



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 5027 OF 2024 (T-RES)

BETWEEN:

M/S SHYAMARAJU AND CO (INDIA)
PRIVATE LIMITED,
WING A, DIVYASREE CHAMBERS,
NO.11, "O" SHAUGNESSY ROAD,
BANGALORE - 560 025.
(COMPANY REGISTERED UNDER COMPANIES ACT
REPRESENTED BY ITS
AUTHORIZED SIGNATORY SMT. SHAFALI SINGH)

...PETITIONER

(BY SRI. JEEVAN J NEERALAGI, ADVOCATE FOR
SRI. E.I SANMATHI, ADVOCATE)

AND:

1. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)-1.7
DGSTO-1, BANGALORE, 3RD FLOOR,
TTMC BUILDING,
YESHWANTHPUR,
BANGALORE - 560 022.

2. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)-1.3
DGSTO-1, BANGALORE, 3RD FLOOR,
TTMC BUILDING,
YESHWANTHPUR,
BANGALORE - 560 022.

...RESPONDENTS





(BY SRI. HEMA KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
FOR RESPONDENT NOS.1 AND 2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
IMPUGNED ADJUDICATION ORDER DATED 30/12/2023 AND
SUMMARY OF ORDER IN GST DRC-07 PASSED BY THE 1ST
RESPONDENT IN ORDER BEARING NO.DCCT/AUDIT-1.7/GST
(ADT)-02/ADJ./T.NO.- 794/2023-24 UNDER SECTION 73(1) OF
THE CGST/KGST ACT, 2017 IN THE INTEREST OF JUSTICE AND
EQUITY AND ETC.

THIS PETITION, COMING ON FOR FURTHER HEARING,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, the petitioner seeks the following reliefs:

*"WHEREFORE, the Petitioner prays that this
Hon'ble Court may be pleased to: (i). issue
appropriate writ, order or direction quashing the
impugned Adjudication Order dated 30/12/2023
and summary of Order in GST DRC-07 passed by
the 1st Respondent in Order bearing
No.DCCT/AUDIT-1.7/GST(ADT)-02/ADJ./T.NO.-*



794/2023-24 under Section 73(1) of the CGST/KGST Act, 2017 in the interest of justice and equity.

(ii). Pass such other order as this Hon'ble Court deems fit under the circumstances of the case in the interest of justice and equity."

2. Heard learned counsel for the petitioner and learned Additional Government Advocate for respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner invited my attention to the impugned order dated 30.12.2023 passed by the respondent No.1, in order to point out that the respondent No.1 has come to the erroneous conclusion that the petitioner was liable to pay Goods and Service Tax (GST) towards 100% of the property on the ground that the Joint Development Agreement dated 06.02.2017 entered into between the petitioner and M/s. DivyaSree R.O.W. Projects Private Limited (for short, 'M/s. DivyaSree Projects') was an unregistered document which did not have the effect of creating / transferring / assigning any rights by the petitioner / land owner in favour of the aforesaid



M/s. DivyaSree Projects, who is a Developer of the property. In this context, it is submitted that prior to the impugned order dated 30.12.2023 i.e., on 28.12.2023, two days prior to the impugned order, the Deputy Commissioner of Commercial Taxes, (Audit)-4.1, DGSTO-4, Bengaluru passed an order in relation to M/s. DivyaSree Projects, who was registered person by coming to the conclusion that the GST liability in relation to the entire property was to be fastened and discharged by the aforesaid M/s. DivyaSree Projects pursuant to which the aforesaid M/s. DivyaSree Projects, Developer had discharged the entire liability as can be seen from the documents produced along with the memo dated 15.07.2025 filed by the petitioner. It is submitted that notwithstanding the fact that the Joint Development Agreement dated 06.02.2017 between the petitioner, the land owner and M/s. DivyaSree Projects - Developer being unregistered one, Deputy Commissioner of Commercial Taxes (Audit)-4.1, DGSTO-4, Bengaluru, has rendered a categorical finding that the aforesaid registered person, the Developer was liable to pay the entire GST liability which was discharged by him and consequently, the question of there being double taxation by calling upon the petitioner to



pay tax once again would not arise and the impugned order and show cause notice etc, deserve to be quashed.

4. Per contra, the learned Additional Government Advocate would support the impugned order and submit that there is no merit in the petition and the same is liable to be dismissed. He, however, does not dispute that there was an order dated 28.12.2023 passed in relation to M/s. DivyaSree Projects pursuant to which the said M/s. DivyaSree Projects has discharged the liability as indicated in the said order.

5. As rightly contended by the learned counsel for the petitioner, the respondent No.1 has passed the impugned Adjudication Order against the petitioner by coming to the conclusion that the Joint Development Agreement dated 06.02.2017 between the petitioner and M/s. DivyaSree Projects was an unregistered document. While arriving at the said conclusion, the respondent No.1 holds as follows:

"Conclusion: *The reply filed by you is considered, examined and found to be not acceptable, as discussed hereunder:*

1. The Original Joint Development Agreements, of the lands is between land owners and Shyamaraju and



Company India Pvt. Ltd. i.e You. Against the said development constructions being put up the land owners are transferring undivided interest in the land. The said rights of development are coupled with transfer of interest in the lands.

There after the You, the Developer, have appointed your contractor for putting up the constructions of apartments to portions of the lands vide the agreement of appointment of contractor as discussed in DOCUMENT-1. Further, You have initially contended that You had given the entire scope of construction of the portion of the lands to M/s Divyasree R.O.W. LLP a pattnership firm and hence there was no construction activity undertaken by You and that You had not collected any money from the apartment purchasers and all money of the construction was collected by the Divyasree R.O.W. LLP contractor. However there was no assignment of rights to the Divyasree R.O.W. LLP. This contractor was a mere agent and not an independent contractor of the Developer.

In this regard the SCN cited in reference 3 has been issued to You wherein the liability of CGST Rs. 5,84,36,140/-, and KGST Rs.5,84,36,140/- has been proposed to be demanded from you.

In response to the said SCN You, have now furnished 2 unregistered documents, viz DOCUMENT-1 and DOCUMENT-3, both of which are unregistered documents.

The said Joint Development Agreement is not registered. The sufficient stamp duty is not paid, hence under section 34 of the Karnataka Stamp Act it is in admissible in



evidence. Also being an unregistered document, under section 17 of the Registration Act there cannot be any transfer, assignment of any interest, rights of development in favour of the new alleged developer DRPPL.

Although styled as Joint Development it is a mere appointment of contractor to carry out the works of constructions for You. Under these facts and circumstances, the acts done by the DRPPL, are as mere agents of Land Owners/Original developers. The entire works of constructions are carried out for the Land Owners/Original Developers.

There cannot be any transfer of interest in the goods of the constructions by DRPPL. They can be only acting for Land owners who are the Principal and the agency, if any is not coupled with interest in favour of DRPPL. Hence all constructions are deemed to be put up by You the Land owner only and not by DRPPL.

The construction agreements can at best under the JDAs be interpreted as entered by DRPPL only as agent of Land owners and nothing more. Hence land owners are liable to pay the GST on the said constructions.

Therefore, under the facts and circumstances in view of the above discussions made, there is an Output Tax Liability arising of CGST Rs.5,84,36,140/- and KGST Rs.5,84,36,140/-, along with applicable interest as per the provisions section 50(1) of KGST Act, and rules made thereunder as discussed in the SCN.



Hence, the '**Adjudication Order**' is passed u/s 73(9) of the KGST Act:

:-ADJUDICATION ORDER:-

In view of the foregoing, based on the SCN and FORM GST DRC-01 cited in the Reference 3 above served to you , the discussions made above and the conclusion arrived at, the Tax, Interest and Penalty payable on the following issues are determined as follows:

1) Output tax liability on Supply of Value of Rs.64,92,90,448/-, during the period from July-2017 to March-2018..

I hereby confirm u/s 73(9) of the KGST Act and u/s 73 (9) of the CGST Act, and u/s 20 of the IGST Act read with section 73 (9) of the CGST Act, the demand of

- i) the tax liability **CGST Rs.5,84,36,140/- and KGST Rs.5,84,36,140/-** arising on the said issue;*
- ii) the applicable interest thereon of **CGST Rs.5,99,41,071/- and KGST Rs.5,99,41,071/-** as per the provisions of section 50(1) of the KGST Act and the Rules made thereunder;*
- iii) the penalty **CGST Rs.58,43,614/-, and KGST Rs.58,43,614/-**, levied on the said tax liability due as per the provisions of section 122(2)(a) of the KGST Act and section 122(2)(a) of the CGST Act, and section 20 of the IGST Act r/w section 122(2)(a) of the CGST Act.*



***Abstract of the Tax Liability arising along with
applicable Interest and Levied Penalty:***

<i>Particulars of Additional Tax and Other Liabilities arising in respect of</i>	<i>CGST (in Rs.)</i>	<i>SGST (in Rs.)</i>
<i>1) Output tax liabilities on Supply of Value of Rs.64,92,90,448/-, during the period from July-2017 to March-2018.</i>	<i>5,84,36,140</i>	<i>5,84,36,140</i>
<i>Add: Interest u/s 50(1) of CGST/KGST Act, (for the period from 20-04-2018 to 30-12-2023)</i>	<i>5,99,41,071</i>	<i>5,99,41,071</i>
<i>Add: Penalty @ 10% on Tax Due</i>	<i>58,43,614</i>	<i>58,43,614</i>
<i>Total</i>	<i>12,42,20,825</i>	<i>12,42,20,825</i>
<u><i>:-Tax, Interest and Penalty Summary :-</i></u>		
<i>Total Tax</i>	<i>5,84,36,140</i>	<i>5,84,36,140</i>
<i>Total Interest</i>	<i>5,99,41,071</i>	<i>5,99,41,071</i>
<i>Total Penalty</i>	<i>58,43,614</i>	<i>58,43,614</i>
<i>Grand Total</i>	<i>12,42,20,825</i>	<i>12,42,20,825</i>

This Adjudication Order is passed without any prejudice to any other or further action that may be taken against You the taxable person, either in this case or any other case 'under the provisions of the KGST Act and under the provisions of the



CGST Act and under the provisions of the IGST Act read with relevant provisions of the CGST Act, and the Rules made thereunder' or any other law for the time being in force. This Adjudication Order is limited to the issues of GST as mentioned above and does not restrain the department from demanding tax, interest, and the penalty liabilities on other issues, if any, for the period covered under this Order.

The FORM GST DRC-07 has to be issued accordingly."

6. In this regard, it is pertinent to note that prior to the impugned order dated 30.12.2023 i.e. on 28.12.2023 itself, the Deputy Commissioner of Commercial Taxes, (Audit)-4.1, DGSTO-4, Bengaluru passed an identical adjudication order in relation to a registered person i.e., M/s. DivyaSree Projects who undisputedly is the Developer by fastening the entire GST liability upon the said Developer by holding as under:

"No:DCCT(AUDIT)-4.1/GST/DRC-7/2023-202 Date:28-12-2023

Present: Parikshith B N

*Deputy Commissioner of Commercial Taxes,
(Audit)-4.1, DGSTO-4, Bangalore.*

Preamble:

- *This copy is granted free of cost for the private use of the person to whom it is issued.*
- *Any person aggrieved by this proceeding may under Section 107(1) of the Karnataka Goods and Services Tax Act 2017, read with Rule 108 of the KGST Rules, 2017, file an appeal electronically or otherwise to the Joint Commissioner of Commercial Taxes (Appeals-4), BMTC Bus Stand, Shanthi Nagar Bengaluru-27. The appeal*



should be filed in Form GST APL-01 within 3(three) months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The appeal shall be signed in the manner specified under Rule 26, enclosing a certified copy of the order along with the relevant documents.

- The officer authorized the Commissioner under Sec 107(2) of the KGST Act 2017, read with Rule 109 of the KGST Rules, 2017; file an application to the appellate authority electronically or otherwise. The appeal should be filed in Form GST APL-03 Section 6 (six) months from the date of communication of this derision or order. The appeal shall enclose a certified copy of the order, and any other relevant documents.*
- In terms of Sec 107(6), no appeal shall be filed under Sec 107(1) unless the appellant has paid (a) in full, such part of the amount of tax,, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to 10% of the remaining amount of tax in dispute, arising from the said order, subject to a maximum of twenty-five crore rupees in relation to which the appeal has been filed.*
- Attention is invited to the provisions governing these and other related matters. Contained in the Karnataka Goods & Services Tax Act. 2017 and the rules made/notifications issued there under, for compliance.*
- Certified copy of this order may be applied immediately in order to avoid delay in filing of statutory appeal as required under rule 108(3) of the KGST Act.*
- In case of any mistakes apparent on record, the same may be brought to attention of the undersigned within 3 months under section 161 of KGST Act.*

FORM GST DRC-07

[See rule 100(1), 100(2), 100(3) & 142(5)]

To,

Case ID No

: AD290523013422F Date:
17.05.2023

Trade Name

: M/s. Divyasree R.O.W. Projects
Private Limited



NC: 2025:KHC:26950
WP No. 5027 of 2024

GSTIN : 29AAGCD0372F1ZS
Address : No. 11 A Wing, Divyasree
Chambers, O Shaugnessy Road,
Langford Town, Bengaluru-
560025
Email : madesha@divyasree.com
Tax Period : April-2018 to March-2019

Subject: Adjudication Order under section 73(9) of
KGST/CGST Acts-2017- reg.

- Ref:** 1) Assignment for audit U/s 65 of the KGST Act, 2017 issued by the Commissioner Commercial Taxes (K), Bengaluru, Assignment no.125038867, Dated 25/01/2022.
- 2) Audit Report in form ADT-02 passed by the undersigned vide Audit Report bearing No.:50685/2022-23, Dated 12.04.2023
- 3)Joint Commissioner of Commercial Taxes (Admin)DGSTO-04 Assignment U/s 73 of the KGST Act, 2017 issued by the Commissioner Commercial Taxes (K), Bengaluru, Assignment no.369, Dated 17/05/2023.
- 4) Form GST DRC-01A issued, Dated 20.05.2023
- 5) Show Cause notice issued in GST DRC-01, Dated 09.06.2023
- 6) Reply to the Show Cause notice Dated 04.07.2023
- 7) 2nd Reply to the Show Cause notice in GST letter of reply, Dated 30.10.2023.
- 8) Personal Hearing held on 30.10.2023.
- 9) Personal Hearing held on 28.11.2023.

M/s. Divyasree R.O.W. Projects Private Limited, No.11 A Wing, Divyasree Chambers, O Shaugnessy Road, Langford Town, Bengaluru 560 025, is a registered taxable person under the provisions of the Karnataka Goods and Services Taxes Act, 2017. The Registered Person/Taxable Person (RP) is a Service Provider and is engaged in the supply of Construction Services.



On conclusion of Audit report as cited above under ref. no.2 the short payment of tax is observed and a copy of the Audit report is duly served to the RP availing an opportunity to discharge the observed tax liability along with admissible interest payable.

Subsequently followed with the Audit report issued an intimation of tax ascertained as being payable under Section 73(5) of the CGST/KGST Act, 2017, is issued to the dealer as cited above under ref. no.4, and an opportunity is extended to the Registered Person to make the voluntary payment of tax demand along with applicable interest payable.

The Registered Person has not made any voluntary payment of ascertained tax dues, Hence, a show-cause notice was issued to the RP requiring him to show cause as to why he should not pay the amount specified in the Audit findings as cited above under ref. no.6, and the verb-trite of the 'Brief facts of the case' and 'Grounds of the case' of the show cause notice issued are reproduced as under;

".....

Hence the present Show Cause Notice for the following reasons.

The taxpayer has purchased UDI for unsold units post receipt of Occupancy certificate from Shyamaraju and Co (India) Pvt Ltd (SRIPL) through agreement for sale dt. 07/01/2018. However as per the agreement for appointment of construction contractor entered into with Shyamaraju and Co (India) Pvt Ltd dated 19/05/2014 the taxpayer is only a contractor to construct apartment as per the specification of the approved plan and as per this agreement the taxpayer needs to enter into separate construction agreements with customers and consideration for that construction is to be collected by taxpayer directly from that customer.

Further on verification of agreement for sale dated 07/01/2018 entered into with Shyamaraju and Co (India) Pvt Ltd and others, it is observed that, the developer i.e. M/s Shyamaraju and Co (India) Pvt Ltd has agreed to convey the UDI corresponding apartment units remaining



*unsold in Phase I of the project as on the date of receipt of the occupancy certificate, **in lieu of payments** due to the purchaser who was their contractors **in relation to the construction** of phase I of the project. It is important to note that the taxpayer is **receiving entire sale consideration from customers** as per the agreement dated 19/05/2014 entered into with M/s Shyammaraju and Co (India) Pvt Ltd, hence there is **no question of payment due for construction from developer** (i.e. M/s Shyammaraju and Co (India) Pvt Ltd) as mentioned in the agreement dated 07/01/2018.*

Further on verification of the above mentioned agreements and explanation provided by the taxpayer the facts of the issue is that during initial period of the project Shyammaraju and Co (India) Pvt Ltd and others have entered into agreement dated 19/05/2014 with the taxpayer for appointment of construction contractor and as per that agreement the taxpayer needs to collect the construction amount directly from the purchaser of flats in the capacity of the contractor and needs to discharge GST liability as a contractor under works contract. However after receiving of occupancy certificate for the project, the developer i.e M/s Shyammaraju and Co (India) Pvt Ltd, has entered into one more agreement dated 07/01/2018 with the taxpayer for transfer of UDI of unsold flats to the taxpayer just to facilitate the taxpayer to project the taxpayer as developer of the project and to claim benefit of GST exemption on construction value as sale of immovable property. It is also important to note that, the taxpayer is claiming as exemption or Non-GST supply is related to collection of the installment amounts from the customer during the tax period, which means the apartment was sold before obtaining of occupancy certificate, in such case the amount collected from sold flats are not eligible for exemption under GST for developer of the project also.

*From the above observation it is very clear that, the agreement dated 07/01/2018 entered into between the taxpayer and the developer Le. M/s Shyammaraju and Co (India) Pvt Ltd **is just an arrangement** for evasion of GST. The entire consideration received by taxpayer from customers is towards construction service in the capacity of contractor and the occupancy certificate is irrelevant*



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for contractor to determine the applicability of GST. In order to **avoid GST on construction service** the arrangement mentioned in agreement dated 07/01/2018 is entered **to represent the contractor as a developer** and claiming the entire consideration received after the date of occupancy certificate **as a sale of Immovable property**. It is also observed that, during verification of sample sale deeds entered into with the customers there is no clarity about the consideration amount receiver. As the taxpayer has provided the construction service by constructing flats whether sold or unsold they are liable for GST, irrespective of receiving of occupancy certificate.

Therefore, GST on the turnovers mentioned in the GST ADT-02 of this office dated: 12-04-2023 as per the KGST Act, 2017 at an amount of Rs. 8,21,57,826/- is not discharged by you towards Disallowance of Deduction Claimed for Sale of Immovable Property under KGST Act 2017; a. Tax of **Rs. 4,31,17,856/-** on the disallowance of deduction claimed for sale of immovable property of the KGST Act 2017 b. Interest of **Rs. 3,90,39,970/-** on the said turnover as applicable under Section 50 of the KGST Act. Therefore, you are hereby showcased under Sec. 73 and under Sec. 122 of read with Sec. 50 of the KGST Act as to why the amount mentioned in the below table should not be demanded from you in accordance with law.

Tax				Interest				
IGST	CGST	SGST	TOTAL	IGST	CGST	SGST	TOTAL	TOTAL PAYABLE
0	21558928	21558928	43117856	0	19913362	19913362	3903970	82944580

Note: The interest amount mentioned is calculated till the date of DRC-01A issued. However the Auditee is hereby informed to calculate applicable interest till date of payment for the liabilities mentioned above, in accordance with the provision of Sec. 50 of the KGST Act 2017 and the rules made there under, while discharging the liability in this regard.

If no reply is received in FORM GST DRC-6 within 30 days from the date hereof or no appearance is entered by you or your duly authorized representative under section 116 of the KGST Act when the case is posted for hearing, the



case will be decided based on merits and records available without any further opportunity of hearing to you.

.....
....."

In response to the above show-cause notice issued the Registered Person represented by its DAR Mr. Harsha S, Authorised Signatory, has filed its reply in form DRC-06 as cited above under ref. no.7, and the verb-trite of the replies/objections preferred to the show cause notice issued is recorded as under:

Objections filed by the RP dated: 30.10.2023

We, **M/s. DivyaSree R.O.W. Projects Private Limited** (hereinafter referred to as "the Noticee/DRPPL/We") are engaged in the business of real estate development, and the Developer of Republic of Whitefield, Kundalahalli Village, Krishnarajapuram Hobli, Doddanakundi, Whitefield, Bengaluru-560037.

The Noticee is in receipt of the above subject-referred Show Cause Notice dated 09.06.2023 (hereinafter referred to as 'SCN'), and enclosed as **Annexure-1**, calling upon the Noticee to show cause as to why:

- i. Tax liability of 'KGST Rs.2,15,58,928/- and CGST Rs. 2,15,58,928/- arising, should not be demanded and recovered;
- ii. Applicable Interest thereon of 'KGST Rs.1,99,13,362/- and CGST Rs. 1,99,13,362/-' as per the provisions of section 50 of the KGST Act and the Rules made thereunder, should not be demanded and recovered;

At the outset, we would like to inform you that we have not evaded any taxes and have been regularly and timely paying all the applicable duties as well as availing eligible ITC.

In continuation of our earlier reply dated 04.07.2023; with respect to the Show Cause dated 09.06.2023, our submissions in response to the same are as below,:

BRIEF FACTUAL BACKGROUND LEADING UP TO THE ISSUANCE OF THIS SCN:

1. The Noticee and M/s. Shyamaraju & Co (India) Private Limited (hereinafter referred to as "the landowner/SCPL") had decided to build residential high rise apartments in the



*consolidated property with the name and style 'Republic of Whitefield' (hereinafter referred to as "ROW Project") in terms of Joint Development agreement (hereinafter referred to as "JDA") dated 06.02.2017 entered between the noticee and the landowner. A copy of JDA entered is annexed herewith and marked as **DOCUMENT-1**.*

- 2. The landowner represented to the noticee that prior to the entry into the Joint Development Agreement by this noticee with the landowner, the landowner had nominated M/s. Divyasree R.O.W. LLP (hereinafter referred to as "DROW") to take up the construction of the ROW Project.*
- 3. To the extent of undertaking construction activity, the landowner and DROW had entered into an 'Agreement for Appointment of Construction Contractor' (hereinafter referred to as "AACC") on 19.05.2014. Wherein, it was agreed that DROW will undertake the construction of the ROW Project on its own cost and expense and receive consideration directly from the purchasers of the residential apartment. The landowner has represented to the DROW regarding the plan obtained vide sanction letter dated 24.01.2014 for construction of 4 blocks in the ROW Project (subsequently modified vide plan sanction dated 21.10.2016 to the portion of tower in 4th Block). It was also mutually agreed that this agreement was entered into on a principal-to-principal basis and DROW shall be responsible for funding and footing every expense from raw materials to labour for the purpose of construction. There is no consideration payable between by/to/from the landowner to/from DROW under the agreement in reference. A copy of AACC entered is annexed herewith and marked as **DOCUMENT-2**.*
- 4. Subsequent to the AACC entered the Contractor firm DROW is released and discharged from all its obligations created in terms of AACC by way of novation agreement entered between the DROW, landowner, and the noticee, dated 06.02.2017, and all rights/liabilities/obligations of the DROW created in terms of AACC entered are assumed by the noticee with effect from the date of novation agreement entered into. A copy of Novation agreement entered is annexed herewith and marked as **DOCUMENT-3**.*
- 5. On assuming the rights/liabilities/obligations of the DROW, the Noticee had entered into JDA with the landowner and has obtained development rights in respect of immoveable property/consolidated property measuring 11 acres 31.5 guntas situated in various Survey Nos. of Kundalahalli Village, KR Puran Hobli, Bengaluru, East Taluk. Through the JDA entered, the Landowner have also confirmed that the*



Noticee under the JDA is allowed to the development of the consolidated property without affecting the rights of the landowner.

6. *Subsequently the noticee completed the construction of the project comprising Block R1 (Tower-F & G), Block R2 (Tower-C, D & E), Block R3 (Tower-A & B), and Block R4 (Tower-H, J, K, L, M & N) and upon completion of construction, the noticee along with the landowner approached the concerned authorities and obtained the Occupancy Certificate (partial) (hereinafter referred to as "OC") dated 06.01.2018, bearing number BBMP/Addl.Dir/JD NORTH/107/2010-11 from the BBMP. A copy of the OC obtained is annexed herewith and marked as **DOCUMENT-4**.*
7. *Followed with obtaining the OC the landowner with an intent to easement and to effective transfer of title to the residential units to the ultimate purchasers has entered into an 'Agreement for Sale' (hereinafter referred to as "AoS") with the noticee dated 07.01.2018 and transferred the right of ownership to the noticee of residential units left unsold as on the date of OC obtained. A copy of the Agreement for Sale entered is annexed herewith and marked **DOCUMENT-5**.*
8. *The noticee was served with a notice in Form GST DRC-01A dated 20.05.2023, issued by your good-self directing the noticee to pay CGST and SGST each of Rs.2,15,58,928/- on construction services along with applicable interest thereon for the FY 2018-19. Copy of Form GST DRC-01A is enclosed as **Annexure-2**.*
9. *In reply, the noticee filed its reply on 04.07.2023 in Part B of Form GST DRC-01A. However, prior to the submissions made in reply to Form GST DRC-01A, the impugned SCN is issued. Copy of reply in Part B of Form GST DRC-01A is enclosed as **Annexure-3**.*
10. *The subject-referred SCN has been issued stating that on perusal of the AACC executed on 19.05.2014 between the SCPL and DROW; AoS executed on 07.01.2018 between the SCPL and the noticee, the following allegations emerge:*
 - (i) *The SCPL has entered into an AoS dated 07.01.2018 with the noticee for the properties described, which are conferred with OC, and essentially immovable properties namely sale of land and sale of building finding entry under serial number 5 reads as "Sale of land and, subject to*



clause (b) of paragraph 5 of Schedule II, sale of building" of "SCHEDULE III [See Section 7] ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES" appended to the Central Goods and Services Tax Act, 2017.

(ii) Although there is no underlying supply of goods or services or both is being made through the above agreement from the SCPL to Noticee, the Noticee is the purchaser of land along with building after receiving OC, and that the Noticee through the above agreement agreed to purchase the earmarked flats as appended to the AoS entered.

(ii) Therefore, the Noticee, is not liable to pay tax, as the transaction/activities involved is specifically neither form part of supply of goods nor form part of supply of services or both.

11. In response to the above allegations, the Noticee would like to make its submissions under the following heads:

i. The Noticee is neither the recipient of goods or services or both from SCPL nor liable to discharge tax on the receipt of constructed flats after issuance of completion certificate i.e., OC from the competent authority:

a. There is no underlying supply of goods or services or both.

b. The Noticee and SCPL have executed these agreements on a principal to principal basis.

c. The activities of 'Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building' shall be treated neither as a supply of goods nor a supply of services.

d. There is no taxable supply involved in sale of Undivided Interest of land by the SCPL to the Noticee.

ii. No interest is leviable



DETAILED SUBMISSIONS

12. At the outset and without prejudice to the following submissions, the Noticee submits that the SCN is merely a reiteration of DRC-01A and has been issued without any fresh application of mind and without considering the submissions made by the Noticee. Further, the SCN lacks necessary justification and does not have sufficient reasons to allege tax demand proposed against the Noticee. Hence, the SCN is liable to be dropped on this ground alone.

A. THAT THE SCN HAS BEEN ISSUED WITHOUT CONSIDERING THE DOCUMENTS PLACED ON RECORD BY THE NOTICEE.

A.1. That in the present case, your good authority has issued the SCN without giving due consideration to documents placed on record by the Noticee and submissions made by the Noticee in its reply dated 04.07.2023. Therefore, the SCN is bad in law and is liable to be dropped on this ground alone.

A.2. It is submitted that the SCN has been issued without considering the submissions made by the Noticee wherein, the Noticee submitted that there is no underlying supply of goods or services both is being made through the above agreement from the SCPL to Noticee. However, the SCN has been issued by merely reiterating the contents of DRC-01A. Thus, the SCN has been issued With a foreclosed mind. That the SCN has failed to assign any independent reasons or analysis of the submissions made before the Department:

A.3. It is further submitted that in the SCN your good authority has stated that the allegations have been levelled after verification of the submissions made by the Noticee. However, bare perusal of the SCN would reveal that the SCN is a mere reiteration of Form GST DRC-01A. The same is evident from the fact that the Noticee had made all the relevant submissions to substantiate its submissions. Thus, it is evident on bare perusal of the SCN that the same has been issued by merely reiterating the allegations made in Form GST DRC-01A and without considering the submissions made by the Noticee, which is impermissible in law.

A.4. That the Noticee had made detailed submissions that the activities/transactions which had been effected through AoS are sale of land in the form UDI along with building/residential unit constructed on it after issuance of



OC. The noticee is acquired undivided interest in land which falls under Entry no.5 of Schedule III of the CGST Act, 2017 and will be considered neither supply of goods nor supply of services. However, the present SCN has been issued without providing any Independent reason and without considering the submissions made by the Noticee and by merely replicating the allegations raised in the e-mail, the submissions made and the Intimation Notice.

- A5. It is submitted that mechanical reiteration of the allegation into SCN, without considering the submissions of the Noticee is impermissible in law and hence the SCN is liable to be dropped. Reliance in this regard is placed on the decision of the Hon'ble Tribunal in the case of **Sunrise Industrial Syndicate v. CCE Bangalore 1999 (114) E.L.T. 148 (Tribunal)**, wherein, the Hon'ble Tribunal held that non-consideration of evidence is in violation of the principles of natural justice. The relevant paragraph of the decision is as follows:*

"The Tribunal also took note of these pleas of the appellant. It was therefore pointed out that the appellant was at liberty to produce fresh evidence. In this case, since the evidence is available in the record of the adjudicating officer he was duty bound to look into these evidences before giving any finding in this regard. On the contrary, in the impugned order, he stated that these were not the documents relied upon by the department while issuing the show cause notice and these documents were not looked into. This non-examination is a clear violation of the order of the Tribunal by way of remand wherein it was specifically stated that the appellants should be given an opportunity to produce any such evidence. This not only is an evidence produced by the appellant but is an evidence available with the department itself. Therefore non-consideration of this evidence is violating the principles of natural justice. In any case, the directions of the Tribunal in this regard has not been carried out."

- A.6. Thus, the SCN issued without considering the submissions made by the Noticee and by merely reiterating the allegations, is bad in law and hence is liable to be dropped.*

B. THE NOTICEE IS NEITHER THE RECIPIENT OF ANY SERVICES FROM SCPL NOR LIABLE TO DISCHARGE TAX ON THE CONSTRUCTION SERVICES PROVIDED:



- B.1. *It has been alleged in the subject-referred SCN that the Noticee has the "obligation" to construct and develop the consolidated property in terms of agreement entered dated 19.05.2014, and hence, Noticee has been appointed by the SCPL to discharge this obligation and as such the Noticee is the provider of construction services. However it is brought to the notice of this adjudicating authority that the above said agreement is rescinded on account of winding up of construction firm DROW.*
- B.2. *At the outset, it is admitted that the SCPL has entered into an agreement with Noticee to construct and develop the consolidated property in terms of development agreement entered dated 06.02.2017, and hence, Noticee has been appointed by the SCPL to discharge the obligation to construct; develop; and market the residential units, and as such the Noticee is the provider of construction services towards the entire ROW project in the capacity of Developer. A copy of JDA entered is annexed herewith and marked as **DOCUMENT-1**.*
- B.3. *The Noticee wishes to state that the project is developed under Revenue sharing model where in the GST payable towards the units sold before Occupancy certificate will vest with developer.*
- B.4. *The Noticee further declare that taxes due or payable towards the units sold before occupancy certificate are duly discharged and paid to the appropriate government and there no any transfer of the units/flats to the land owners until the date of issuance of completion certificate.*
- B.5. *Hence nonpayment of GST on construction services to the land owner will not arise to the Noticee and request your good self to consider our explanation and drop further proceedings.*
- B.6. *It is submitted that the cardinal rule of interpreting agreements/contracts is that they should be read as a whole and cannot be dissected to derive or read into new intentions, meanings etc. This has been held so far in a plethora of judicial precedents by the Hon'ble Supreme Court of India, some of them are extracted herein below for easy reference:*

In Union of India v. The Central India Machinery Manufacturing Co. Ltd. and others, AIR 1977 SC 1537, the Hon'ble Supreme Court while dealing with the construction of a contract, expressed thus:

"29..... A correct construction, in turn, depends on a reading of the Standard and Special



conditions as a whole. it would not be proper to cull out a sentence here or a subclause there and read the same in isolation. What is required is not a fragmentary examination in parts but an overall view and understanding of the whole. Again, it is the substance of the documents constituting the contract, and not merely the Form which has to be looked into.

30. The real intention of the contracting parties is primarily to be sought within the four corners of the documents containing Standard and Special Conditions of the Contract.....

*In **M/s. Hindustan Shipyard v. State of Andhra Pradesh, AIR 2000 SC 2411**, the Apex Court has also emphasized the need of looking into the substance and not merely the factum of the contract. The Court observed also stated that the terms and conditions of the contract should be read as a whole.*

*The Hon'ble Supreme Court in the case of **Super Poly Fabriks Ltd. v. Commissioner Of C.Ex., Punjab 2008 (10) S.T.R. 545 (S. C.)**, held:*

"8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof."

*In the case of **Bihar State Electricity Board, Patna & Ors., v. M/s. Green Rubber Industries & Ors., (1990) 1 SCC 731**, the Hon'ble Supreme Court observed that:*

"Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause."

*B.7. It is also submitted that the Hon'ble Supreme Court of India in the case of **Mangalore Ganesh Beedi Works v. CIT (2015) 378 ITR 640/280 CTR 521/126 DTR 233 (SC)**, has held that authorities do not have the power or jurisdiction to re-write the terms of the agreement arrived at between the parties with each other at arm's length and with no allegation of any collusion between them and that*



the commercial expediency of the contract was to be adjudged by the contracting parties as to its terms.

B.8. Similar ruling was pronounced by the Gujarat High Court in the case of **Mohit Marketing Ltd. vs Dy. Cit on 21 April, 2005**, wherein it was held that it is nobody's case that the contract is sham or not acted upon. In the circumstances, the parties are bound by the terms of the contract and **it is not open to any third party, including Revenue or the Court, to rewrite the terms of the contract.** In the absence of any contrary provisions under the Act, the parties are required to be governed by the terms of the contract and the transaction in question is required to be appreciated in context of the same.

B.9. Reliance is also placed upon the ratio of the case law **Union of India vs. Mahindra & Mahindra Ltd. [1995 (76) E.L.T. 481 (S.C.)]**, wherein it was held that there is no material nor was it suggested that the dealings between the parties are not at arm's length. Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs. The agreement entered into between the parties is clear and it is not open to the revenue to construe it differently by reading into it something which is not there.

B.10. Keeping the above principles of interpretation in mind, with respect to this allegation the Noticee would like bring forward the following facts, terms and conditions of the agreements in reference, and the applicable law:

(a) The Noticee is not the provider of construction services to SCPL:

B.11. It is submitted that the construction services provided by Noticee are a taxable supply and the same is determined on the basis of the following definitions of "supplier", scope of supply, and "taxable supply":

7. Scope of supply-

(1) For the purposes of this Act, the expression "supply" Includes- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Section 2. (108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;



Section 2. (105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

B.12. To determine, who is the recipient of Noticee's construction services is Section 2 (31) and Section 2 (93) of CGST Act, 2017 must be referred to, which reads as below:

Section 2. Definitions:-

[31] "consideration" in relation to the supply of goods or services or both includes -

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

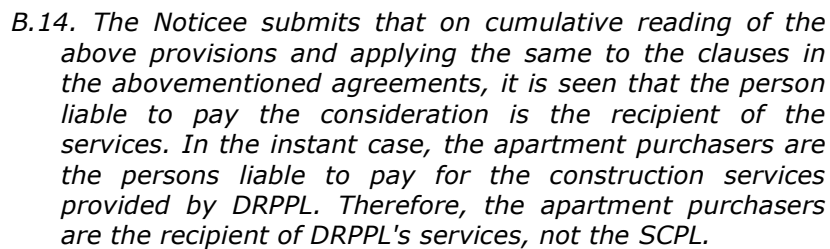
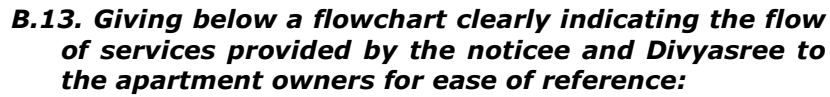
(93) "recipient of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods services both, the person who is liable to pay that consideration:

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;



(b) The GST on the construction services provided by Divyasree has already suffered taxed in the hands of Divyasree

B.16. It is further submitted in the case of construction services, the recipient ought to bear the burden of tax and the supplier must collect the same and deposit it to the Government. In the instant case, the apartment purchasers



being the recipients of the construction service have paid the applicable GST as per law to the Noticee for the construction services provided by it and the same has been deposited to the Government as required under law. The question of taxing the construction services again does not arise at all, and would also amount to double taxation. Therefore, the demand of CGST/KGST from the Noticee is unsustainable.

B.17. In this regard, reliance is placed on the case of **Triton Communication Pvt. Ltd., v. C.S.T. 2022 (11) TMI-CESTAT AHMEDABAD**, wherein the Hon'ble Tribunal held that:

"4.3 Without prejudice, it is also seen that the amount received from the clients/customers have been subjected to Service Tax at the hands of the Broadcasters. The revenue also admitted that appellant do not qualify as Broadcasting agency. Hence, on the Broadcasting Service actual liability of payment of services tax is on the Broadcasting company who provide the said services to the clients. In the present matter Broadcasters already deposited the service tax amount to government as allegedly collected by the appellant from clients against the Broadcasting Services and demand of service tax again from the appellant would amount to double payment. However, the Broadcasters having already paid such collected amount to the government, the appellant cannot be asked to deposit the same again with the Government exchequer. **It is our considered view, that once tax has already been paid on the services, it was not open to the Department to confirm the same against the appellant, in respect of the same services.** Accordingly, the impugned order liable to be set aside."

B.18. Therefore, it is submitted that GST on the construction services provided by the noticee has already suffered taxed, and the demand in the subject-referred is unsustainable.

(c) There is no taxable supply involved in sale of Undivided interest of land by the SCPL to the Noticee

B.19. It is submitted that in Schedule III of CGST/KGST Act, 2017 which entails the list of activities or transactions which shall be treated neither as a supply of goods nor as a supply of services; does Entry 5 specify it as 'Sale of land'. Therefore, the sale of Undivided interest in the scheduled



land transferred by the Noticee to the apartment purchaser is outside the purview of GST.

C. NO INTEREST IS LEVIABLE

C.1. *It is submitted that in the impugned SCN, the Noticee has been directed to discharge the liability as alleged in the SCN along with interest. The Noticee submits that, as discussed in the abovementioned paragraphs, since GST is not applicable on other points, interest is not leviable in the present case.*

C.2. *It is further submitted that interest is only an accessory to the principal and gets attracted only when the principal is otherwise payable. In the present case, there is no GST payable, the question of recovery of any interest does not arise. Reliance in this regard is placed on the judgment of **Pratibha Processors vs. Union of India [1996-VIL-22-SC-CU]** wherein it was held that interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld. This is a basic principle that where the amount of duty payable is nil, interest payable is also nil. Interest has no independent or separate existence. Consequently, the levy of interest under section 50 of the Act is untenable. Relevant part of the decision is extracted below:*

13. in fiscal Statutes, the import of the words "tax", "interest", "penalty", etc. are well known. They are different concepts, tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute. Interest is compensatory in character and is imposed on an assessee who has withheld of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty - which is penal in character.

C.3. *Considering the fact that no tax itself is payable, no interest should be paid in the facts of the present case.*

13. *We further submit that, Joint Development/Venture Agreement dated 6th February 2017 has not been considered by your good office. Hence, we request your good self to consider the same.*



14. *Therefore, in view of the above submissions, it is submitted that the Notice is unsustainable in Law and all the proceedings initiated in the Notice deserve to be dropped.*
15. *The Noticee submits that the above grounds are without prejudice to one another.*
16. *The Noticee further submits that they reserve their right to alter/modify/amend these objections/submissions and also reserve their right to produce such other additional objections/submissions as may be deemed fit by them.*
17. *It is humbly prayed that the above submissions be taken on record and no further proceedings be initiated in this regard.*

PRAYER

In view of the foregoing, the Noticee prays that:

- i. *The proceedings initiated vide the impugned notice dated 09.06.2023, may kindly be dropped;*
- ii. *The Joint Development/ Venture Agreement dated 6th February 2017 has not been considered by your good office. Hence, we request your good self to consider the same.*
- iii. *The proposal to recover Tax liability of 'KGST Rs. 2,15,58,928/- and CGST Rs. 2,15,58,928/- tax' may kindly be dropped;*
- iv. *The proposal to recover interest of 'KGST Rs. 1,99,13,367/- and CGST Rs.1,99,13,362/-' in terms of Section 50 may kindly be dropped;*
- v. *An opportunity of personal hearing be granted to the Noticee before passing any order in the proceeding;*

*Thanking you,
Yours truly,*

*For and on behalf of **DivyaSree R.O.W. Projects Private Limited***

Authorised Signatory"

The RP has requested for Personal hearing. Therefore an opportunity of personal hearing is accorded to the RP on 28.11.2023, who has appeared before the undersigned through its DAR Mr. Harsha S, and was heard.



Further the above replies preferred to the show cause notice by the Taxable Person is closely examined, and the following complies are made to complete the proceedings in accordance with provisos of the IGST/KGST/CGST Act, 2017, as under;

Para No. 1: Non-Payment of GST on construction services provided to Landowner: -

On scrutiny of the audit records it is observed that during the return periods falling in the year 2018-19 the RP is in the business of property development namely construction of residential apartments, and during the above return periods you are engaged in a project named 'Republic of Whitefield' at Kundalahalli Vilalge, K R Puram Hobli, Bangalore East Taluk, Bengaluru, being constructed by the Developer (i.e., RP) on the Schedule A Property comprises of 4 blocks, viz., Block R1, Block R2 and Block R3 consisting of 2BF+GF+14UF (inclusive of clubhouse in Block R3), and Block R4 consisting of 2BF+GF+19UF, along with car parking spaces, roads, internal driveways, Common Areas and Amenities and the Clubhouse.

From the available Audit records it is observed that the project 'Republic of Whitefield' is a Joint development project comprising of 1,448 number of residential and EWS units being developed in terms of Joint Development Agreement entered with Land Owner 'M/s. Shyamaraaju & Co (India) Private Limited' in a ratio of 70:30 between the builder (i.e., M/s. Divya Sree R.O.W. Projects Private Limited) and the Land owner respectively.

The Landowner initially has commenced construction on its own and laid down basic infrastructure to the Schedule property. Subsequently has appointed Construction contractor namely M/s. Divyasree R.O.W. LLP in terms of agreement entered 'Agreement for Appointment of Construction Contractor' dated 19.05.2014, also on 14.10.2014 the BBMP Authorities have issued a Commencement Certificate (CC) bearing number JDTP/LP/07/2010-11, in favour of the landowner, considering the application preferred by the landowner. Subsequently due to closure of the business of the construction contractor namely M/s. Divyasree R.O.W.



LLP, on 06.02.2017, the landowner has proceeded to rescind the agreement entered with construction contractor w.e.f., 06.02.2017, and entered into fresh agreement to take up the construction; development and marketing the residential units in the project of Republic of Whitefield with M/s. DivyaSree R.O.W. Projects Private Limited, i.e., this RP.

In terms of the Joint Development Agreement entered the RP has acquired the status of developer and developed the project of Republic of Whitefield from the stage where it is left and w.e.f., 06.02.2017, and the units are sold jointly along with the landowner and offered the receipts from the units sold to admissible taxes after deducting the land consideration/cost, which is less/equal to 30% of the total consideration received from the apartment buyers and shared with the land owners in terms of Joint Development Agreement entered.

On 06.01.2018 the BBMP Authorities have issued a Occupancy Certificate (Partial) (OC) covering the construction of 1st Phase of the Project consisting of 594 number of residential apartments.

On further examining the Audit records it is observed that out of the total flats constructed 530 number of units (i.e., upon completion of 1st Phase of the Project) flats were sold. And as on the date of OC obtained the Area of the development of project, Area sold in the project developed and the un-sold area in the project developed is observed as under;

Sl.no.	Particulars	Area (Sg. Ft.)
1	The total area of the Development of the Project (A)	68,391
2	Area sold in the project developed (B)	42,077
3	Un-sold area in the project developed (C) (A-B)	26,314
	% of Un-sold area in the project developed	38.48



Therefore as OC is obtained; it is deemed to be treated as Construction is completed, and thereby the possession or right in the property of the flats pertaining to the land owners in respect of the Republic of Whitefield was deemed to be transferred to the land owner by way of conveyance deed i.e., OC and the Project is completed in the return period of January'2018, also there are 1st occupations in the projects by way of units sold.

On verification of the details provided by the RP it is observed that the RP is engaged in development of land into residential high rise apartments under the scheme of Joint Development Agreement with Landowners. As per the Joint Development Agreement entered with M/s. Shyamaramaju & Co (India) Private Limited for developing the property measuring 11 acre 31.5 guntas in Kundalahalli Village, KR Puram Hobli, Bengaluru. It is agreed in exchange of the development rights conferred by the Land owners to the developer, and the developer shall construct, market and deliver to the landowners 30% of the revenue of constructed super built-up area and the developer will retain 70% of the revenue of constructed super built-up area. Also the Developer has undertaken to the payment of Output tax on the entire receipts including the portion of super built-up area falling to the land owners on receipt of advances from prospective buyers and to apportion the revenue to the land owner.

Thus, the receipts from the construction services provided till and up to the date of obtaining OC, is found to be subjected to the admissible GST, further on the part of the residential units left unsold as on and after the date of OC, and the corresponding construction services provided and completed before issuance of OC is disposed off in terms of the development agreement entered, and which the relevant phrase of the agreement is reproduced as below;

"It is agreed between the Parties, if at the completion of the construction of the said Project followed with obtaining the completion certificate from the local authorities, if portion of built up area in the said Project remains unsold, the Parties may



by mutual consent share the unsold built up area in ratio of 30% to the Owner and 70% to the Developer by physical demarcation and shall record the sharing in writing and Agreement signed by both the Parties. The principles of sharing shall remain same as provided in clause (viii) of 7.10 above. After such sharing both the parties shall be entitled to deal with their respective share of built up area as absolute owners without reference/claim from each other. It is further agreed that in respect of built up area so allocated to the share of the Owner, the Owner shall be required to pay BESCOM/BWSSB Charges not exceeding Rs. 100/- (Rupees One Hundred Only) per sq.ft. of the built up area, VAT and Service Tax or any other taxes to the Developer. It is further agreed between the Owner and the Developer that, for the purposes of this clause the value of Owner's share of built up area shall be arrived at based on the averages selling price of built up area sold in the said Project for the previous six months."

Thereby, it is clear that the right in the property of the above detailed flats that are agreed to be constructed by the developer, rendering "Construction Residential Complex Service" and given to the land owners in lieu of the development rights transferred to the developer, is a non-monetary consideration, were transferred to the land owners by way of entering into joint development agreement entered by and between this Registered Person and the Land owners. Thus, the land owners became entitled to sell, mortgage, gift, lease or otherwise dispose of the same or any part thereof, along with their undivided share in the land along with proportionate car parking area, by virtue of the Agreement entered, and upon conferring the Certificate of occupancy to the Constructions by BBMP, on 06.01.2018.

Therefore the actual right over the property i.e. the flats that were left unsold was effectively transferred on completion of construction i.e., on 06.01.2018 (partial OC obtained) in respect of project "Republic of Whitefield".



It can be seen from the above referred Joint Development Agreement that the apartments agreed to be constructed and given to the landowners in lieu of the development rights in land transferred to M/s. DivyaSree R.O.W. Projects Private Limited by the land Owners. Thereby, it is clear that the right in the property of the above detailed flats that are agreed to be constructed and given to the land owners in lieu of the development rights transferred to the developer, were transferred to the land owners and the landowners became entitled to the proceeds from the sale, mortgage, gift, lease or otherwise disposed of the same or any part thereof.

Thereby, the RP being the registered person under the provisions of CGST/KGST/IGST Acts, engaged in supplying Construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, is liable to discharge admissible GST on the Construction services provided to the portion of super built-up area falling to the landowner.

And here in this regard the notification issued by the hon'ble Ministry of Finance of Government of India bearing Notification no.4/2018-Central Tax (Rate), New Delhi, Dated 25.01.2018, which reads as under;

"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:-

- (a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and*
- (b) registered persons who supply construction service of complex, building or civil structure to supplier of development*



*rights against consideration, wholly or partly,
in the form of transfer of development rights,*

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter)."

Thus, the Services namely construction services rendered by this Registered Person are the activities that have been specified in Section 7 of the CGST/KGST Act, 2017. When such activities are carried out by one person for another in the taxable territory for a consideration then such activities are taxable services.

Whereas from the above discussion and the given facts in the case, it appeared that works contract service is being provided by the builder/developer to the landowner. The developer receives consideration for the construction service provided by him, from landowner: in the form of development rights in "scheduled property"; and from other buyers: normally in cash.

Thus construction of residential complex service provided by the developer in respect of construction of residential flats is taxable in case any part of the payment/development rights of the land was received by the developer before the issuance of completion certificate and the Goods and Service tax would be required to be paid by builder/developers even for the flats given to the land owner.

Further from the available Audit records it is observed that the RP has shared the 30% of total receipts from sale proceeds of flats booked before OC to the land owner, and subjected the entire receipts to tax including the portion



of land owner, and the flats that were constructed but left unsold as on the date of OC were claimed with exemption from payment of admissible GST.

Herein in the case on hand the RP has provided the outward taxable services namely construction services to the recipient (i.e., the Land owner) and in return received the consideration from the recipient as recorded above, but has failed to subject the same to admissible GST, and the un-sold area in the project is observed at 26,314 sq. ft., and therefore the portion of developed area in the 'un-sold area of the project as on the date of OC obtained' falling to the portion of the land owner is stands at 7,894.23 sq. ft. (i.e., 30% of unsold area), on which you have failed to discharge the admissible GST.

Further to the valuation of the services provided the agreement entered between the landowner and this RP i.e., 'Agreement for sale' of flats left unsold as on the date of OC dated 07.01.2018, is considered in terms of rule 28(1) of the CGST/KGST Rules, 2017, wherein the total value of the unsold flats are recorded at Rs. 23,93,96,540/- for the total unsold UDI area consisting of 26,314 sq. ft. along with saleable area of 87,371 sq. ft., and therefore the value for the unsold UDI area of 7,894.23 sq. ft. along with saleable area proportionately at 26,211.30 sq. ft., is arrived as under;

(underlining supplied)

Therefore the value of the area falling to the portion of the land owner (for 7,894.23 sq. ft.) is Rs.7,18,18,962/-

Value of Service provided to recipient (in Rs.)	7,18,18,962
Date of Delivery / OC received	06.01.2018
Due date for filing return / payment of tax	20-02-2018

And the above facts are appraised to the RP's DAR Mr. Harsha S, in the course of personal hearing held as cited above under ref. no.8. And during the course of personal



hearing the RP has made further submission that, on completion of the ROW project, the RP has reversed the total ITC as is attributable to the un-sold area in the project at Rs.1,51,22,135/- for the area of 26,314 sq. ft., wherein as the area of 7,894.23 sq. ft. falling to the portion of landowner is subjected to tax the ITC as is attributed at Rs.45,36,640/- (i.e., 30% Rs.1,51,22,135/-) is to be adjusted with the liability, also furnished the details of ITC subjected to reversal on completion of project relating to Phase-1 of the ROW project. Which the submission of the RP is examined carefully, and found in order, hence, the tax payment made by way of ITC reversal on the portion of construction services provided by this tax payer to the landowner is considered, and allowed set off as under.

In view of the above facts/findings/discussions, the construction services provided by this RP is subjected to admissible GST and quantified the tax liability as below, and further subjected to interest liability in terms of Section 50(1) of the CGST/KGST Act, 2017, and incorporated as below;

Abstract:

Particulars	IGST	CGST	KGST
Output GST payable on Construction services provided to Land owner at Rs.7,18,18,962/-	0	64,63,707	64,63,707
Less: Discharged by way of ITC reversal	0	22,68,320	22,68,320
Balance to be payable	0	41,95,387	41,95,387
Add: Interest U/s. 50(1) of the Act	0	44,21,363	44,21,363

Note: Interest is levied till the date



In view of the above findings and discussions, the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised along with interest and penalty payable is worked out and recorded as under;

ABSTRACT OF LIABILITY

(Amount in Rs.)

Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
KGST	29-Karnataka	41,95,387	43,38,605	4,19,539	0	89,53,531
CGST	29-Karnataka	41,95,387	43,38,605	4,19,539	0	89,53,531
Total		83,90,774	86,77,210,	8,39,078	0	1,79,07,062

CW: Issue demand notice in DRC-07 accordingly.

7. It is an undisputed fact that pursuant to the said order, the aforesaid M/s. DivyaSree Projects has discharged the entire GST liability towards the entire property as evidenced from the intimation of voluntary payment in Form GST DRC-03 which is extracted hereunder:



NC: 2025:KHC:26950
WP No. 5027 of 2024

FORM GST DRC-03
[See rule 142(2) & 142(3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

ARN:AD2912230610593

Date:30/12/2023

1	GSTIN						29AAGCD0372F1ZS					
2	Name						DIVYASREE R.O.W. PROJECTS PRIVATE LIMITED					
3	Cause of Payment						SCN					
4	Section under which voluntary payment is made						73(8)					
5	Details of show cause notice, if payment is made within 30 days of its issue						Reference No: AD290523013422F				Date of Issue 28/12/2023	
6	Financial Year						2017-2019					
7	Details of payment made including interest and penalty, if applicable (Amount in Rs.)											
Sr. No.	Tax Period	Act	Place of Supply	Tax/Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger Utilised (Cash/credit)	Debit entry no.	Date of entry
1	JAN 2018-JAN 2018	CGST	Karnataka	4,195,387.00	4,338,605.00	419,539.00	0.00	0.00	8,953,531.00	Cash/Credit	DC2912230359456/D12912230392052	30/12/2023
2	JAN 2018-JAN 2018	SGST	Karnataka	4,195,387.00	4,338,605.00	419,539.00	0.00	0.00	8,953,531.00	Cash/Credit	DC2912230359456/DI29122303920252	30/12/2023

8. Reasons, if any -
As per DRC-07 Adjdn Order issued by DCCT 4.1



8. The aforesaid facts and circumstances are sufficient to come to the conclusion that the adjudication order dated 28.12.2023 was passed against the registered person i.e., Developer - M/s. DivyaSree Projects pursuant to which the said person discharged the entire GST liability in relation to the entire property including the 30% share of the petitioner under the Joint Development Agreement dated 06.02.2017 and consequently, the question of there being double taxation i.e., payment being made by the aforesaid M/s. DivyaSree Projects and once again payment being demanded from the petitioner would not arise in the facts and circumstances of the instant case and the impugned order deserves to be quashed.

9. In so far as the contention of the learned Additional Government Advocate and the finding recorded by the respondent No.1 that the Joint Development Agreement dated 06.02.2017 being unregistered cannot be made the basis to exempt the petitioner from payment of GST is concerned, as stated supra, prior to the impugned order, Deputy Commissioner of Commercial Taxes, (Audit)-4.1, DGSTO-4, Bengaluru has already recognized, accepted and acted upon the aforesaid Joint Development Agreement for the purpose of



coming to the conclusion that the GST liability was to be discharged by the Developer and has accepted payment from it and consequently, in the light of the finding recorded by Deputy Commissioner of Commercial Taxes, (Audit)-4.1, DGSTO-4, Bengaluru, the respondent No.1 clearly was estopped from taking a diametrically opposite stand and rendering a contrary finding that the Joint Development Agreement dated 06.02.2017. Under these circumstances, this contention urged by the learned Additional Government Advocate cannot be accepted.

10. In the result, I pass the following:

ORDER

- i. The petition is hereby ***allowed.***
- ii. The impugned adjudication Order dated 30.12.2023 and Summary of the Order in Form GST DRC-07 passed by the respondent No.1 in Order bearing No.DCCT/AUDIT-1.7/GST(ADT)-02/ADJ./T.NO.-794/2023-24 are hereby quashed.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**