

GST Issues in Real Estate Sector

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Real Estate Sector is in great difficulty

- **Over-supply** and **sluggishness in demand**, investors disappearing
- Difficult stipulations in **RERA, Anti-Profitteering**, Consumer Court, Competition Commission
- One sided contracts held invalid
- Many big names are facing Insolvency Proceedings
- Home buyers can file application for initiating corporate insolvency resolution process - jointly by not less than 100 or not less than 10% of home buyers, whichever is less
- Whatever hope for recovery has been smashed by **Coronavirus Pandemic**

Issues under Real Estate Sector

- Renting and Leasing of Immovable Property
- **Real Estate Projects under RERA**
- **TDR/FSI/Long Term lease**
- Sale of Land and Developed Plots
- Works Contracts
- Government related construction contracts

Real Estate – Tax Regime Timeline

Real estate projects are long gestation projects which may run for 2 to 10 years

Period	Tax Regime
01.07.2010 to 30.06.2012	Service tax - Positive List based taxation of services VAT – On material component of under-construction flat (Works Contract)
01.07.2012 to 30.06.2017	Service tax – Negative List based taxation of services VAT – On material component of under-construction flat (Works Contract)
01.07.2017 to 31.03.2019	GST – old scheme of taxation
01.04.2019 onwards	GST – amended scheme of taxation post issuance of notification no. 03/2019 to 08/2019 – Central tax (rate) dated 29.03.2019

Constitutional Background

- Taxes on lands and buildings is a **State subject** – Entry 49 of List II of Seventh Schedule – Article 246
- However, Article 246A of Constitution confers **concurrent powers to Centre and State to make laws with respect to tax on goods and services** – these are overriding powers
- **Services means anything other than ‘goods’** – Article 366(26A) of Constitution
- Thus, **‘services’ can cover immovable property**

Sale of complex before completion

- As per **para 5(b) of Schedule II** of CGST Act, **construction of complex, building, civil structure, except** where entire consideration for sale has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier [**deeming provision**]
- As per **para 6(a) of Schedule II** of CGST Act, **works contract** shall be treated as supply of service
- Interestingly, as per Article 366(29A) of Constitution of India, tax on transfer of property in goods involved in execution of works contract is deemed to be sale of goods

Sale after first occupation or completion certificate, whichever is earlier – no GST

As per para 5 of Schedule III read with para 5(b) of Schedule II of CGST Act, If entire consideration is received **'after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier'**, the promoter (builder or developer) is not liable to pay GST.

The words **'after its first occupation'** are confusing.

'Occupation' by whom? The 'occupation' should be of that particular apartment which is being sold or any apartment in that complex?

As per FAQ (Part I) No. 29 issued by CBI&C *vide* circular F No. 354/32/2019-TRU dated 7-5-2019, 'first occupation' means **'first occupation' of the project in accordance with laws, rules and regulations of State/Central Government or any other authority**. Thus, mere staying in the apartment before obtaining **completion/occupancy certificate** will not be considered as 'first occupation'.

Thus, the FAQ (Part I) treats **'first occupation' as equivalent to completion/occupancy certificate**. If so, the words *'or its first occupation whichever is earlier'* become redundant. It is well settled that an interpretation which treats some words redundant should not be adopted.

In many places, there is delay in issuing completion certificate/occupancy certificate. However, the customers start occupying the apartments.

However, such occupation is illegal occupation.

Transactions out of GST ie. Neither goods nor services – para 5 of Schedule III of CGST Act

➤ **Sale of land**

➤ **Sale of building or apartment after its completion** i.e. after completion certificate has been obtained from competent authorities

Issue of sale of Developed Plots – with common facilities like gym, club house, temple, security office etc. – care required

Amended GST structure w.e.f. 1-4-2019

- The amended scheme applies to residential and commercial apartments which are **covered under RERA** [Real Estate (Regulation and Development) Act, 2016].
- The provisions do not apply to **construction of single houses or works contracts not covered under RERA**
- **"Promoter"** shall have the same meaning as assigned to it in section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 [RERA] - clause (xvii) of paragraph 4 of Notification No. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.
- The new scheme is **compulsory for projects commenced on or after 1-4-2019**. In respect of ongoing projects as on 31-3-2019, the promoter has option to shift to new scheme w.e.f. 1-4-2019 (without ITC) or continue under earlier scheme (with ITC)

GST Rates

- Under new scheme, the GST rates for residential apartments are as follows –
 - (a) CGST 0.5% plus SGST/UTGST 0.5% (**total 1%**) or IGST 1% (**without ITC**) for **affordable residential apartments**
 - (b) CGST 2.5% plus SGST/UTGST 2.5% (**total 5%**) or IGST 5% (**without ITC**) for **other residential apartments.**
- In respect of **commercial apartments (shops, offices, godowns etc.) in RREP**, the GST rate is CGST 2.5% plus SGST/UTGST 2.5% (**total 5%**) or IGST 5% (**without ITC**).
- In respect of construction of **commercial apartments (other than RREP)**, the GST rate is CGST 6% plus SGST/UTGST 6% (**total 12%**) or IGST 12% (**with ITC**).

These rates apply where supply of services involves transfer of land or undivided share of land and its charges are included in the amount charged to customer.

Other Points

- REP – Real Estate projects. [definition under RERA] – can cover both residential and commercial apartments (shops, offices, godowns) – **Commercial apartment means other than residential apartment**
- RREP – It means REP with commercial apartments not more than 15% of total carpet area [No parallel definition in RERA] – balance residential apartments – common buildings are not ‘commercial apartments’
- **Affordable Residential Apartment** means apartment having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than Rs. 45 lakhs.

[also an apartment being constructed in an ongoing project as on 1st April 2019 under any of the schemes specified*]

- In case of ongoing projects as on 1-4-2019, the promoter has **option to opt for earlier provisions of tax i.e. with utilization of ITC**. If promoter intends to continue under old scheme, he has to submit declaration in specified form to jurisdictional Commissioner before 20-5-2019.
- If the promoter does not submit such **declaration**, he is deemed to have opted for the new scheme.
- In case of ongoing projects, **if the promoter intends to shift to new scheme (of 1%/5%) w.e.f. 1-4-2019, he is required to refund excess ITC availed as on 31-3-2019 or get credit of ITC less claimed as on 31-3-2019.**
- In respect of new projects, the tax (CGST, SGST/UTGST or IGST as applicable) shall be paid in cash by debiting the **electronic cash ledger only** [without utilising Input Tax Credit].

Concessional rate on ongoing projects if promoter continues under old scheme with ITC

- Promoter had option to continue under old scheme with ITC in case of ongoing projects as on 31-3-2019.
- In that case, the earlier GST rate of 18% [effective 12% of gross amount charged includes value of land]
- In some ongoing projects, GST rate is 12% [effective 8% if gross amount charged includes value of land], if promoter continues under old scheme. These cover schemes under Pradhan Mantri Awas Yojana, Rajiv Awas Yojana, Affordable Housing, low cost houses etc.

Reverse Charge if procurement from unregistered Person (Shortfall Tax)

- All **cement** for the project must be purchased from registered supplier only. If not so received, the promoter is required to pay **GST @ 28% under reverse charge** by promoter (even if total value of supplies received from registered suppliers is more than 80%).
- After considering payment of GST on cement under reverse charge, **at least 80% of the procurement of inputs and input services** [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the real estate project service **shall be received from registered supplier only.**
- In case of **interest**, it can be considered as received from registered supplier, if Bank/FI/company giving loan are registered under GST
- If there is **shortfall** in procurement from registered suppliers, i.e. if still requirement of procurement of 80% from registered suppliers is not achieved, **GST @18% is payable on value to the extent of shortfall. This adjustment is to be done financial year wise and not project wise.**

- In case of **capital goods** procured from unregistered person, the promoter is liable to pay GST under reverse charge.
- Where **GST paid under reverse charge u/s 9(3)**, it will be **treated as procured from registered person**
- **Inward supplies of exempted goods /services included for calculating 80%**

Project-wise Accounts

- 'Project' as per RERA
- All accounts are to be maintained project-wise. **Each project can be treated differently** e.g. for some projects, promoter may opt for **1%/5% scheme** and for some projects **8%/12% scheme** - FAQ (Part I) No. 24 issued by CBI&C *vide* circular F No. 354/32/2019-TRU dated 7-5-2019.
- **If project is big**, advisable to have separate GST Registration for each project – even more than one project within mega project
- As per FAQ (Part I) No. 30 issued by CBI&C *vide* circular F No. 354/32/2019-TRU dated 7-5-2019, even within same building, **two separate projects can be registered e.g. 1st to 10th floor for one project and 11th to 20th for another project.** These will be considered as distinct projects.

Liability of services of contractor or sub-contractor

- The contractor or sub-contractor supplying service to promoter or other contractor is liable to pay **tax @ 18%** in case of construction of **commercial apartments or residential apartments other than affordable apartments.**
- In case of services of contractor or sub-contractor for construction of **affordable apartments, the GST rate is 12%** (The carpet area of affordable residential apartments should be at least 50% of total carpet area of all the apartments in the project)
- **Input Tax Credit is available.**
- For the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments, value of the apartments shall be the **value of similar apartments booked nearest to the date of signing of the contract for supply of the service.**
- In case it **finally turns out that the carpet area of affordable residential apartments was less than 50%** of total carpet area of all the apartments, the **promoter shall be liable to pay difference between normal tax payable and the tax collected at concessional rate from the buyers, under reverse charge basis.**
- The **contractor can rely on declaration by promoter that the project meets conditions of concessional rate on the works contract service** - FAQ (Part II) No. 23 issued by CBI&C *vide* circular F No. 354/32/2019-TRU dated 14-5-2019.

ITC Reversal

Where **promoter opts to pay tax at full rate (8%/12%) after availing ITC, proportionate reversal of Input Tax Credit** is required in respect of apartments remaining unsold as on date of completion or first occupation, whichever is earlier.

The reversal is required to be made on date of completion of project. Reversal should be as per **rule 42 of CGST Rules in respect of inputs and input services** and **rule 43 of CGST Rules in respect of capital goods**.

Such **reversal will be on basis of carpet area** and not on basis of value.

Purchaser (customer) selling or surrendering before completion certificate

- **Purchaser of apartment may sale before completion certificate –**
 - In my view he is not liable to pay GST as he is not supplier of construction service and he is not in business of sale of apartment (though even casual transaction can be taxed) – dispute possible
- **Promoter can adjust GST only if he refunds the amount with GST**
- If customer **Cancels booking, the promoter deducts certain amount.** On that amount, GST @ 18% applies as it is **‘tolerating an act or situation’** – deemed service

Is the deeming provision in respect of value of land legally valid?

- The deeming provision states that **value of land will be 'deemed to be one third of total amount charged.**
- There is **no option available to promoter to deduct actual value of land** involved in sale of apartment instead of deemed value - FAQ (Part I) No. 36 issued by CBI&C *vide* circular F No. 354/32/2019-TRU dated 7-5-2019.
- The **provision applies even when the promoter enters into two agreements - one for sale of undivided share in land and other for construction of superstructure** - *Kara Property Ventures LLP, In re* (2019) 73 GST 289 = 103 taxmann.com 279 (AAR- TN).
- In many cases (in particularly large cities), the value of land is actually much more than 33% of total amount charged. In such cases, the promoter is required to pay GST at value much higher than actual value of construction.
- It is well settled that any '**deeming provision**' **cannot override a section. The 'value' cannot exceed value as specified in section 15 of CGST Act, read with relevant valuation rules in CGST Rules.**
- In my view, it is **possible to challenge** this deeming provision, though, of course, final result is uncertain.

PLC, EDC, Parking Space Charges, Club Membership Deposit

- Prime Location Charges, External Development Charges (EDC), parking space charges etc.
- These are **'naturally bundled services'** and should form part of **'total amount'** charged for **purpose of GST**
- Club Membership deposit or fee is not **'naturally bundled service'** and should be taxable at hands of club
- **Maintenance service** provided by promoter till housing society or Resident Welfare Association (RWA) is constituted – **GST @ 18% - exemption of Rs 7,500 per month not available**

Types of Joint Development Arrangements

- Often promoter enters into agreement with land owner in respect of Real Estate Project. **Land owner transfers development rights to promoter**
- In some cases, land owner has **revenue sharing arrangement** with promoter. In that case, promoter is liable to pay GST on entire supplies of apartment.
- In some cases, land owner-promoter is allotted some apartments ie. **area sharing arrangement**, which he sales on his own account either before completion or after completion.
- Some times, Joint Development Agreement is executed and **separate joint venture company or AOP** is constituted
- And some times, **joint venture without forming a separate entity**

Is Development Rights

leviable for

GST ?



Notification No. 4/2018-CT (Rate), dated 25-1-2018 (applicable upto 31/03/2019)

As per the notification No. 4/2018-CT (Rate), dated 25-1-2018, the **liability of promoter** (earlier termed as developer, builder etc.) **and the land owner to pay GST 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, even if completion certificate is not obtained, if specific apartments are conveyed by conveyance deed to land-owner, GST liability arises.

In my view, liability cannot arise when the promoter only identifies some apartments which will be given to land-owner at a later stage.

Reverse Charge on TRD/FSI

- The GST payable by **promoter under reverse charge** on TDR, FSI, upfront amount for long term lease w.e.f. 1-4-2019
- **There is no reverse charge for transactions upto 31-3-2019**
- For transactions upto 31-3-2019, in case of land owner, liability arises when apartments are handed over to land owner

Exemptions of GST on TDR/FSI

- In respect of development rights or FSI transferred or payment of upfront amount for long term lease of land on or after 1-4-2019 proposed to be used for **residential apartments, GST is not payable on TDR, FSI** or payment of upfront amount for long term lease of land **if residential apartment is sold before completion.**

However, if some residential apartments **remain unsold** on date of completion, **proportionate GST is payable** on TDR, FSI or long term lease of land by promoter under reverse charge.

- In case of **commercial apartments, GST is payable on development rights or FSI** transferred or payment of upfront amount for long term lease of land after 1-4-2019, whether or not commercial apartments are sold before obtaining completion certificate. **The tax is payable by promoter under reverse charge.**
- **Upfront amount for long term lease of industrial plots** of development of infrastructure business provided by specified Government agencies. **If leased plot not used for intended purpose, GST payable**
- **Ancillary services relating to long term lease like transfer fee, conversion fee taxable**

Exemption to the extent of residential apartments sold before completion

As per the principle,

The first step is to calculate GST payable on development rights transferred, which pertain to residential apartments.

(A) GST on transfer of development rights/FST attributable residential apartments = GST payable on TDR or FSI (including additional FSI) or both *or* on upfront amount payable in respect of service by way of granting of long term lease of thirty years, or more for construction of the project] × (carpet area of the residential apartments in the project) ÷ (Total carpet area of the residential and commercial apartments in the project) .

The second step is to calculate GST payable by promoter on un-booked residential apartments.

(B) GST payable on residential apartments remain un-booked on date of completion = [GST payable on TDR or FSI (including additional FSI) or both *or* upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction **of the residential apartments in the project but for the exemption contained herein**] × (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ **Total carpet area of the residential apartments in the project**)

The **exemption available** on transfer of development rights/FSI attributable to residential apartments which were booked prior to date of completion = **(A) - (B).**

Upper limit for tax on residential apartments :

The tax payable in terms of above shall not exceed 0.5% of CGST + 0.5% of SGST/UTGST of the value in case of affordable residential apartments and 2.5% of CGST + 2.5% of SGST/UTGST of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.

Time when liability of promoter arises :

The liability to pay GST on the said portion of the development rights or FSI, or both, or upfront amount paid for long term lease of land, shall arise **on the date of completion or first occupation of the project, as the case may be, whichever is earlier.**

Value of supply of service of development rights or FSI by land-owner to promoter

➤ **Value of supply of service by way of transfer of development rights or FSI** by a person to the promoter against consideration in the form of residential or commercial apartments shall be **deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter** - para 1A of Notification Nos. 12/2017-CT (Rate) and 9/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 1-4-2019.

➤ As per paragraph 2 of Notification No. 11/2017-CT (Rate) dated 28-6-2017, the value will be equal to total amount charged less one third of total amount as value of land.

For Example: XYZ Ltd, a developer enters into an agreement with ABC Landowner for transfer of development rights for a consideration in lieu of constructed flats on 1st April 2019. The Builder sells 10 flats to independent buyers on 10th May 2019. The value to be considered while paying tax under RCM on issuance of completion certificate will be as per the value of flats sold to independent buyers on 10th May 2019 irrespective of the value existing on the date of completion certificate.

➤ Really, value of land is much higher than one third and cost of construction is much less than two third

➤ Thus, GST is payable on much higher amount i.e. **beyond section 15 of CGST Act.**

Valuation construction service provided by promoter to land-owner

- Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, **the value of construction service** in respect of such apartments shall be **deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers**, other than the person transferring the development right or FSI (including additional FSI), **nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land**, if any, as prescribed in paragraph 2 (see below) - para 2A of Notification Nos. 11/2017-CT (Rate) and 8/2017-IT (Rate) both dated 28-6-2017 as inserted w.e.f. 1-4-2019.

Rate of Tax on Development Right

The rate of tax for providing a service in the form of TDR is derived from the HSN Code of 9972.

The rate of tax under HSN 9972 for TDR is 18%.

Notification 04/2019 also states that the **tax payable derived shall not exceed** the

- 1% of the value of residential apartments in case of affordable residential apartments and
- 5% in case of other than residential apartments

that are un-booked on the date of issuance of completion certificate

Example :

Where the total tax on **50 un-booked residential apartments** is calculated as under

Particulars	Amount
Value per flat	Rs 50,00,000
Un-booked Area	30000 Sq ft
Total Area	100000 Sq ft
Consideration paid for TDR	Rs 10,00,00,000

Tax Payable on un-booked flats = $50,00,000 * 50 * 5\% = 1,25,00,000$

Calculation of Tax Payable on TDR = $10,00,00,000 * 18\% * 30000 / 1,00,000 = 54,00,000$

As the above calculation does not exceed the amount of tax payable on un-booked flats, the tax payable on TDR shall be Rs 54,00,000.

GST payable by promoter under reverse charge

Question: A promoter entered into agreement with landowner for **transfer of development rights on 15-5-2019**. As per the agreement, promoter was allowed to develop a real estate project on the land. The promoter had agreed to give apartments consisting of **40% of the carpet area to landowner** as consideration for granting development rights to promoter. The real estate **project was of 100 apartments of same size**. Out of these 100 apartments, **40 apartments were to be given by promoter to landowner**.

It was agreed that **promoter will make all the bookings and sales, even of apartments given to landowner**. The project was registered under RERA and **construction commenced in August 2019**.

The **promoter started booking of apartments in September 2019**. The rate offered was **Rs 75 lakhs per apartment** and first two apartments were booked at that rate.

The **construction was completed on 20-11-2021**. Five apartments were sold in **October 2021 for Rs 102 lakhs each**.

Calculate **value of transfer of development rights on which the promoter is liable to pay GST under reverse charge** (without considering the exemption available in respect of residential apartments booked prior to 20-11-2021) and the GST payable.

Answer: The development rights were transferred in **May 2019**. The booking rate at that time was Rs 75 lakhs. Hence, **value of supply of service is Rs 50 lakhs (two-third of Rs 75 lakhs)**.

Since 40 apartments were to be given to landowner, the total value of transfer of development rights = $40 \times 50 = \text{Rs } 2,000$ lakhs.

GST payable of transfer of development rights = 18% of Rs 2,000 lakhs = Rs 360 lakhs.

The value of un-booked apartments is to be considered on basis of value of similar apartments booked nearest to date of completion. The apartments were booked by promoter for **Rs 102 lakhs in October 2021**. Hence, **value of the apartment nearest to date of completion is Rs 68 lakhs (two-third of Rs 102 lakhs)**.

Since 30 residential apartments remained un-booked on date of completion certificate, the **Value of un-booked apartments = $68 \times 30 = \text{Rs } 2,040$ lakhs.**

Question: In the aforesaid example, out of 100 apartments, 30 were commercial apartments and 70 were residential apartments. Carpet area of each is 100 Sq M. Out of these, 20 commercial apartments and 40 residential apartments were booked prior to date of completion certificate. Value and carpet area of commercial and residential apartments are same. Calculate the exemption available to promoter in respect of GST on development rights and GST payable by promoter under reverse charge on transfer of development rights.

Answer - The calculations are as follows -

GST payable on transfer of development rights is Rs 360 lakhs (as above).

Carpet area of residential apartments of project = $70 \times 100 = 7,000$ Sq M

Total carpet area of residential and commercial apartments = $100 \times 100 = 10,000$ Sq M

Carpet area of residential apartments which remain un-booked on date of completion = $30 \times 100 = 3,000$ Sq M.

(A) GST on transfer of development rights attributable residential apartments = GST payable on TDR or FSI (including additional FSI) x (carpet area of the residential apartments in the project) / (Total carpet area of the residential and commercial apartments in the project).

Hence, (A) GST on transfer of development rights attributable residential apartments

$$= 360 \text{ lakhs} \times 7,000/10,000 = \text{Rs } 252 \text{ lakhs.}$$

(B) GST payable on residential apartments remain un-booked on date of completion = GST payable on development rights or FSI (including additional FSI) for construction of the residential apartments in the project x (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate / Total carpet area of the residential apartments in the project) –

Hence, (B) GST payable on residential apartments remain un-booked on date of completion

$$= 252 \times 3,000/7,000 = \text{Rs } 108 \text{ lakhs.}$$

The tax payable shall not exceed 1% of value of affordable residential apartments remaining un-booked and 5% of value of residential apartments (other than affordable residential apartments) remaining un-booked on date of completion.

The value nearest to date of completion is Rs 2,040 lakhs (as in above example). Since area of each residential apartment is 100 Sq M, these are residential apartments (other than affordable residential apartments). Hence, 5% of Rs 2,040 lakhs is Rs 102 lakhs.

Thus, GST payable on un-booked residential apartments is Rs 102 lakhs due to the ceiling.

Hence, (B) = Rs 102 lakhs.

Exemption available on development rights pertaining to residential apartments which were booked prior to date of completion = (A) - (B) = 252 - 102 = Rs 150 lakhs

GST payable by promoter on transfer of development rights under reverse charge = Total GST Rs 360 lakhs - Exemption available on transfer of development rights pertaining to residential apartments transferred prior to completion certificate 150 lakhs = Rs 210 lakhs.

Thus, the developer is liable to pay Rs 210 lakhs under reverse charge as GST on transfer of development rights.

Check - This can be checked by making same calculations in different way.

GST on transfer of development rights attributable commercial apartments = GST payable on TDR or FSI (including additional FSI) x (carpet area of the commercial apartments in the project) / (Total carpet area of the residential and commercial apartments in the project).

Thus, (i) GST on transfer of development rights attributable commercial apartments = 360 lakhs x 3,000/10,000 = Rs 108 lakhs.

Add (ii) GST payable on un-booked residential apartments Rs 102 lakhs (due to the limit of 5% of value)

Total GST payable by promoter under reverse charge = (i) + (ii) = 108 + 102 = Rs 210 lakhs.

Issues in Valuation

- **Open market value** at the time of supply [rule 27 (a) of CGST Rules]
- **Value of supply of similar of apartments of like kind or quality**, if open market value not available [rule 27 (c) of CGST Rules]
- **Is the value of construction of similar apartments given to others comparable with apartments given free to transferor of development rights or FSI?**
- It is obvious that value of land is recovered by promoter from buyers of apartments who pay in cash. Thus, **value of land is apportioned only on apartments which are sold for cash and not on all apartments**. Thus, the value of land is included in the price charged to buyers. In fact, it is much higher than the average value of land, if such value was apportioned on all apartments.
- **110% of cost of provision of service** [rule 30 of CGST Rules]

Land owner himself selling apartments before completion

- In some cases, the land owner himself sales apartments before completion. In that case, he has to charge GST. **He can take ITC of GST charged to him by promoter**
- Both land owner promoter and developer promoter should opt for identical option i.e. 1%/5% or 8%/12%
- However, there is time mismatch

As per clause D of Notification No. 6/2019-CT (Rate) dated 29-3-2019, in case of supply of construction service by promoter against consideration in the form of development rights or FSI (including additional FSI) shall arise on **date of completion certificate of project by competent authority or first occupation, whichever is earlier.**

– as **liability of land owner is immediate while liability of developer-promoter is when completed apartment is handed over to land owner promoter.**

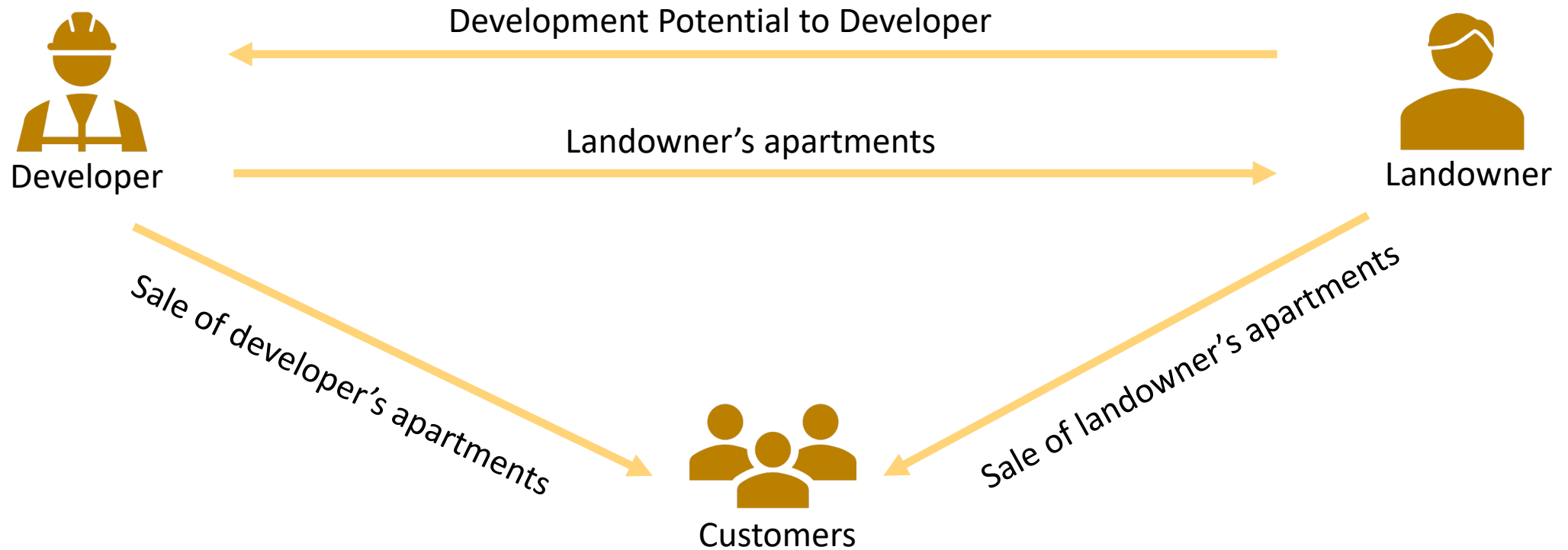
Hence, **ITC may be unusable. No provision for refund.**

The **only option is** to raise tax invoice by promoter developer in respect of apartments which the land owner promoter intends to sale before obtaining completion certificate

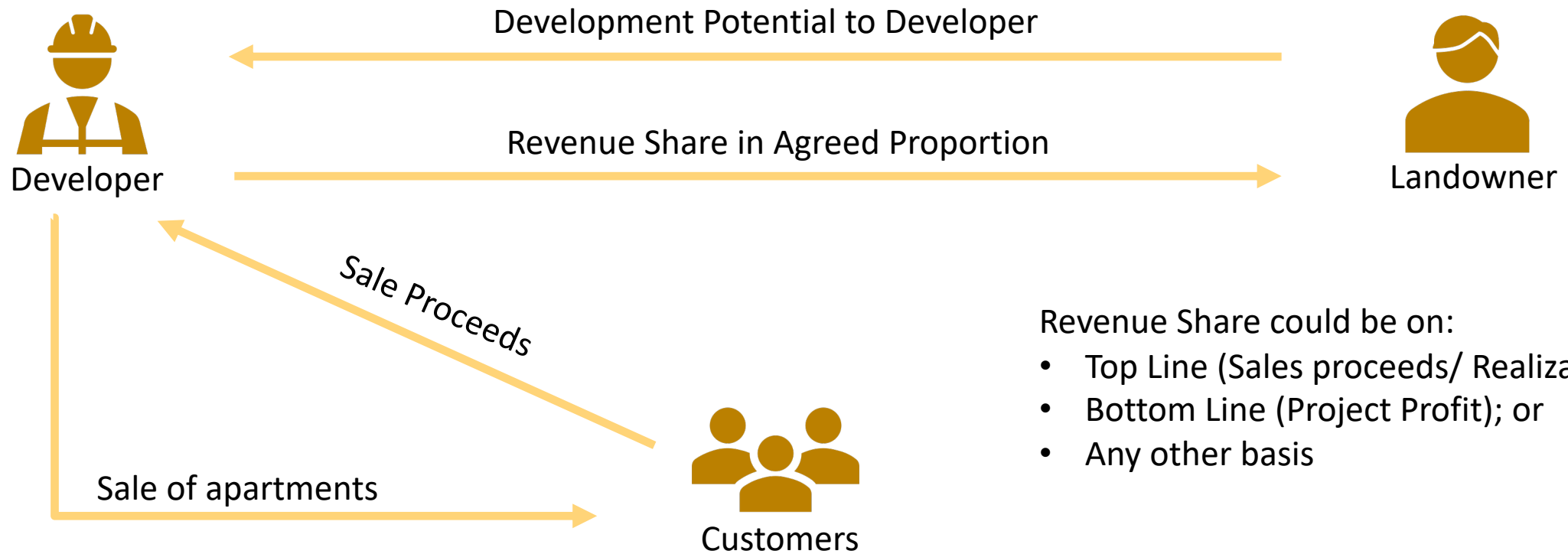
Tolerating an act or situation

- Cancellation charges
- Penalty for breach of contract
- Forfeiture of deposit or advance as penalty
- Surrender of tenancy rights
- Tenant getting rent for alternate accommodation (tenant liable)
- Cheque bouncing charges
- Notice Pay

Joint Development Agreement (Area Sharing)



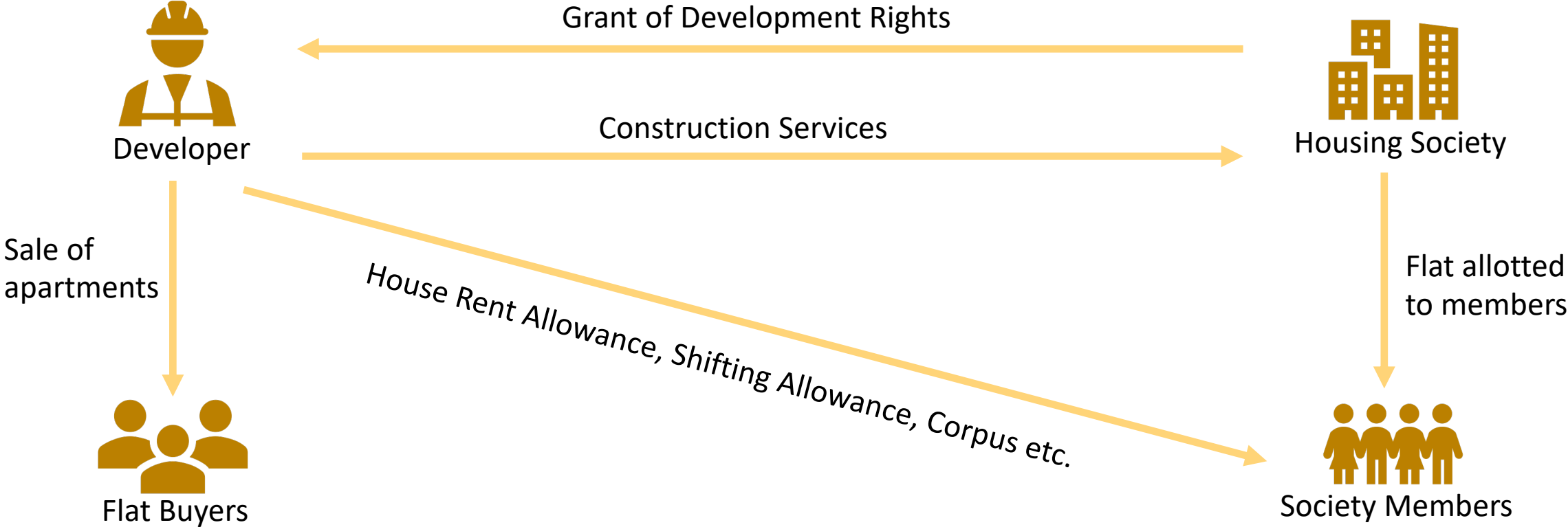
Joint Development Agreement (Revenue Sharing)



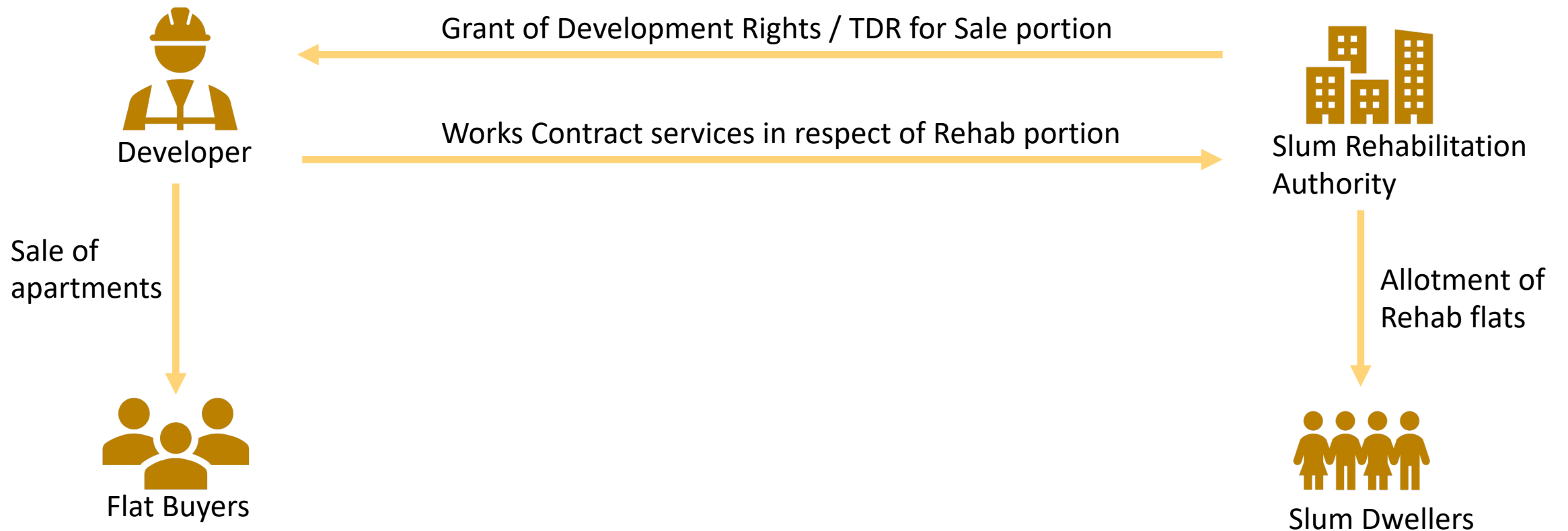
Revenue Share could be on:

- Top Line (Sales proceeds/ Realization); or
- Bottom Line (Project Profit); or
- Any other basis

Housing Society Redevelopment



Slum Rehabilitation Scheme



GST: Where respondent builder had not reduced prices to be realised from buyers of flats, commensurate with benefit of ITC received by him, and also compelled them to pay more GST on additional amount realised, he would be liable for profiteering

[2019] 105 taxmann.com 345 (NAA)

NATIONAL ANTI-PROFITEERING AUTHORITY

Varun Goel

v.

Eldeco Infrastructure & Properties Ltd.

B.N. SHARMA, CHAIRMAN

J.C. CHAUHAN, MS. R. BHAGYADEVI AND AMAND SHAH, TECHNICAL MEMBER

CASE NO. 34 OF 2019

MAY 24, 2019

Illustrative Example

Table (Amount in Rs.)

Sl.No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to August, 2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)	(7)	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services as per ST-3(A)	61,03,173	21,45,334	82,48,507	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-	-	-	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	61,03,173	21,45,334	82,48,507	-	-	-
4	Input Tax Credit of GST Availed as per GST Return (D)	-	-	-	95,05,178	37,35,163	1,32,40,341
5	Total Taxable Turnover as per Returns (E)	12,82,89,436	7,02,77,743	19,85,67,179	7,21,61,576	5,85,73,391	13,07,34,967
6	Total Saleable Area of Villas in the project (Square Mtr) (F)			1,01,795.90			1,01,795.90
7	Area Sold relevant to Taxable turnover as per returns (G)			14,843.33			34,646.89
8	Relevant CENVAT/Input Tax Credit (H)= [(C)*(G)/(F)] or [(D)*(G)/(F)]			12,02.753			45,06,436
9	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover [(I)=(H)/(E)]			0.61%			3.45%

Sl. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June,2017	July,2017 to August, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - D above (%)	C	0.61%	3.45%
4	Increase in tax rate post-GST (%)	D= 12% less 5.50%	-	6.50%
5	Increase in input tax credit availed post-GST (%)	E= 3.46% less 0.61%	-	2.84%
6	Analysis of Increase in input tax credit:			
7	Base Price raised during July, 2017 to August, 2018	F		11,67,79,389
8	Other than Base Price raised during July, 2017 to August, 2018	G		1,39,55,578
9	Total Taxable Value raised during July, 2017 to August, 2018	H=F+G		13,07,34,967
10	GST Collected @ 12% over Basic Price	I= F*12%		1,40,13,527
11	GST Collected @ 18% over other than Basic Price	J = G*18%		25,12,004
12	Total GST Collected	K = I+J		1,65,25,531
13	Total Demand collected	L=H+K		14,72,60,498
14	Recalibrated Basic Price	M= F*(1-E) or 97.16% of F		11,34,62,854
15	GST @ 12%	N = M*12%		1,36,15,543
16	Recalibrated other than Basic Price	O = G*(1-E) or 97.16% of G		1,35,59,240
17	GST@18%	P = O*18%		24,40,663
18	Commensurate demand price	Q = M+N+O+P		14,30,78,300
19	Excess Collection of Demand or Profiteering Amount	R=L-Q		41,82,198

Thank You !



CA Yashwant J. Kasar

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