

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 Act, 2017)

BENCH

Mr Sydney D'Silva, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services 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 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	Bengal Peerless Housing Development Company Limited
Address	6/1A, Moira Street, Mangaldeep Building Ground Floor, Kolkata- 700017
GSTIN	19AABCB3038P1ZE
Case Number	07 of 2019
ARN	AD190219000271H
Date of application	08/02/2019
Order number and date	01/WBAAR/2019-20 dated 02/05/2019
Applicant's representative heard	Amit Agarwal, Dy. General Manager

1. Admissibility of the Application

1.1 The Applicant is a joint venture of The West Bengal Housing Board and The Peerless General Finance and Investment Company Limited for developing real estate projects in West Bengal. It is developing a residential housing project named 'Avidipta II' and supplying construction service to the recipients for possession of dwelling units in the year 2023. The Applicant is enjoying abatement, prescribed for construction service under Sl No. 3(i) read with Paragraph 2 of Notification No 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time; hereinafter collectively called the Rate Notification. In addition to the construction service, the Applicant provides services like preferential location service, which includes services of floor rise and directional advantage. It seeks a ruling on whether the supply of these services constitutes a composite supply with construction service as the principal supply, and if so, whether abatement is applicable on the entire value of the composite supply.

1.2 The question raised is admissible for an advance ruling under section 97(2)(a) & (b) of the GST Act.

1.3 The Applicant declares that the issues raised in the Application are not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has raised no objection to the admissibility of the application.

1.4 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 'Avidipta II' is being developed on about 2.63 acres of land as a residential complex. There will be dwelling units for different income groups. The prices of residential units offered to the lower income groups (LIG) and the middle-income groups (MIG) categories are regulated by the State Government. In the case of the high-income group (HIG) category, the price is determined by the Applicant. According to the brochure containing the General Terms of Conditions (hereinafter the GTC) and the prototype of the agreement with a buyer for a HIG unit (hereinafter the Agreement), the Applicant is offering at a single consolidated price construction service based on Standard Built-up Area (SBUA) and the right to use the allotted car parking space. It also includes services associated with preferential location, which means charges, if any, for directional advantage and floor rise. Charges for the right to use the common areas and recreational facilities are also included in the above single consolidated price. Other charges, deposits and taxes are separately recovered. The Applicant's question is limited to what is being offered to the buyers of the HIG category of flats.

2.2 In its Written Submission the Applicant makes out a case for treating the supply of services of directional advantage and benefit of floor rise as integral to supply of construction service. The Applicant provides construction service to a recipient only after the Agreement is signed and other terms and conditions laid down in the Agreement are fulfilled. It is, therefore, absolutely clear from the context that the construction service is being provided only with respect to the dwelling unit allotted and after the allotment money paid. Supply of construction service cannot, therefore, be separated from the supply of the services of directional advantage and benefit of floor rise associated with the unit allotted to the recipient. Supply of construction service is, therefore, naturally bundled with the supply of the services of directional advantage and benefit of floor rise, and all of them are being supplied in conjunction with one another in the ordinary course of business. It is, therefore, a composite supply with construction supply, being the dominant element, as the principal supply.

2.3 The Applicant then draws attention to section 8(a) of the GST Act, which provides that a composite supply, for the purpose of taxation, shall be treated as supply of the principal one. The abatement, as prescribed for construction service in Paragraph 2 of the Rate Notification, should, therefore, be available on the value of the entire composite supply.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue submits that the buyer of a flat pays for the construction of the flat, floor rise and directional advantage. All such services are supplied as a

whole in the ordinary course of business. Out of these services the construction service is the main supply and the other ones are incidental or ancillary to the construction service. The Applicant is, therefore, providing composite supply to the buyer of the flat wherein the construction service is the main supply. Hence, abatement for construction in terms of SI No. 3 of the Rate Notification may be considered for the purpose of taxation.

4. Observation & Findings of the Authority

4.1 The Agreement refers to the sale of an immovable property. It is relevant so far as construction service (SAC 9954) is offered, assuring coming into being of the immovable property. The buyer also agrees to pay in advance for certain other services that he will enjoy after obtaining possession of the property. They include inter alia the service of preferential location (SAC 9985), right to use the car parking space and the common areas and facilities (SAC 9972). The buyer agrees to pay a single consolidated amount for all these supplies (refer to clause 2.1 of the Agreement). The question that needs to be examined is whether they are naturally bundled and are supplied in conjunction with one another in the ordinary course of business and whether the construction supply is the dominant element and all other services in the bundle are ancillary or incidental to the supply of the construction service.

4.2 Actual enjoyment of the construction service and the other services mentioned in the above bundle are separated by time. The other services can be enjoyed only after the supply of construction service is complete. In fact, the buyer of a completed dwelling unit can pay for and enjoy the other services like preferential location and right to use the parking space and the common areas and facilities without having been provided with the construction service.

4.3 Although actual provisioning of the construction and other services are made at different points of time, they can be supplied in a bundle because supply, as defined under section 7(1) of the GST Act, includes agreement to supply even if actual supply is to be made at a future date, provided and to the extent the recipient pays in advance. There is no straight jacket formula to examine whether they are naturally bundled and supplied in conjunction with one another in the ordinary course of business. The term 'naturally bundled' is not defined in the GST Act. But the concept has been taken from the previous service tax regime, and the Education Guide that CBEC published in 2012 throws valuable light on this issue.

4.4 In contrast to other combinations, the services that are naturally bundled can be treated as provisioning of a single service that lends the bundle its essential character (Section 9.2.1 of the Education Guide). The Education Guide illustrates with the example of convention service that a star hotel provides to the delegates when it charges a lump sum for a package of services, including accommodation, breakfast, conference facility, business centre, gym etc. All these services can be separately provided. However, they can also be combined together while charging for convention service, which describes the essence of the package. It is the predominant element of the combination of services being supplied. Another example is works contract service, which is the predominant element in the combination of goods and services supplied in construction, repair etc of an immovable property, where all other supplies in course of such construction are ancillary to supply of the works contract service.

4.5 Whether the services so bundled are provided in conjunction with one another *in the ordinary course of business* would depend upon the normal or frequent practices adopted in a business and can be ascertained from several indicators. For example, if a large number of service receivers reasonably expect such services to be provided as a package, such a package could be treated as naturally bundled in the ordinary course of business. Similarly, if a majority of the service providers in a particular area of business provide these services in a bundle, such packaging of services may be treated as the ordinary business practice (Section 9.2.4 of the Education Guide).

4.6 Section 2(30) of the GST Act draws upon these concepts to define composite supply as supply by a taxable person of a combination of taxable goods or services or both, which are naturally bundled and supplied in conjunction with one another in the ordinary course of business, where one of the supplies can be identified as the principal supply. Section 2(90) of the GST Act defines principal supply as the predominant element of such a composite supply where all other supplies in the bundle are ancillary to the principal supply.

4.7 There is no doubt that the Applicant is a taxable person and the services offered in the bundle described in para 4.1 are taxable services. It is also clear from the context that construction service is the dominant element in the bundle described in para 3.1 above. Moreover, the recipient, while agreeing to buy these services as a bundle, cannot enjoy the other services unless he agrees to buy the service of constructing the allotted dwelling unit. Furthermore, developers of residential complexes usually offer these services in a bundle. Although one has the option not to pay for the right to use car parking space, he cannot buy it, or for that matter any other service in the bundle, separately. The recipient has to buy these services only as a package, where the construction service remains the predominant element. The buyers of the service of constructing dwelling units in such upscale residential complexes like Avidipta II expect, apart from the preferential location of the dwelling unit, right to use car parking space and enjoyment of common areas and facilities like landscaped gardens, gym, conference hall, a club with swimming pool etc. They usually buy them as a bundle while booking a flat in such a complex. It is, therefore, reasonable to conclude that the services described in para 4.1 above are naturally bundled and offered in conjunction with one another in the ordinary course of business, and the other services of the bundle are ancillary to the supply of the construction service, which describes the essential character of the bundle of services being supplied. It appears that the concerned officer from the Revenue holds similar view in the matter.

4.8 The Applicant, therefore, is providing a composite supply of the bundle of services described in para no. 4.1 above, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as the supply of construction service, taxable under SI No. 3(i) read with Paragraph 2 of the Rate Notification.

In view of the foregoing, we rule as under

RULING

The Applicant is providing service of construction of a dwelling unit in a residential complex, bundled with services relating to the preferential location of the unit and right to use car parking space and common areas and facilities. It is a composite supply, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as supply of construction service, taxable under SI No. 3(i) read with Paragraph 2 of Notification No 11/2017 - CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

Sd-
(SYDNEY D'SILVA)
Member

Sd-
(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling

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