

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY B.COM, B.L. (HONS.),

VINUPRIYA MUTHURAMALINGAM, B.A., L.L.B. (HONS.)

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

BY E-MAIL / COURIER

File No.232/2020-Opinion

31.10.2020

QUERIEST: Shri. A V SIVARAMAN,
F2, Navin Manasarovar,
86th Street, 18th Avenue,
Ashok Nagar,
Chennai – 600 083.

Attn.: Mr. B. Raghuraman <raghubhava@gmail.com>

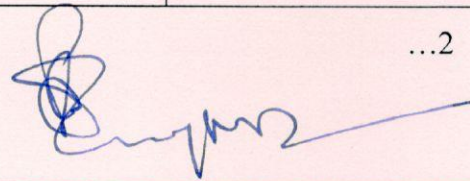
Sir,

Sub.: Clarifications with regard to GST liability on Construction Services based on Joint Venture Agreement.

A. Please find the replies for the queries in chart form.

SL.NO.	QUERY	OPINION	REMARKS
1.	Rate of GST – The developer-promoter will charge on the land owner-promoter while handing over flats before issue of completion certificate.	7.5%	On the basis of the valuation to be adopted, effectively it will be 5%.
2.	Can land owner-promoter take input tax credit if they sell their share of flat before issue of completion certificate?	YES	a) The tax payable should not be less than the tax charged on the land owner-promoter by the developer-promoter. b) Sale/payment to be before issue of completion certificate / first occupation.

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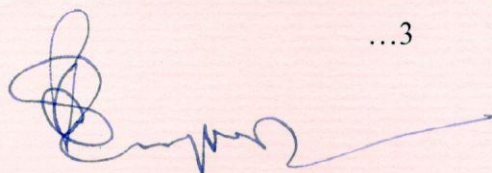
No.1, 4th Floor, Ceebros Centre, New No.39, Old No.45, Red Cross Road, Egmore, Chennai – 600 008.

Email: smurugappan53@yahoo.com

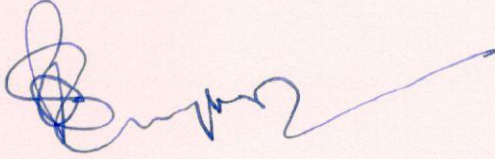
Website: www.smurugappan.com

Phone: 42122660, 42122661, 28521223, Fax: 28521398

SL.NO.	QUERY	OPINION	REMARKS
3.	For selling the flats belonging to more than one land owner-promoter whether a power of attorney holder can register under GST.	NO	Each shareholder of the property owning a flat will be a supplier when he sells to a third party, the flat given to him. Thus he needs to register himself under GST law.
4.	As progressive payments are involved from third party buyer, whether the land owner-promoter is to be registered under GST?	YES. Land owner-promoter should register when payments are received by him from third party buyers.	---
5.	Can GST be paid by the land owner-promoter after getting GST invoice from developer-promoter?	It depends on payment schedule from the third party buyers. It can be adjusted to the time of invoices from developer-promoter.	The time of supply for developer-promoter is defined as the date of obtaining the completion certificate or first occupation. But based on payments received, there is no bar for the developer-promoter to raise invoices before completion of service by the developer-promoter i.e. before obtaining completion certificate or the date of first occupation. Hence based on such invoices, it should be possible to adjust the input tax credit when the flats are sold to third parties.
6.	Under JV arrangement can the developer-promoter take input tax credit?	Yes, if he opts to pay 18% GST. No credit will be available, if he opts to pay 7.5%.	Effectively, it will be 12% with input tax credit and 5% without input tax credit.



B. Also kindly send payment of our fees as per the enclosed bill.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

S. MURUGAPPAN

Encl.: as above.

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.