium parking level floor plus twelve residential floors, with 70 numbers of apartment in each wing more particular described herein below as...

(A) **La-Riveria A Wing consisting...**

(i) 30 Nos. of 2 BHK apartments having its RERA carpet area of 47.47 Sq. Mt.

(ii) 10 Nos. of 1 BHK apartments having its RERA carpet area of 28.24 Sq. Mt.

(iii) 20 Nos. of 2 BHK apartments having its RERA carpet area of 48.96 Sq. Mt.

(B) **La-Riveria B Wing consisting...**

(i) 10 Nos. of 1 BHK apartments having its RERA carpet area of 28.24 Sq. Mt.

(ii) 30 Nos. of 2 BHK apartments having its RERA carpet area of 47.47 Sq. Mt.

(iii) 18 Nos. of 2 BHK apartments having its RERA carpet area of 48.96 Sq. Mt.

(C) **La-Riveria A Wing 12th and 13th Floor consisting...**

(i) 04 Nos. of 2 BHK apartment having its RERA carpet area of 48.96 Sq. Mt

(ii) 01 No. of 1 BHK apartment having its RERA carpet area of 28.24 Sq. Mt.

(iii) 05 Nos. of 2 BHK apartment having its RERA carpet area of 47.47 Sq. Mt.

(D) **La-Riveria B Wing 12 & 134 proposed floor consisting...**

(i) 05 Nos. of 2 BHK apartments having its RERA carpet area of 47.47 Sq. Mt.

(ii) 06 Nos. of 2 BHK apartment having its RERA carpet area of 48.96 Sq. Mt.
(iii) 01 No. of 1 BHK apartment having its RERA carpet area of 28.24 Sq. Mt.

Conclusion:- All these details of total 140 nos. of apartments in project La-Riveria are less than 60 Sq. Mt. RERA Carpet Area.

All these details are uploaded by M/s. Lakhani Builders & Pvt. Ltd on “Maha RERA” site and can be avail online anytime by referring RERA No. P52000001858 of this project "La-Riveria" and also copy of which is enclosed herein with this application.


6) Considering the facts mention herein above in para no. 4 and 5, project "La-Riveria" falls under affordable housing category and thus M/s. Lakhani Builders Pvt. Ltd. is qualifies to avail the benefit of application of lower rate of CGST@6% and SGST@6% as provided in Sl. No. 3-item(V) - sub item (da) vide notification no. 01/2018-CT(Rate) dated 25-01-2018.

7) M/s. Lakhani Builders Pvt. Ltd awarded a contract to M/s. Yash Nirman Engineers & Contractors for construction of La-Riveria, A Wing (70 nos. of apartments) with specific scope of work more particularly limited only to Excavation, RCC Work, Brick Work, Plaster Work and Water Proofing Work vide their Work Order dated 17” April, 2014 copy of this work order is enclosed herein with this application.

8) M/s. Lakhani Builders Pvt. Ltd also awarded other construction work in this project "La Riveria" to the various other contractors,

9) Yash Nirman Engineers & Contractors is a Sub-Contractor for this project "La-Riveria" along with other various Sub-Contractors.

10) There are specific provision of Tax Rate for the Sub-Contractors providing their services under Sl. No. 3- item(IX) and item (X) vide notification no. 01/2018-CT(Rate) dated 25 01-2018, who qualifies to avail the application of lower rate of GST @12% and GST @5% respectively.

11) There is no Specific provision for the Sub-Contractors providing their services to the main contractor here in this case is M/s. Lakhani Builders Pvt. Ltd. who further provides the construction service under Sl. No. 3-item(V) – sub item (da) vide notification no. 01/2018-CT(Rate) dated 25-01-2018.

3B. Statement containing the applicant’s interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s)

1) The project "La-Riveria" qualifies to be an affordable housing project which has been given infrastructure status vide notification of Govt. of India and thus attracts the benefits of lower
rate of GST@12% [CGST@6% & SGST@6%] w.e.f. 25-01-2018 under the Sl. No. 3-item (V) - sub item (da) vide notification no. 01/2018-CT(Rate) dated 25-01-2018. The effective Tax Rate would be 8% after reducing 1/3rd towards value of Land.

2) Service falls under Sl No. 3, heading 9954 (Construction Service), item (V)- sub item(da) describes as

"Composite Supply of Works Contract as defined in clause(119) of section 2 of the Central Goods & Service Tax, 2017, Supplied by way of Construction, Erection, Commissioning or installation of original works pertaining to, Low cost houses up to a carpet area of 60 Square meters per house in an affordable housing project which has been given infrastructure status vide notification of Govt. of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 309 March 2017"

Explanation 1:- Interpretation of this service in my view point is that all the consequent works contract service provider who provides their composite supply of works contract service pertaining to the specific project defined herein as low cost houses in an affordable housing project falls under this category at Sl. No. 3, heading 9954 (Construction Services), item (V) - sub item (da).

Explanation 2:- Either main contractor or Sub Contractor who provides their composite supply of works contract service pertaining to the low cost houses in an affordable housing project are qualifies under Sl No. 3, heading 9954 (Construction Services), item (V)- sub item (da) and thus there is no need of separate provision for Sub-Contractors who provides their composite supply of works contracts construction services pertaining to low cost houses in an affordable housing project.

Accordingly composite supply of Works Contract Service by way of Construction of Houses pertaining to the low cost houses in an affordable housing projects herein this case is “La-Riveria” by M/s. Yash Nirman Engineers & Contractors would attract GST@12% [CGST@6% & SGST@6%] w.e.f. 25-01-2018.

**CONTENTION - AS PER THE CONCERNED OFFICER**

The jurisdictional office has not made any submissions.

**04. HEARING**

Preliminary hearing in the matter was held on 23.04.201. Sh. Ashwin Vasoya, authorized representative, appeared and requested for admission of their application. Jurisdictional Officer was not present.

The application was admitted and called for final hearing on 02.08.2019, Sh. Ashwin Vasoya, authorized representative appeared & made oral and written submissions. Jurisdictional Officer was not appeared.
05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

Briefly stated, M/s. Lakhani Builders: Pvt. Ltd. (hereinafter referred to as “Lakhani”) has undertaken development of a Residential project viz. “La-Riveria”, in Panvel with the intention of sale to the prospective apartment buyers. There are 140 apartments to be constructed in the said project with each apartment having an area of less than 60 sq. mt. carpet. The applicant has submitted that they are providing Works Contract Service to Lakhani by way of construction of the said residential project, as per contract awarded to them by Lakhani. However they have also submitted that the contract is awarded with specific scope of work more particularly limited only to Excavation, RCC Work, Brick Work, Plaster Work and Water Proofing Work, vide their Work Order dated 17.04.2014. In respect of such supply, applicant wants to know whether they are entitled to lower GST rate as provided in Sl. No: 3, Item (v), sub item (da) of Notification no: 01/2018-CT (Rate) dated 25-01-2018 and have accordingly raised their query.

As per Sr. No. 3, column 3, item (v) sub-item (da) of Notfn. No. 1/2018-C.T. (Rate) dated 25.01.2018, 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 will attract tax rate of 12 % (6% each of CGST & SGST) This clause will be applicable to any person if the project undertaken by such person is an affordable housing project which has been given infrastructure status vide Government of India notification mentioned above.

Department of Economic Affairs’ Notfn vide F. No. 13/6/2009-INF, dt the 30.03.2017 has included Affordable Housing under the column “Infrastructure sub sector” against the category of Special & Commercial Infrastructure & has further defined “Affordable Housing” as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters and “Carpet Area” shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

One of the recommendations made by the GST Council in its 25th meeting held on 18th January 2018 at Delhi was to extend the concessional rate of 12% (8% GST after deducting value of land) to services by way of construction of low cost houses up to a carpet area of 60 sqm in a housing project which has been given infrastructure status under Notfn No. 13/06/2009. The said Notfn of Department of Economic Affairs provides infrastructure status to Affordable Housing. The recommendation of the Council would extend the concessional rate to construction of flats/
houses of less than 60 sqm in projects other than the projects covered by any scheme of the Central or State Government also. The GST Council has also observed that “It may be recalled that all inputs used in and capital goods deployed for construction of flats, houses, etc attract GST of 18% or 28%. As against this, most of the housing projects in the affordable segment in the country would now attract GST of 8% (after deducting value of land). As a result, the builder or developer will not be required to pay GST on the construction service of flats etc. in cash but would have enough ITC (input tax credits) in his books to pay the output GST, in which case, he should not recover any GST payable on the flats from the buyers. He can recover GST from the buyers of flats only if he recalibrates the cost of the flat after factoring in the full ITC available in the GST regime and reduces the ex-GST price of flats.” The GST Council has also mentioned that the builders/developers are expected to follow the principles laid down under Section 171 of the GST Act (Anti-Profiteering Rules) scrupulously.

In response to a request for clarification to enable availing 8% GST on Affordable Housing made by the builders association namely, CREDAI, vide their letter no. CREDAI/MeF/2018/14 dated 19th March, 2018, the Government, vide F.No. 354/52/2018-TRU, G.O.I, M.O.F., Deptt. of Revenue (TRU) dated 7th May, 2018 has clarified that “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 under notification F. No. 13/6/2009-INF, dated the 30th March, 2017 of MOF (DEA), attract concessional GST of 8% (the value of the undivided share of land is included in the price of the house). Whether the housing project qualifies as affordable housing project or not, shall be determined by the builder/developer as per the definition of affordable housing given in the above mentioned notification (i.e., affordable housing has been defined as a housing project using at least 50% of FAR/FSI for dwelling units with carpet area of not more than 60 SQM). No certificate from any authority is required.”

We find that the applicant has not been given the entire contract for construction of complete houses. Probably the carpentry work like making of doors, etc., electrical work, etc does not seem to have been given to them. However we also find that the job allotted to them are pertaining to affordable housing since the each and every one of the apartments are less than 60 sq. mtrs. We find that entry (v) (da) of Notification 01/2018, mentioned above, nowhere restricts the benefit to a 'Developer' only. The Notification entry is qua the supply of service and not qua the person and therefore once a project qualifies as an AHP, the benefit of concessional rate of tax would be available in respect of works contract services pertaining to Low Cost Houses, irrespective of it being supplied by the Developer or the Contractor. Hence, in view of the above discussions and facts on record, we find that the applicant’s case is covered under the tax rate of 12%, under Heading 9954 (Construction Services), (v) (da) of above mentioned Notification
No. 11/2017, as amended since the project undertaken by them falls under the definition of "Affordable Housing" as also claimed by them in their application. The benefit of reduced rate would be available to them only in the cases of supply effected after 25.01.2018 i.e. the date on which Notification 1/2018-Central Tax (Rate) was issued and the benefit of this reduced rate would be applicable in case of only those flats which are of carpet area upto 60 sq mtrs., in this scheme, which is covered in the category of affordable housing.

06. In view of the extensive deliberations as held hereinafter, we pass an order as follows:

ORDER

NO.GST-ARA- 143/2018-19/B- Mumbai, dt. 23/08/2019

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- Whether the construction service provided by M/s. Yash Nirman Engineers and Contractors to M/s. Lakhani Builders Pvt. Ltd under the project "La-Riveria" qualifies for application of lower rate of CGST@6% and SGST @ 6% as provided in Sl. No: 3- Item (V) - sub item(da) vide notification no: 01/2018-CT (Rate) dated 25-01-2018?

Answer :- Answered in the affirmative.

PLACE - Mumbai
DATE - 23/08/2019

B. TIMOTHY
(MEMBER)

B. V. BORHADE
(MEMBER)

Copy to:-
1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.