

FIVE DAY GST WEBINAR SERIES
ORGANIZED BY
NAVI MUMBAI BRANCH OF WIRC OF ICAI

**GST ON REAL ESTATE INDSTRY
– A COMPREHENSIVE VIEW**

Presented by CA RAJIV LUTHIA

COVERAGE

- *Constitutional Aspect and Legal History*
- *Levy & Taxability of supply under GST*



CONSTITUTIONAL ASPECT & LEGAL HISTORY OF WORKS CONTRACT

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Background & Constitutional Disputes

- Works contract is a transaction involving combination of supply of goods and services.
- The Service Tax Law was introduced in 1994.
- Prior to introduction of service tax law the tax was levied only on Manufacturing & sale of goods. (Excise & sales Tax)
- Question came up before Court whether transaction of works contract is liable to VAT?

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GANNON & DUNKERLEY- HON'BLE MADRAS HC

- The power of The Madras General Sales tax Act,1939 to tax value of material used in execution of construction contract under entry 48 in list II of schedule VII of The Govt of India Act,1935 was challenged.
- There was no transaction of sale of goods, hence provisions of statute authorizing imposition of tax were ultra virus.
- "Sale of goods " had the same meaning in Entry 48 which it has in the Indian Sale of Goods Act, 1930.
- The construction contracts were agreement to execute work and not contract for sale of material used therein. They are entirely indivisible contracts and cannot be broken in to contract of sale of goods and contract for work.
- There must be an agreement between parties for the sale of very goods in which eventually property passes.
- Hence Hon'ble Court held the provisions are ultra vires to the provincial legislature.

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Hon'ble SC - State of Madras Vs Gannon Dunkerly & Co. 1958 9 STC 353

- In case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act).
- The contract being one indivisible contract, it cannot be broken up to levy VAT on sale of goods involved in the execution of works contract.
- Thereby state government lacks power under constitution to tax the goods portion in works contract.

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Article 366(29A)(b)---46th Amendment to Constitution

Article 366(29A)(b)---w.e.f. 2nd Feb, 1983

- *Tax on the sale or purchase of goods includes a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;*

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Finance Act, 2005---- w.e.f. 13th May, 2005

CST

- Section 2(g)(ii) of CST Act, 1956 defines term “Sale” include a transfer of Property in goods (whether as goods or in some other form) involved in execution of a work contract.
- Section 2(ja) of CST Act, 1956 defines "**works contract**" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property

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Taxability of Works contract under service Tax

- Service Portion in execution of works contract was brought into service Tax net w.e.f. 1st June, 2007
- Section 65(105)(zzzza)-**Taxable service** means any service provided or to be provided to any person, by any other person in relation to execution of **works contract**, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

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Definition - Works contract

Explanation- For the purpose of this sub clause, “**works contract**” means contract wherein-

- i) Transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods; and
- ii) such contract is for the purpose of carrying out;
 - a) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricates or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or waterproofing, lift and escalator, fire escape staircases or elevators; **or**
 - b) construction of new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purpose of commerce or industry; **or**
 - c) construction of a new residential complex or part thereof; **or**
 - d) completion and finishing services, repairs, alteration, renovation or restoration of, or similar services in relation to (b) and (c); **or**
 - e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

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Works Contract under Negative regime

- The above definition of “Works contract” was relevant for period 1st June, 2007 to 30th June, 2012. After 1st July, 2012, Works contract was defined under section 65B(54)
- 65B(54) of Finance Act, 1994 defined “ **Work contract**” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immoveable property or for carrying out any other similar activity or a part thereof in relation to such property.

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Works Contract

- Section 66E(h)-(Declared Service) ---Service portion involved in the execution of works contract
- The valuation of works contract service is provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

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LEGAL HISTORY OF CONSTRUCTION SERVICE

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“Commercial or Industrial Construction Service”

Date	Taxable in respect of
10 th September, 2004	Construction/Repair/Restoration of new building or civil structure or part thereof.
16 th June, 2005	Scope widened to cover: <ul style="list-style-type: none"> a) construction/repair/alteration/renovation/restoration of pipeline or conduit b) completion & finishing service such as glazing, plastering, painting etc. c) “renovation” besides repair/alteration/restoration building or civil structure. Service renamed as “Commercial or Industrial Construction Services”
1 st July, 2010	Sale of commercial premises by the builder/developer to the prospective buyer before obtaining Completion certificate.

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“Construction of Residential Complex”	
Date 16 th June, 2005	Taxable in respect of Section 65(30a) defines Construction of Complex -means <ul style="list-style-type: none"> • construction of new residential complex or part thereof; or • completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or repair, alteration, renovation or • restoration of, or similar services in relation to, residential complex.
	<p>Section 65(91a) defines “Residential Complex”- means any complex comprising of-</p> <ul style="list-style-type: none"> • a building or buildings, having more than 12 residential units; • a common area; and • any one or more facility or services such as park, lift, parking space, community hall, common water supply or affluent treatment system <p>located within a premises and the lay out of such premise is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging in any other person for designing or planning of lay out and the construction of such</p>

Hon’ble SC in case of Larsen and Tourbo Ltd (2015-TIOL-187-SC-ST)
<ul style="list-style-type: none"> • Works contract is a separate species of contract distinct from contracts for services simpliciter • Charging section 65(105) contains 5 different service simpliciter taxable services <ul style="list-style-type: none"> • Erection, Commissioning or Installation Service, • Commercial or Industrial Construction Service (CICS), • Residential construction, • Repairs & maintenance, • Technical Testing. • The said section would not refer to composite works contract

Hon'ble SC in case of Larsen and Tourbo Ltd (2015-TIOL-187-SC-ST)

- Hon'ble FM while moving Finance Bill 2007 intended to tax service component of composite indivisible works contract.
- Although, there are various exemption notification under difference services. The WC service not chargeable to service tax prior to 1st June, 2007.
- CICS, COCS & ECIS covers only such contracts/ transactions which involves service simpliciter transaction falling within the ambit of the respective definitions and do not comprehend Works Contract Service within their ambit

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LEGAL HISTORY OF CONSTRUCTION SERVICE

Hon'ble Supreme court In case of "K.Raheja Development Corporation Vs. State of Karnataka (2005) 2 STT 178 (SC)

- Decision was vis-à-vis Karnataka State Sales Tax Law
- Activity undertaken by builder that of construction of flat/building on behalf of prospective customer for consideration in cash or for deferred payment is works contract and not sale ... (There was separate agreement for sale of indivisible portion of land)

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CBIC Circular

- **Circular No.V/DGST/22/AUDIT/MISC/1/2004 dated 16/02/2006**-CBEC relying upon above decision clarified that “Estate builders are covered under definition of service provider for construction of complex”.
- **Para 13.1 of Circular 80/2004** clarified “Estate builders who construct building/civil structure for their own use, renting it out or selling it subsequently are not taxable service providers. However, if such real estate owner hires contractor, the payment made to such contractor would be subject to service tax”
- **CBEC vide Letter No.332/35/2006-TRU dated 01/08/2006** clarified “builder or developer engages the contractor for construction of residential complex, the contractor shall be liable to pay service tax for service provided to builder/developers. If no contractor is engaged and construction is undertaken by builder/ developer himself, in such case in absence of service provider and service receiver relationship, the question of providing taxable service does not arise hence service tax will not be leviable.

CBIC Circular

- Circular No.V/DGST/22/AUDIT/MISC/1/ 2004 dated 16/02/2006 and letter no. 332/35/2006-TRU dated 01/08/2006 withdrawn vide Circular No.96/7/2007 dated 23/08/2007
- Builder/promoter undertaking construction work on his own not liable but it is the contractor who renders the services of construction is liable for service tax.

LEGAL HISTORY OF CONSTRUCTION SERVICE

Hon'ble Gauhati High Court in the case of Magus Construction Pvt.Ltd. Vs. UOI (2008) TIOL 321-HC-GUW-ST held that

- Sale of flat by builder during construction stage is not service hence not liable to service tax
- CBIC Circular dated 1st August,2006 is binding on the department.....when a builder, promoter or a developer undertakes construction activity for it's own self, the question of provision of taxable service does not arise in absence of relationship of "service provider" and "service recipient".
- Any advance made by a prospective buyer is against consideration for sale of flat and not for the purpose of obtaining service.

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Construction service – Explanation Inserted.

W.e.f. 1st July, 2010 – Explanation inserted

Explanation-*For the purposes of this sub clause, the construction of new building which is intended for sale, wholly or partly, by a builder or any person authorised by builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall deemed to be service provided by the builder to the buyer.*

- Attempt to reverse the decision of **Hon'ble Gauhati High Court in the case of Magus Construction Pvt. Ltd. V/s. UOI (2008) 11 STR 225**

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Bombay High Court in case of MCHI

- The construction activity is an activity which is rendered on land does not make the tax a tax on land.
- The charge is on rendering a taxable service and the fact that the service is rendered in relation to land does not alter the nature or character of the levy.
- The legislature has expanded the notion of taxable service by incorporating within the ambit of clause (zzq) and clause (zzzh), services rendered by a builder to the buyer in the course of an intended sale whether before, during or after construction.

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Bombay High Court in case of MCHI

- There is a legislative assessment underlying the imposition of the tax which is that during the course of a construction related activity, a service is rendered by the builder to the buyer.
- The submission that the explanation brings in two fictions and is ultra vires the provisions of Sections 67 and 68 of the Finance Act is completely lacking in substance.
- Constitutional validity of levy of service tax on builder upheld.

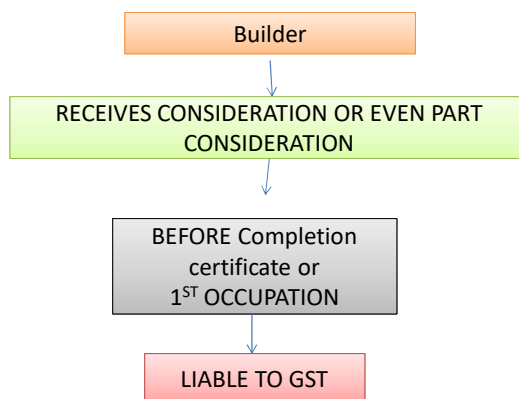
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REAL ESTATE SECTOR Under GST (Prior to 1st April,2019)

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ConstructionSection 7- Schedule II (5)(b)

- Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.



14th June, 2017

CA RAJIV LUTHIA

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Rates of GST

Particulars	Effective Rate
Construction of a complex , building, Civil Structure or a part thereof, intended for sale to a buyer, wholly or partly (The Value of Land is included in the amount charged from the service recipient) (Builder)	12 % with full ITC

14th June, 2017

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Deemed value of Land

- Para 2 of Notification 11/2017-CT (Rate) dated 28th June, 2017 provide that In case of supply of service specified in column (3), in item (i); ⁸⁸[(i) (ia), (ib), (ic), (id), (ie) and (if)] **(i.e. construction service)** against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and **the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply**
- *Explanation.* –For the purposes of this paragraph ⁸⁹[and paragraph 2A below], “total amount” means the sum total of,-
 - (a) consideration charged for aforesaid service; and
 - (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.

14th June, 2017

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Deemed Value of Land

- Section 15(5) provide that ***“Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.”***
- Notification No. 11/2017 – CT (R) provides for determination of value of supply based on the deduction of the deemed value of land.

14th June, 2017

CA RAJIV LUTHIA

29

Deemed Value of Land

- In exercise of the powers conferred by sub-section (1) sub-section (3) and sub-section (4)] of section 9 subsection (1) of section 11, **sub-section (5) of section 15**, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do.....

14th June, 2017

CA RAJIV LUTHIA

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Hon'ble SC in case of Century Manufacturing Co.

- Question arose before **SC in case of Century Manufacturing Company Limited – SC 1992 (5) TMI 19** that whether tariff values as fixed by the Government in exercise of powers conferred by Sec. 3(2) of Central Excises and Salt Act, 1944 is ultravires?
- Sec. 3(2) read as under “The CG may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings in the First Schedule as chargeable with duty ad valorem and may alter any tariff values for the time being in force”

14th June, 2017

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Hon'ble SC in case of Century Manufacturing Co.

- Supreme court has held that
 - While we undoubtedly say that Section 3(2) confers a power on the CG to fix tariff values for goods at its pleasure, unrestricted to the terms of Section 4, we do not say that this can be done at the whim and caprice of the Government
 - This discretion has to be exercised by the Government in accordance with the crucial guideline that is inbuilt into the statute and also illustrated by the manner in which the determination is provided for in Section 4.
 - In the case of the goods with which we are concerned, the basis on which tariff value was fixed by the Government was explained before the High Court.

14th June, 2017

CA RAJIV LUTHIA

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Hon'ble SC in case of Century Manufacturing Co.

- Supreme court has held that
 - In our opinion, the tariff value has been notified under Section 3(2) for valid reasons and on germane grounds having a nexus to the 'value' of the goods and the High Court erred in accepting the assessee's plea that "the notifications are arbitrary, perverse and display a non-application of mind on the part of the authorities as the tariff values fixed are unrelated to the value or price or the manufacturing cost and manufacturing profit of the products"
 - The CG has the undoubted power to enhance the rates and the validity of a notification having such an effect is not open to challenge even if it is done under the "guise" of fixing a tariff value.
 - The tariff values of sulphuric acid and chlorine were validly fixed under the impugned notifications. Section 3(2) of the Act as well as the notifications are declared valid and constitutional.

14th June, 2017

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Hon'ble SC– Wipro Ltd

- Hon'ble SC decision in case of Wipro Ltd v. Assistant Collector Of Customs 2015 (319) E.L.T. 177 wherein it was held that
 - when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved.
 - On the contrary, it goes against the objective behind Section 14 namely to accept the actual cost paid or payable and even in the absence thereof to arrive at the cost which is most proximate to the actual cost.
 - Addition of 1% of free on board value is thus, in the circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution

14th June, 2017

CA RAJIV LUTHIA

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Hon'ble SC– Wipro Ltd

- No doubt, rule making authority has the power to make rules but such power has to be exercised by making the rules which are consistent with the scheme of the Act and not repugnant to the main provisions of the statute itself.
- Such a provision would be valid and 1% F.O.B. value in determining handling charges, etc., could be justified only in those cases where actual cost is not ascertainable

14th June, 2017

CA RAJIV LUTHIA

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Deemed Value of Land

- In the present case before us, the only justification for stipulating 1% of the F.O.B. value as the cost of loading, unloading and handling charges is that it would help Customs authorities to apply the aforesaid rate uniformly.
- This can be a justification only if the loading, unloading and handling charges are not ascertainable. Where such charges are known and determinable, there is no reason to have such a yardstick.
- We, therefore, are not impressed with the reason given by the authorities to have such a provision and are of the opinion that the authorities have not been able to satisfy as to how such a provision helps in achieving the object of Section 14 of the Act.
- It cannot be ignored that this provision as well as Valuation Rules are enacted on the lines of GATT guidelines and the golden thread which runs through is the actual cost principle. Further, the loading, unloading and handling charges are fixed by International Airport Authority.”

14th June, 2017

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Rates of GST – Notification 11/2017

Particulars	Effective Rate
Supplied by way of construction , erection , commissioning , repair, maintenance, renovation, or alteration of :	8% (i.e. 12% less 33.33% reduction for land) with full ITC
(a) a road, bridge, tunnel or terminal for road transportation for use by general public	
(b) A civil structure or any other original works pertaining to:	
<ul style="list-style-type: none"> • Scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana • “In-situ rehabilitation of existing slum dwellers using land as a resource through private participation” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers 	

20th January, 2018

CA Rajiv Luthia

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Rates of GST – Notification 11/2017

Particulars	Effective Rate
Supplied by way of construction , erection , commissioning or installation of original works pertaining to :	8% (i.e. 12% less 33.33% reduction for land) with full ITC
a single residential unit otherwise than as a part of a residential complex	
Low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-	
(1) the “Affordable Housing in Partnership”	
(2) any housing scheme of a State Government;	

20th January, 2018

CA Rajiv Luthia

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Rates of GST – Notification 11/2017

Particulars	Effective Rate
Supplied by way of construction , erection , commissioning, repair, maintenance, renovation, or alteration of : a civil structure or any other original works pertaining to the “Beneficiary led individual house construction” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana	12%

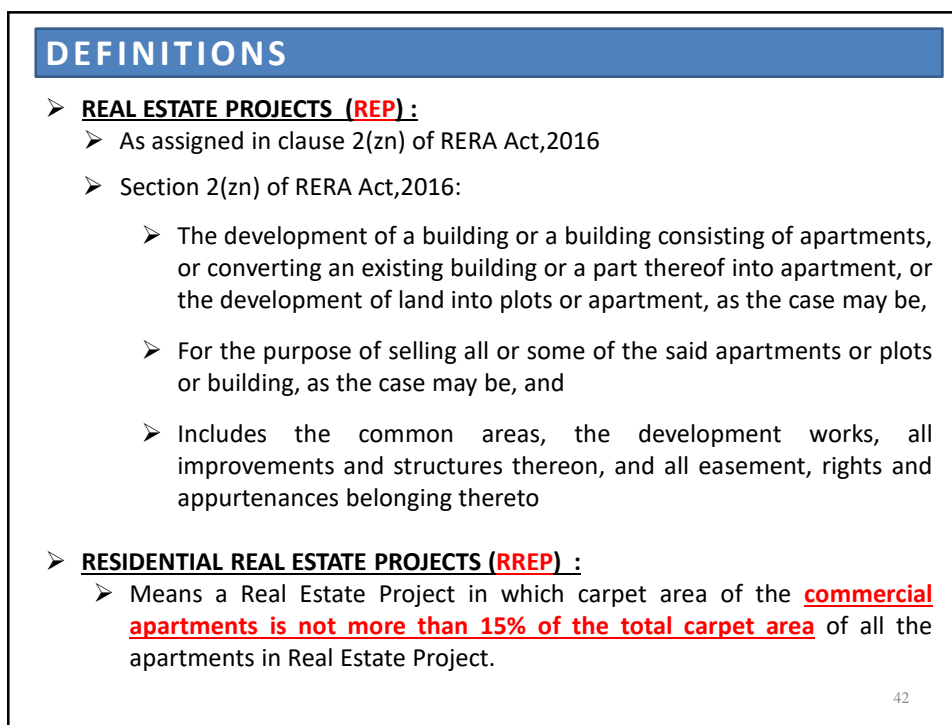
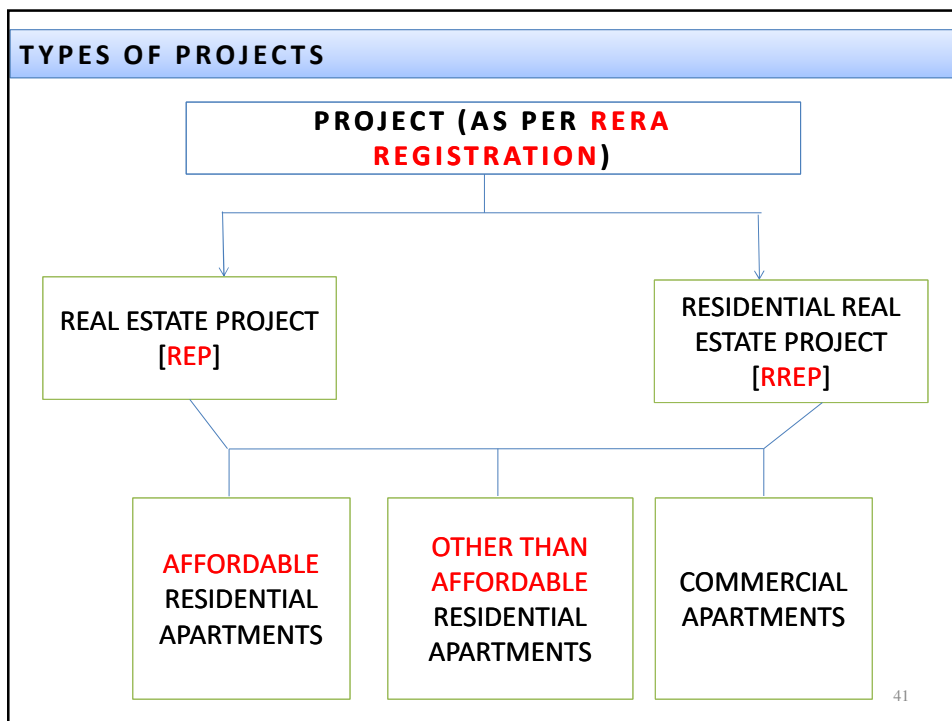
20th January, 2018

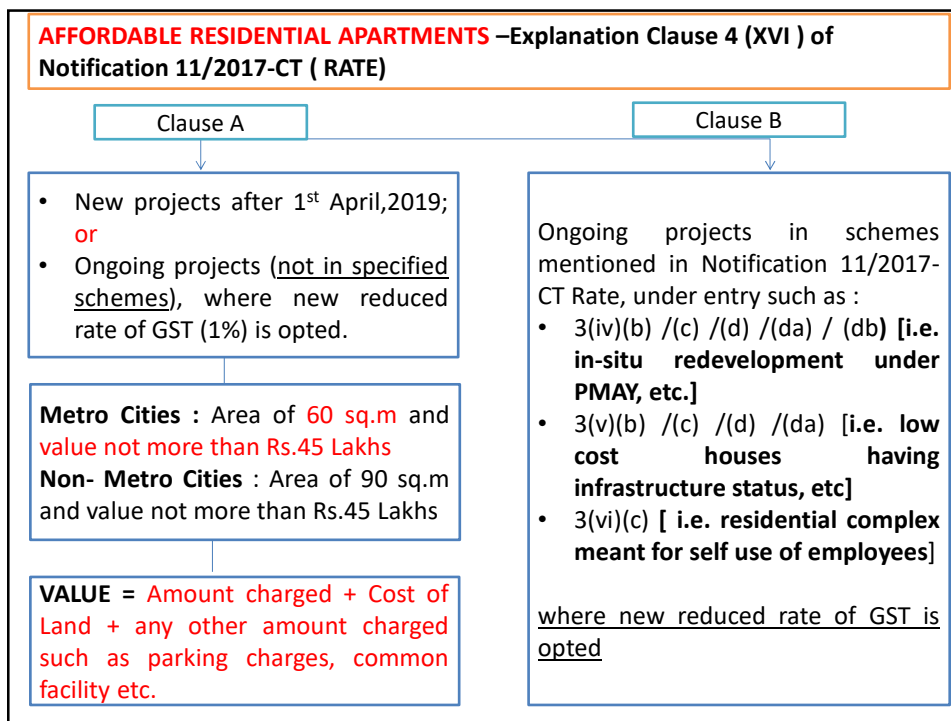
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GST on REAL ESTATE SECTOR (w.e.f 1st April,2019)

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Scheme under provisions before 1st April, 2019

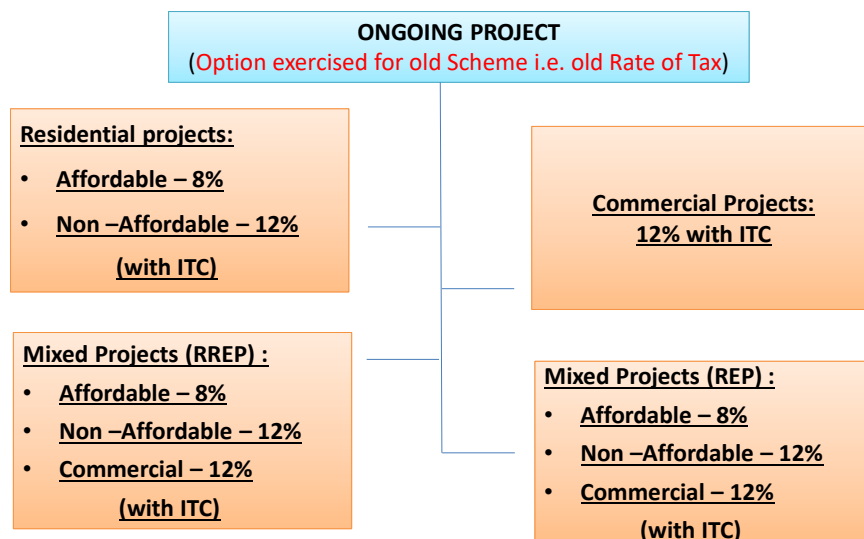
- Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana. **[3(iv)(b)]**
- In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) **[3(iv)(c)]**
- Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana. **[3(iv)(d)]**
- Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union Territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban). **[3(iv)(da)]**
- Houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban). **[3(iv)(db)]**

Scheme under provisions before 1st April, 2019

- A single residential unit otherwise than as a part of a residential complex **[3(v)(b)]**
- Low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; **[3(v)(c)]**
- Low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under 1) The "Affordable Housing in Partnership" component of the Housing for
 - All (Urban) Mission/Pradhan Mantri Awas Yojana;
 - Any housing scheme of a State Government; **[3(v)(d)]**
- **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. [3(v)(da)]**

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TAXABILITY OF PROJECT



**The above rates are derived after considering 1/3rd deduction for Land

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TAXABILITY OF PROJECT

ONGOING PROJECT (Opted for new rates) or New Project

Residential projects:

- Affordable – 1%
- Non –Affordable – 5%
(No ITC)

Commercial Projects: 12% with ITC

Mixed Projects (RREP) :

- Affordable – 1%
- Non –Affordable – 5%
- Commercial – 5% (clause (ib) of not. 3/2019 (No ITC)

Mixed Projects (REP) :

- Affordable – 1%
- Non –Affordable – 5%
- Commercial – 12% (clause (if) of not. 3/2019 (Proportionate ITC)

**The above rates are derived after considering 1/3rd deduction for Land

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WHAT IS AN ONGOING PROJECT ???

Ongoing project means a project which satisfies ALL the conditions :

- **Commencement certificate** is issued before 31st March,2019 **and** is certified by any of the following persons as to construction of project has started before 31st March,2019 :
 - An Architect, Chartered Engineer or a licensed surveyor
- If commencement certificate from competent authority is not required, then **certification from above persons as to construction of project has started before 31st March,2019**
- CONSTRUCTION DEEMED TO BE STARTED IF EARTHWORK FOR SITE PREPARATION FOR THE PROJECT HAS BEEN COMPLETED AND EXCAVATION FOR FOUNDATION HAS STARTED
- **Completion certificate** or **first occupation** of the project has not taken place on or before 31st March,2019
- **Apartments being constructed, have been booked partly or wholly before 31st March,2019**

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MEANING OF APARTMENTS BOOKED ON OR BEFORE 31ST MARCH, 2019

Following conditions to be satisfied

- **part of supply of construction** of which has time of supply on or before the 31st March, 2019; **and**
- **at least one installment has been credited to the bank account** of the registered person on or before the 31st March, 2019; **and**
- **an allotment letter or sale agreement** or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019

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ONE TIME OPTION FOR ONGOING PROJECTS

- Builder can choose to adopt new rates of GST (1% / 5%) w.e.f. 1st April, 2019 or can continue with old rates of GST as applicable upto 31st March, 2019
- Option to be exercised and intimated to jurisdictional GST office in Form Annexure IV to be filled **on or before 10th May, 2019**
- **If no option intimated till 10th May, 2019 then it is deemed that builder has choose for NEW rates of GST**
- Till the option is exercised, Invoices may be issued with existing rate & subsequent adjustment as per option opted shall be given effect to.

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CONDITIONS FOR NEW RATES OF TAX

- Tax payment to be made in cash only. No Input Tax Credit shall be utilized.
- No ITC can be taken post 1st April, 2019
- However, in case of REP project proportionate credit for commercial apartment taxed at 12% shall be eligible for ITC, **if determinable**.

REDEVELOPEMENT PROJECT

- Developer shall pay GST on flats allotted to landowner.
- Landowner eligible for ITC of such tax paid by developer, if landowner sells these flats to 3rd buyer before OC and levies GST on same.....**Whether DR / FSI is Goods or Service ????**
- Transitional procedure to be followed in respect of accumulated ITC balance for ongoing projects (Discussed in detail in later slides).
- Input Tax Credit not availed shall be reported in monthly GSTR-3B as "Ineligible Credit"

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CONDITIONS FOR NEW RATES OF TAX

- **80%** of **value of input & input services**, shall be received from registered person.
 - For calculating 80%, do not consider / include supplies of TDR, Long term lease, FSI, electricity, high speed diesel, motor spirit, natural gas.
 - Services on which RCM is paid, like GTA, security etc; shall be considered purchases from registered suppliers.
 - Calculation shall be made for each Financial Year or Part thereof (year of receiving OC)
 - In case of shortfall of 80%, GST to be paid on shortfall value on RCM basis @ 18% before the month of June of subsequent year
 - "CEMENT" purchased from URD suppliers shall be payable on RCM basis @ 28% on monthly basis....**notification 3/2019 uses term " notwithstanding" Notification 7/2019 provides for RCM liability only to the extent of shortfall**
- Project wise details to be maintained.

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CALCULATION OF 80% (ILLUSTRATION)

SR.No.	NATURE OF INPUTS / INPUT SERVICES	% VALUE DURING FY.	PURCHASE FROM RD ?
(a)	Sand	10	Yes
(b)	Cement	15	No
(c)	Steel	20	Yes
(d)	Bricks	15	Yes
(e)	Flooring Tiles	10	Yes
(f)	Paints	5	Yes
(g)	Architect /drawing	10	Yes
(h)	Aluminium windows etc.	15	Yes

Whether RCM applicable on Cement only to tune of "shortfall" of 80%? Notification 7/2019-CT (r) contradicts with example given in notification 3/2019-CT (r)

Whether Interest on Loan / Water / Exempt supplies etc. from URD suppliers be counted for this 80% working ????

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TRANSITIONAL PROCEDURES IN RESPECT OF ONGOING PROJECTS

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PROJECT LEVEL ANALYSIS TO BE MADE TO IDENTIFY THE WHICH SCHEME IS BENEFICIAL

- This exercise to be carried out in case of projects where NEW rates of GST applicable / opted.
- ITC reversal / availment to be made on or before the due date of filing GSTR-3B for the month of September,2019
- ITC availed till 31st March,2019 but attributable to construction of Residential portion in case of REP project & attributable to construction of residential & commercial portion in case of RREP project , which has time of supply after 1st April,2019 shall be liable to be determined, as per formula prescribed.

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PROJECT LEVEL ANALYSIS TO BE MADE TO IDENTIFY THE WHICH SCHEME IS BENEFICIAL

- If above ITC is positive, which means that out of the ITC availed till 31st March,2019 some portion is attributable to supplies to be made post 1st April,2019 wherein no ITC is eligible, then same needs to be reversed /paid.
- If above ITC is negative, which means that ITC availed till 31st March,2019 is short availed as is attributable to supplies already made till 31st March,2019 , then such short ITC to be availed from the ITC of 2019-20, for which he is not eligible otherwise, as per the formula prescribed.

Whether provision related re-calculation of ITC already claimed and utilized , is constitutionally valid?????????

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WITH KNOWLEDGE..... WE KNOW THE WORDS,
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



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