

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX

Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Eden Real Estates Private Limited
Address	4 th floor, N-410 Ideal Plaza Building, 11/1 Sarat Bose Road, Kolkata-700020
GSTIN	19AABCE6856A1ZQ
Case Number	WBAAR 22 of 2022
ARN	AD1907220142095
Date of application	July 29, 2022
Jurisdictional Authority (State)	Park Street Charge
Jurisdictional Authority (Central)	Park Street Division, Kolkata South Commissionerate
Order number and date	19/WBAAR/2022-23 dated 22.12.2022
Applicant's representative heard	Mr. Ankit Kanodia, Authorized Advocate

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services

Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be in the business of construction of residential apartments intended for sale to buyers. It is submitted that the prospective buyers are given an option to opt for car parking space along with the apartment being booked by them and accordingly the buyers who opt for availing the car parking facility also, are charged a certain sum towards right to use of car parking space and the same forms part of the total consideration charged by the applicant towards sale of the apartment by the applicant.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

(a) Whether the amounts charged by the applicant for right to use of car/two wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST/WBGST Act, 2017?

(b) If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the applicant from its prospective customers?

(c) If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a NON GST supply under Sch III of the CGST/WBGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space?

(d) Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e. the customer had not opted for the car parking space at the time of purchase of the under constructed unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (a) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that he is in the business of construction and promotion of residential apartments in and around Kolkata and one such project being developed by the applicant is named 'EDEN CITY MAHESTALLA'. In the said township project, there are number of completed towers as well as under construction towers for which prospective buyers approach the applicant for booking of apartments therein.

2.2 The applicant states that the prospective customers are given an option to opt for car parking space along with the apartment being booked by the customers and accordingly the customers who opt for availing the car parking facility, are charged a certain sum towards right to use of car parking space and the same forms part of the total consideration charged by the applicant towards sale of the apartment by the applicant.

2.3 The applicant states that in the present scenario, the applicant is treating the services of right to use of car parking space as a composite supply of services along with the sale of under construction apartment service and hence is discharging GST on the said amounts received towards car parking space at the rate of 6% CGST and 6% WBGST on such amounts received as per Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time.

2.4 The applicant further states that when the said units are sold after receipt of the completion certificate from the competent authority along with the right to use of car parking space, the applicant doesn't charge any GST on the same as is treated as NON-GST supply under the provisions of the Schedule III of the CGST/WBGST Act, 2017.

2.5 The applicant, in his submission, has referred following provisions of the GST Act which he finds to be relevant in respect of the instant case:

(a) As per Section 2(30) of the CGST Act, 2017, *"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in*

conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration. - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

(b)SECTION 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;

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Explanation. — For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; [and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; [* *]*

*[(d) * * *]*

[(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1), —

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

c. SCHEDULE III [See Section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

“5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

d. SCHEDULE II [See Section 7]

ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

5. Supply of services

The following shall be treated as supply of services, namely:—

(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.

Explanation. — For the purposes of this clause —

(1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of

Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;

2.6 The applicant contends that in the given case, the applicant is giving right to use of the car parking area to the customers of the applicant who opts for the same and it is not available to any person who doesn't own a property within the complex of the applicant. Therefore, the right to use of car parking is naturally bundled with the apartment sale. Thus, having regard to the definition of composite supply supra, the applicant states that in its case also, the right to use of car parking space is to be treated as a composite supply of sale of apartment and the rate of GST applicable on such sale of apartment shall be applicable on the consideration charged by the applicant from the customers for such right to use of car parking space.

2.7 The applicant further contends that if the apartment is sold after receipt of the completion certificate by the competent authority as defined above, then in such case also, the transaction, being a composite supply of apartment sale shall be treated as a NON-GST supply under Schedule III and no GST shall be applicable on the entire consideration of the apartment as received by the applicant including that of right to use of car parking space.

2.8 The applicant in this regard relies on the WBAAR ruling in the case of M/s. Bengal Peerless Housing Development Company Ltd [AAR] 2019-TIOL-137-AAR-GST wherein it was held as- “Construction service is the dominant element in the bundle of services provided - buyers of the service of constructing dwelling units in such upscale residential complexes expect, apart from the preferential location of the dwelling unit, the right to use car parking space and enjoyment of common areas and facilities like landscaped gardens, gym, conference hall, club with swimming pool etc. and which are usually bought as a bundle while booking the flat - it is, therefore, reasonable to conclude that such services are naturally bundled and offered in conjunction with one another in the ordinary course of business and the other services are ancillary to the supply of construction service, which is the essential supply - applicant is, therefore, providing a composite supply, construction being the principal supply - entire value of composite service is to be treated, for the purpose of taxation, as supply of construction service, taxable under sl. No. 3(i) r/w paragraph 2 of notification 11/2017-CTR: AAR”.

2.9 The applicant submits that the above view was also confirmed by the Hon'ble WBAAAR reported in 2019-TIOL-68-AAAR-GST, wherein it was stated as- "The Appellate Authority notices that the respondent had sought a ruling only on the entitlement of abatement prescribed for supply of construction service in terms of Sl. no. 3(i) of 11/2017-CTR read with paragraph 2 appended thereto in respect of supply of services of Floor Rise and Directional Advantage being Composite Supply with the principal supply of Construction service, however, the AAR had passed its ruling in respect of right to use car parking space and common areas and facilities also, which was not prayed for in the applicant - Revenue viz. Assistant Commissioner has prayed for suitable order in respect of right to use car parking space along with PLS while filing the present appeal - AAAR holds that decision of AAR in respect of PLS would also hold for 'right to use car parking space' - AAR ruling modified to this effect - Appeal stands disposed of: AAAR".

2.10 Thus, the applicant states that based on the above ruling made by the Ld. WBAAR and as affirmed by the Ld. WBAAAR, the applicant is of the view that the right to use of car parking space is an ancillary supply to the principal supply of construction services for apartment and hence GST shall be payable on the consideration towards right to use of car parking space on the same rate as applicable to the construction services of apartment.

2.11 Further, in case the apartment is sold after receipt of the completion certificate issued by the competent authority, since the transaction would be a sale of building and covered under Schedule III of the CGST/WBGST Act, 2017, no GST would be payable on the consideration charged either for the apartment value or for the right to use of car parking space as collected by the applicant from its customers.

2.12 The applicant draws attention to the press release of the 47th GST Council meeting wherein clarification has been brought for GST applicability on preferential location charges in case of lease of plot. According to the press release, "Allowing choice of location of a plot is part of supply of long term lease of plot of land. Therefore, location charge or preferential location charges are part of consideration charged for long term lease of land and shall get the same treatment under GST."

3. Submission of the Revenue

The submission of the officer concerned from the revenue may be summarized as follows:

3.1 As per section 2(30) of the GST Act, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction

with each other in the ordinary course of business, one of which is a principal supply. But the right to use of the car parking area to the customers of the applicant does not come combined with the purchase of the property. In the applicant's own words it is available to those customers only who have opted for such facility and it is also apparent that a customer can opt for such right to use or service even after purchasing the property. Hence, such supply of service cannot be called a "composite supply".

3.2 In the instant case, the right to use of car parking space for valuable consideration which rightfully falls within the scope of supply of service but does not fall within the scope of Para 5(b) of SCHEDULE II as it is purely the supply of a service to provide the facility of parking car in a space. The ownership of the said space is not being transferred to the customer in this case.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised advocate of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue.

4.2 Before we proceed to analyze the issue, we may first look over the fact of the case and the scheme of taxation related to the supply involved. The applicant is developing a residential housing project and supplying construction services to the recipients for the possession of dwelling units. In addition to the construction services, the applicant provides services towards right to use of car parking space to the prospective buyers who opt for the same. This facility of car parking, however, is not supplied to any person who doesn't own a property within the said residential project. The applicant has made this application seeking advance ruling in respect of four questions. However, we find that the moot question involved in the instant case is to determine the taxability of services provided by the applicant for right to use of car parking space and for that purpose to determine whether such supply constitutes a composite supply with construction services as the principal supply.

4.3 Construction services under Heading 9954 specified at items (i), (ia), (ib), (ic) and (id) against serial number 3 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, attract tax @ 1.5% and @ 7.5%, as the case may be w.e.f. 01.04.2019. Further, construction services under Heading 9954 specified at items (ie) and (if) against the aforesaid serial number

attract tax @ 12% and @ 18% respectively. However, in all the above-referred cases of supply of services, valuation is to be made according to provisions of paragraph 2 of the Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, which provides that the value of transfer of land or undivided share of land which is deemed to be the one-third of the total amount charged for such supply has to be deducted from the total amount charged for such supply. In other words, in all such cases, tax shall be levied on two-third of the total amount charged for such supply.

4.4 In the instant case, the applicant enters into agreement with prospective buyers for sale of residential apartment. Such agreement can be made prior to issuance of completion certificate or post-issuance of the same. In course of personal hearing, the authorised advocate of the applicant furnishes copies of some allotment letter and tax invoices issued by the applicant. Sample copies of invoices issued by the applicant for sale of apartment post receipt of completion certificate have also been furnished by the authorised advocate. We find that the price of the apartment and consideration for right to use of open parking space have been separately mentioned in the allotment letters. The payment schedules for the aforesaid services have also been specified in a separate manner. However, the applicant has charged tax @ 18% on $\frac{2}{3}^{\text{rd}}$ of the apartment value as well as $\frac{2}{3}^{\text{rd}}$ of basic parking value thereby allowing abatement to the extent of $\frac{1}{3}^{\text{rd}}$ of the consideration being deemed value of land. On the other hand, the applicant issues bill of supply where the sale of apartment and right to use of parking space are made post issuance of completion certificate and the applicant has not charged any tax under the GST Act on such supply.

4.5 The applicant has contended that the right to use of car parking space is an ancillary supply to the principal supply of construction services for apartment and therefore tax under the GST Act on supply of services towards right to use of car parking space would be levied at the same rate as applicable to the construction services of apartment. The applicant, in support of his contention, has placed his reliance on the ruling pronounced by the West Bengal Authority for Advance Ruling (WBAAR, for short) in the case of M/s. Bengal Peerless Housing Development Company Ltd [AAR] 2019-TIOL-137-AAR-GST wherein it is held that the entire value of composite supply which inter alia includes services for right to use of car parking space, is to be treated for the purpose of taxation, as supply of construction service, taxable under sl. No. 3(i) r/w paragraph 2 of notification 11/2017-Central Tax (Rate).

4.6 The applicant thereafter submits that the aforesaid view has been confirmed by the Hon'ble West Bengal Appellate Authority for Advance Ruling (WBAAAR, for short). This submission of the applicant appears not to be correct for the reason that the WBAAAR has

not upheld the ruling of the WBAAR rather the decision has been modified as discussed herein under:

- In the case of M/s. Bengal Peerless Housing Development Company Ltd, the WBAAR has held that services relating to the preferential location of the unit and right to use of car parking space and common areas and facilities constitute a composite supply with construction services and therefore would attract tax under SI No. 3(i) read with Paragraph 2 of Notification No 11/2017 – Central Tax (Rate) dated 28.06.2017 as supply of construction service. Thus, the WBAAR has allowed abatement according to provisions of paragraph 2 for the purpose of valuation of services relating to preferential location charges and right to use of car parking space which has resulted in reduction in effective rate of tax to be levied on such supply.
- On the contrary, in appeal, it is held that no abatement prescribed for construction services under SI. No. 3(i), read with paragraph 2 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is applicable on the value of preferential location service (PLS) realised separately from the buyers. Further, the WBAAAR holds that the decision as above in respect of PLS will also hold for right to use of car parking space.

It thus appears that the Hon'ble WBAAAR has held that the abatement prescribed in respect of value of transfer of land or undivided share of land is not admissible for preferential location services as well as right to use of car parking space which are altogether separate services having no association with the land.

4.7 We also do not find any reason to hold a different view from what is taken by the Hon'ble WBAAAR. The applicant submits that the prospective buyers of a flat in the residential project are offered to avail right to use of car parking space for which separate consideration is payable by the buyers. Admittedly, it is at the choice of the buyers whether they would avail the facility or not. Further, an owner of a flat may avail this facility even after the issuance of completion certificate of the project. Furthermore, if there remains any unallotted car parking space after allocation among the intending buyers, it is offered to allottees desiring additional car parking space. The aforesaid fact delineates that such supply is altogether a separate service and cannot be treated as naturally bundled with the construction services.

4.8 The applicant draws attention to the press release of the 47th GST Council meeting wherein clarification has been brought for GST applicability on preferential location charges

in case of lease of plot. Clarification given in Para 10.4 of Circular No. 177/09/2022-TRU dated 03.08.2022 may be reproduced in this context:

“Accordingly, as per recommendation of the GST Council, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.”

4.9 It appears that the clarification as above has been given in respect of location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land. However, here the issue is related to construction of residential project and right to use of car parking space which is different from the subject matter, as clarified in the circular.

In view of the above discussions, we rule as under:

RULING

Question: Whether the amounts charged by the applicant for right to use of car/two wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST/WBGST Act, 2017?

Answer: Supply of services for right to use of car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services.

Question: If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the applicant from its prospective customers?

Answer: In the instant case, supply of services for right to use of car parking space would be taxable @ 18%.

Question: If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a NON GST supply under Sch III of the CGST/WBGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space?

Answer: In such scenario, tax is payable on supply of services for right to use of car parking space.

Question: Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e. the customer had not opted for the car parking space at the time of purchase of the under constructed unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

Answer: In such scenario, tax is payable on supply of services for right to use of car parking space.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 22.12.2022

To,

Eden Real Estates Private Limited

4th floor, 410 Ideal Plaza Building, 11/1 Sarat Bose Road, Kolkata-700020

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Sr. JCCT/JCCT, Park Street Charge, 14, Beliaghata Road, Kolkata-700015
- (4) Office Folder