

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:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional 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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	TCG Urban Infrastructure Holdings Private Limited
Address	Beta building, Bengal Intelligent Park, Ground floor, Plot A2, M2, N2, block EP and GP, Salt Lake Electronic Complex, Salt Lake Sector V, 700091
GSTIN	19AADCS8821M1ZS
Case Number	WBAAR 12 of 2024
ARN	AD1906240090557
Date of application	June 24, 2024
Jurisdictional authority (State)	Barasat Charge
Jurisdictional authority (Centre)	Bidhannagar Division, Kolkata North Commissionerate
Order number and date	18/WBAAR/2024-25 dated 14.01.2025
Applicant's representative heard	Mr. Priyajit Ghosh, C.A Mr. Vikash Agarwal, CA Ms. Yamini Agarwal, C.A

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 TCG Urban Infrastructure Holdings Private Limited is a real estate development and investment company engaged in development, construction, leasing and sale of commercial properties and providing the fit-outs and related infrastructure on hire to various tenants of the properties held by Bengal Intelligent Parks Private Limited (BIPPL) and BIP Developers Private Limited (BIPDPL), subsidiaries of the applicant in India and providing related consultancy services.

TCG Urban Infrastructure Holdings Private Limited wishes to understand the appropriate classification of services for hiring of fitted assets and corresponding rate of GST to be charged on such provision of services. Hiring of fitted assets inter-alia includes air-conditioning system, fire sprinkler system, DG Sets, electric installations etc.

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 seeking an advance ruling in respect of following questions:

What would be the proper classification of the services being provided by the applicant by way of supplying fitted assets on hire basis and the corresponding rate of GST from the below options:

- (a) Whether the said services will be covered by serial no 17(iii) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 under SAC 997314, attracting a GST Rate of 28% which the Applicant has been following since inception of GST; or
- (b) Whether the said service will be covered by serial no 17(viii) of the Notification No. 11/2017– Central Tax (Rate) dated 28.06.2017 classified as “leasing or rental services concerning office machinery and equipment (except computers) with or without operator” under SAC 997314, attracting a GST Rate of 18% as recently held by the West Bengal Authority for Advance Ruling in the case of Sun Knowledge Private Limited vide Order No. 29/WBAAR/2023-24 Dated 31.01.2024; or
- (c) Whether the service will be classified under SAC 998599 under the category ‘Support Service’, attracting a GST Rate of 18%; or

(d) Any other classification as the Hon'ble authority may deem fit.

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

1.5 The applicant states that the questions raised in the application have neither been decided by nor are 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 prior to 1st April 2020, the activities of providing fit-outs and related infrastructure support to various tenants of the properties held by BIPPL and BIPDPL were provided by M/s Boulevard Services Private Limited (BSPL), another subsidiary of the applicant. Later on, by way of a scheme of amalgamation BSPL is merged with the applicant.

2.2 The applicant states that by a Deed of Lease, the Governor of the State of West Bengal has granted to West Bengal Electronics Industry Development Corporation Limited (WEBEL) a lease for a period of 999 years of a plot of land in Block EP and GP in Sector V of Bidhannagar in the district of North 24 Parganas. The lease was granted with the object of developing the demised land for setting up of Electronics Industries. WEBEL has divided the demised land into diverse plots and has allotted the same for the purpose of setting up Electronics Industries.

2.3 The applicant states that WEBEL, by issuance of an Allotment Letter and by entering into the Deed of Sub-Lease, granted a sub-lease of Plot Nos. A2, M2 and N2 for a term of 90 years exclusively for the purpose of setting up of an electronics industry. This sub-lease was granted to the Bengal Intelligent Parks Private Limited (BIPPL) with an option to WEBEL to renew the sub-lease before it's expiry for two further terms of 90 years each, provided BIPPL did not breach the covenants of the sub-lease.

2.4 Under the deed of sub-lease, BIPPL has also been authorized and permitted by WEBEL to grant further sub-leases/ licenses in the proposed building or buildings constructed or buildings

to be constructed on the sub demised land provided the intending sub lessees/ tenants etc. shall use the said built up space for setting up of electronics industries exclusively and for no other purpose.

2.5 In terms of the deed of sub-lease, BIPPL *inter alia* constructed and completed diverse buildings which are collectively known as “Bengal Intelligent Park”. BIPPL decided to sub-lease the building units on a bare shell condition to its licensees.

2.6 The applicant states that BIPPL has made certain arrangements with the applicant to provide assets and fit outs on hire basis to the licensees and sub-lessees of the said building. For this purpose, the applicant (erstwhile BSPL) entered into an agreement with BIPPL on 16th November 2005 for the purpose of providing infrastructure support and facilities of a high standard of various spheres for the benefit of the occupants at Bengal Intelligent Park.

2.7 The relevant extracts of the aforesaid agreement dated 16th November 2005 is produced below:

“G. It is the intention and purpose of BIPPL to provide and ensure infrastructure and facilities of a high standards of various spheres for the benefit of the occupants at Bengal Intelligent Park.

H. BSPL is in the business of providing assets for intelligent park on lease/ hire and has represented to BIPPL that it has the necessary expertise and competence to provide on lease/ hire the Assets in common areas (Assets) at the said demised space.

I. BIPPL has approached BSPL to provide the assets to its Lessees/ Licensees at the said demised space and BSPL has agreed to provide the same.

J. BSPL has also represented that it will charge reasonable hire charges from the occupants of the said demised space.”

Further, the assets to be provided by the applicant are mentioned in Schedule II to the agreement which is produced below:

- *Basement and service area ventilation system;*
- *HVAC systems to tenant premises upto predetermined delivery points;*
- *Hard and soft landscaping including fountains, plantations, lighting etc.*
- *Suspended ceiling and floor raceways for common areas only;*
- *Sub mains, cables and distribution systems for common area and building mains up to entry to the tenant's premises;*

- *Low tension system for the building common areas and feeder up to the tenant point*
- *Power back-up/ DG set for essential equipment or as decided by the BIPPL/ occupants;*
- *Electrical fixtures and fittings for common areas only;*
- *Building water system including different pumping system*
- *Building sprinkler firefighting system*
- *Sewerage treatment plant and system for liquid waste*
- *Any other specialized fit out, if needed by BIPPL*

2.8 The applicant states that based on the aforesaid agreement, the applicant started entering into the agreements with the licensees for providing the fitted assets on hire basis. In this regard, it is important to note that the applicant after entering into the aforesaid agreement with BIPPL installed the mentioned assets and created the required infrastructure in common areas of 'Bengal Intelligent Park' as well as up to entry point of the tenant's bare shell premises. The tenant shall install, at its sole responsibility and cost, all fixtures and fittings within its premises. On expiry of the sub-lease agreement between the tenant and BIPPL, the tenant has an option to remove such fixtures and fittings which were originally installed by them and restore the said premise to its original bare condition. Otherwise, the tenant can also hand over the said fixtures and fittings to the applicant against a consideration. In that case, the applicant will become the owner of such assets within the premise which the applicant will give it on hire to the next tenant.

2.9 Accordingly, the applicant generally provides three types of fitted assets:

- a. Assets provided in common areas since the commercial operation was started in the building;
- b. Assets up to the entry point of the tenant's bare shell premise since the commercial operation was started in the building; and
- c. Sometimes, when the tenant vacates the premise, they hand over various assets located within the premise to the applicant.

2.10 In this regard, a reference can be drawn from a recent agreement entered into by the applicant with Sun Knowledge Private Limited on 09th November 2022. The relevant extract from the aforesaid agreement is produced below:

1.1 Grant of Hire Rights: In consideration of payments to be made by Sub-Lessee to TCGUIH as provided herein, TCGUIH agrees to provide on hire to the Sub-Lessee

and Sub-Lessee agrees to take on hire from TCGUIH the assets, i.e. the Assets for Sub-leased space and Assets for common Areas listed respectively in Part I and Part II of the Second Schedule hereto, on the terms and conditions contained in this agreement.

- 1.2 Legal Possession: At all times the legal possession of the Assets shall be of TCGUIH
- 3.1.1. Amount: The Sub Lessee shall pay a sum of Rs. 542,235/- (Rupees Five lakh forty-two thousand two hundred and thirty five only) (computed at the rate of Rs. 15/- per sq. ft. for the total super built-up area of 36149 sq. ft.) as Hire Charge in advance plus GST on or before the 10th day of each calendar month, commencing from 1st March 2023 upon receiving bills raised by TCGUIH.

2.11

Second Schedule

[Assets]

Part I

(Fully functional assets of standard quality for sub-leased space)

Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition.

Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the Sub Lessee.

Air Conditioning system up to the floor Air Handling unit along with the existing ducting's and diffusers in as is where is condition.

DG set emergency power supply on chargeable and availability basis as per agreed terms.

Part II

(Fully functional assets of standard quality for common areas)

Electrical equipment comprising electrical wiring, distribution systems and electrical switchboard and luminaries (including fixtures and fittings excluding lamps).

DG set with accessories.

Sprinkler system comprising fire detectors, alarm panel, sprinklers pipe and sprinklers.

Fit outs as per warm shell provision.

2.12 Current Practice followed by the Applicant

The applicant states that since the inception of GST with effect from 01.04.2017, the applicant has been issuing tax invoices to the various tenants for hire of assets at a rate of @28% [Central Tax @14% and State Tax @14%] under SAC 997314 and accordingly deposited the relevant tax on regular basis. While determining the GST rate in respect of hire of assets, the applicant considered various provisions of the CGST Act, 2017. In the instant case, admittedly the tenant takes on hire multiple assets for a single price from the applicant as is evident from the relevant extracts from the agreement with Sun Knowledge Private Limited dated 09th November 2022 as mentioned in para 11 hereinabove.

In terms of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.201 the following rates are notified for different services related to the hiring of goods:

SI No	Description of taxable service	Rate	Conditions
17. Heading 9973 (Leasing or rental services, with or without operator)	(iii) Transfer of the right to use any goods for any purpose (whether or not for a specific period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as an supply of like goods involving transfer of title in goods	-
	(viii) Leasing or renting services, without operator, other than (i),(ii),(iii),(iv) (vi) and (vii) above	9	-

2.13 In light of the above, serial no 17(iii) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 states that the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration attracts same rate of tax as on supply of like goods involving transfer of title in goods.

At this juncture, it is important to understand the GST rate of various assets given on hire by the Applicant to the tenants. Referring back to the Second Schedule to the agreement with Sun Knowledge Private Limited, as mentioned in para 11 above, it is clear that the applicant provides assets and fit outs on hire to the tenants which inter-alia includes four types of assets –

Electrical Equipment, Sprinkler System, Central Air Conditioning System and DG Set. The GST rate for the said goods is tabled below:

Particulars	Chapter	GST Rate
Electrical Equipment	8502	18%
Sprinkler System	8424	18%
Central Air Conditioning System	8415	28%
DG Set	8511	18%

The applicant submits as the rate of GST in respect of the aforesaid assets involves multiple GST rates against a single supply of “Hiring of Fitted Assets”, it is important to determine the nature of supply i.e., whether the supply of hired assets constitutes a composite supply or a mixed supply.

As per Section 2(30) of 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.

In the instant case, the Applicant provides individual supply of assets, and the element of any principal supply is missing. Hence, supply of assets in the instant case cannot be treated as composite supply.

The applicant further states that the term mixed supply is defined as per Section 2(74) of CGST Act, 2017 which is as follows:

- that the supply is consisting of *two or more individual supplies of goods or services, or any combination thereof;*
- that such different supplies are *made in conjunction with each other by a taxable person for a single price;*
- that *such supply does not constitute a composite supply.*

As in the instant case, the applicant provides individual supply of assets which are independent of each other at a single price such supplies should be treated as mixed supply.

Tax liability on mixed supply has been laid down in Section 8(b) of the CGST Act, 2017 which is as follows:

“(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax”.

In the instant case, the air-conditioning system attracts the highest GST rate of 28%. Therefore, the GST rate in respect of the entire supply of hiring of assets would be 28%.

2.14 Advance Ruling sought by one of the tenants – Sun Knowledge Private Limited

The applicant asserts that recently one of their tenants namely, Sun Knowledge Private Limited ('Sun Knowledge'), has raised concerns about the applicability of 28% GST rate on "Hire of Assets" arguing that the service should be classified as "leasing or rental services concerning office machinery and equipment (except computers) with or without operator" under SAC 997314, attracting a GST Rate of 18%.

For determination of the correct rate to be charged on hiring of assets, Sun Knowledge has sought an advance ruling before the West Bengal Authority for Advance Ruling (WBAAR) on the applicable rate of tax to be charged by the applicant. Vide the order number 29/WBAAR/2023-24 dated 31.01.2024, the WBAAR held as follows:

*"1.23 It thus appears that hiring of air conditioning machine and fire extinguisher would attract tax @ 28% and @ 18% respectively being the same rate applicable for supply of such items and when such are supplied in conjunction with each other for a single price, **the supply being a mixed supply would attract tax @ 28%.** However, in the instant case, **we are of the view that air conditioning system and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods.***

"1.27 In the light of foregoing discussions, we are of the opinion that in the instant case, rate of tax on supply of hiring services of air conditioning system and fire extinguishing system would not be determined vide serial number 17(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. According to our view, each of the supplies would attract tax @ 18% under serial number 17(viii) of the said notification as leasing or rental services and therefore, the supply received by the applicant from TCGUIH, being a mixed supply, would also be taxable @ 18% i.e., supply which attracts the highest rate of tax."

(emphasis supplied)

2.15 In conclusion, the authority for advance ruling provided that supply on account of hiring of electrical equipment, sprinkler system comprising fire detectors for true ceiling, air conditioning

system up to the floor Air Handling Unit with existing ducting's and diffusers, DG set emergency power supply would attract tax @18% under serial number 17(viii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06,2017. ITC shall also be available on the tax charged by the supplier subject to the fulfilment of all the conditions under Section 16 of the CGST Act, 2017.

2.16 Divergent Approach/ Alternative View

After obtaining the ruling of WBAAR as mentioned above, the applicant decided to relook into this matter and discussed the same with various experts. As a result, an alternative view has been formed in respect of the nature of services provided by the applicant to the tenants. The view is elucidated below:

The applicant submits that hitherto, the discussion has primarily focused on the GST rate applicable on hiring of assets. Now, the applicant raises a significant question: whether the applicant recovers hire charges for providing assets *per se* or for the creation of the basic infrastructure and facilities within the building.

The applicant submits that the intention of the BIPPL to engage the applicant to provide the assets becomes apparent from the agreement dated 16th November 2005 as mentioned in Para 11 above. Para G of the said agreement makes it clear that the intention and purpose of BIPPL is to provide and ensure infrastructure and facilities of a high standard of various spheres for the benefit of the occupants at Bengal Intelligent Park. For this purpose, BIPPL engaged the applicant to provide assets in the building.

The applicant submits that the applicant is responsible to provide proper infrastructure in the building including common areas so that the building can properly function. BIPPL is giving the units in the building on lease to its tenants on a bare shell condition. Without proper infrastructure and facilities as stipulated in Schedule II to the agreement dated 16th November 2005 [refer para 11 of Annexure B], the building cannot even properly function.

The applicant further submits that the Second Schedule to the agreement entered into with Sun Knowledge Private Limited dated 9th November 2022 stipulates the natures of assets provided by the applicant to the Sun Knowledge Private Limited for which the applicant recovers hire charges from Sun Knowledge Private Limited. The same has already been produced in para 15 of Annexure A. However, for the sake of brevity, the same is reproduced below:

Second Schedule
[Assets]
Part I
(Fully functional assets of standard quality for sub-leased space)

Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition

Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the Sub Lessee.

Air Conditioning system up to the floor Air Handling unit along with the existing ducting's and diffusers in as is where is condition.

DG set emergency power supply on chargeable and availability basis as per agreed terms.

Part II
(Fully functional assets of standard quality for common areas)

Electrical equipment comprising electrical wiring, distribution systems and electrical switchboard and luminaries (including fixtures and fittings excluding lamps).

DG set with accessories.

Sprinkler system comprising fire detectors, alarm panel, sprinklers pipe and sprinklers.

Fit-outs as per warm shell condition.

2.17 From the above, it is apparent that the applicant is providing assets for two areas – for sub-leased space and for common areas. The applicant submits that it is clear beyond doubt that the assets provided in common areas is for the use of all tenants and visitors. Therefore, it can be inferred that the assets provided in common areas as mentioned in Part II of the Second Schedule to the Agreement as mentioned above does not mean that the individual assets are provided to the Sun Knowledge Private Limited. Rather, the applicant provides the facilities for all its tenants by installing various assets in common areas and recovers hire charges for the same from each tenant including Sun Knowledge Private Limited.

2.18 Let us also analyse the assets provided for the sub-lease space.

As outlined the applicant furnishes fully functional assets for the sub-leased space. The specific functionalities of these assets are delineated below:

Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition: The applicant states that an electric installation within the building includes various components such as machines, transformers, protective devices, wiring systems, other accessories and equipment designed for the purpose of providing electrical energy.

In the existing system, the transformer is positioned in a particular place of the premises. It is linked to an electrical panel that channels the primary power input to the wired circuits and tap-off points distributed throughout the building. These tap-off points are strategically located on each floor of the building, accessible to the respective tenants on that floor. Subsequently, it is the responsibility of each tenant to manage the internal wiring within their premises from the tap-off points. In essence, individual electrical installations are not provided to each tenant. Instead, the applicant has established a unified system that serves all tenants within the building.

Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the sub-lessee: A fire sprinkler system is an active fire protection method, consisting of a water supply system providing adequate pressure and flowrate to a water distribution piping system, to which fire sprinklers are connected. In the instant case, the water line infrastructure, along with the initial setup of the sprinkler system up to true ceiling, is provided by the Applicant. However, it becomes the responsibility of each respective tenant to arrange for fire detectors, alarm panel, false ceiling sprinkler pipes etc. The applicant's approach aims to establish a comprehensive and centralized system to serve the needs of all tenants within the building. While the foundational water line and initial setup are provided by the Applicant, the individual components are managed by the respective tenants.

Air conditioning system up to the floor Air Handling Unit along with the existing ducting and diffusers in as is where is condition – The applicant clarifies that in a central air-conditioning system, all the components of the system are grouped together centrally, and conditioned air is distributed from that system to the required places through extensive duct work. The whole system can be divided into three parts:

- (i) Central Air Conditioning Plant Room
- (ii) Air Handling Unit (AHU room)
- (iii) Air Distribution system (Ducting)

The plant room is located away from the room to be air conditioned. Other components are grouped together in an AHU and conditioned air is circulated through air distribution system i.e., ducting with the help of fan or blower to the room to be air conditioned.

In the instant case, the applicant provides that inside the building, there is a central air conditioning plant in order to provide air conditioning facilities and supply of cooling air to each floor through AHU Duct systems, catering to the needs of individual tenants. The AHU is located in each floor wherefrom the tenants are responsible for installing the ducting's, diffusers etc. to its premise. Consequently, no individual assets are provided to tenants, instead, they are furnished with an air-conditioning system, enabling them to install their own units.

DG set emergency power supply on chargeable and availability basis as per agreed terms- The applicant states that there are one or two common DG sets located on the ground floor of the building to serve as an emergency power backup. The facility is available to all the tenants within the building, the benefit for which is enjoyed by all.

2.19 From the above explanation, it is clear that the applicant in case of Sun Knowledge Private Limited has never offered any independent assets or fit outs separately to tenants. Instead, they create a cohesive set of infrastructure elements that are essential for the overall functioning of the building.

2.20 The applicant emphasizes that they are obligated to provide with comprehensive infrastructure support to their tenants. This infrastructure includes essential components such as electrical installations, backup DG sets, a centralized air-conditioning system, and fixed installations that are integral to building's operation and functionality. Without this foundational infrastructure, the building would not be able to operate effectively or efficiently.

2.21 The applicant submits that provision of the infrastructure support and facilities in Bengal Intelligent Park by the applicant and recovers consideration for the same from the tenants should be classified as support service under Heading 9985. It is to be noted the term 'Support Service' has not been defined in GST Law. In this regard, the applicant submits that the reference can be taken from the definition of 'Support Service' from the erstwhile service tax

regime.

Section 65B (49) of the Finance Act 1994 defines 'Support Service' w.e.f. 01.07.2012 which is as follows:

"support services" means **infrastructural, operational**, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis; [This definition was omitted vide Finance Act 2015 w.e.f. 01.04.2016]

The applicant further states that prior to 01.07.2012, the term 'Support Service' was defined under Section 65(104C) of the Finance Act 1994 which is as follows:

"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security

2.22 The applicant submits that from the definition of 'Support Services' during the erstwhile service tax regime as mentioned above, it is apparent that support service includes any infrastructural or operational support that may be carried out by the entities itself but may be obtained as services by outsourcing from others for any reason.

In the instant case, BIPPL, being a developer of the building, should create proper infrastructure support and facilities in the said building. However, the same is outsourced to the applicant. The applicant is responsible for creating proper infrastructure and a facility in the building as already mentioned above and recovers hire charges for the same from the tenants. Therefore, we are of the considered view that hiring of assets should be classified as support under SAC 998599 i.e.,

other support services nowhere else classified and the GST rate is 18%.

Additional Submission on 17.09.2024

2.23 The applicant seeks an advance ruling on whether the services provided by TCGUIHPL should be classified as comprehensive support service rather than leasing or renting services. This argument is supported by drawing an analogy from a recent circular (Circular No 232/26/2024-GST dated 10 September 2024) issued regarding data hosting services provided by data centers.

Recent Circular on Data Hosting Services (Circular No 232/26/2024-GST dated 10 September 2024)

A recent circular clarified the classification of data hosting services provided by data centers.

The key points from the circular are:

1. Comprehensive Service Nature (Para 3.3.3): Data hosting services involves a range of activities including operating data centers, ensuring uninterrupted power supplies, backup generators, network connectivity, firewall services, and monitoring and surveillance services.
2. Not Directly Related to Immovable Property (Para 3.3.4): The circular clarified that data hosting services are not directly related to immovable property and thus cannot be classified under section 13(4) of the IGST Act.
3. Place of Supply (Para 4): The place of supply for data hosting services provided to overseas entities is determined based on the location of the recipient of the services as per section 13(2) of the IGST Act.
4. Export of Services (Para 5): Such services can be considered as export of services if other conditions mentioned in section 2(6) of the IGST Act are fulfilled.

2.24 Applicability of the Circular to the facts of the present case before the Hon'ble AAR

The applicant proposes to draw an analogy from the above clarification to argue that the services provided by TCGUIHPL should be classified as support services rather than leasing or renting services.

The key points to present are:

(i) Comprehensive Nature of Services:

- Similar to data hosting services, TCGUIHPL provides a comprehensive range of services that include installation and maintenance of air-conditioning systems, fire sprinkler systems, DG sets, electrical installations, etc.
- These services are essential for the proper functioning of the building and are not limited to mere leasing or renting of individual assets.
- Services provided by TCGUIHPL are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to infrastructure. Accordingly, infrastructure services cannot be considered as the services provided directly in relation to immovable property or physical premises.

(ii) Not Directly Related to Immovable Property:

- The assets provided by TCGUIHPL are integral to the infrastructure of the building and are not standalone movable properties.
- The services involve creating a cohesive set of infrastructure elements essential for the overall functionality of the building.

(iii) Not the actual owner of the property:

- Throughout the provision of the infrastructure services, TCGUIHPL does not own property and is not the actual owner. TCGUIHPL independently handles, monitors and maintains the infrastructure of the property.

(iv) Support Services Classification:

- The comprehensive nature of the services aligns more closely with the definition of support services under SAC 998599.
- Support services include infrastructural support which is precisely what TCGUIHPL provides to its tenants.

(v) GST Rate:

- As support services under SAC 998599, the applicable GST rate would be 18%, which aligns with the nature of the comprehensive service provided.

2.25 Decision provided in Advance Ruling by Sun Knowledge Private Limited

- Air conditioning and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods
- Tax on supply of hiring services of air conditioning system and fire extinguishing system would not be determined vide serial number 17(iii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017
- Supply would attract tax @18% under serial number 17(viii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as leasing or rental services.

By upholding the rationale provided in the Circular, specifically Para 3.2.2 and Para 3.2.3, it is understood that TCGUIH operates as an independent entity, that provides comprehensive support services to the BIPPL. This includes a range of infrastructure and fit outs such as air-conditioning systems, fire sprinkler systems, DG sets, electrical installations to tenants.

2.26 In the instant case, TCGUIH independently handles, operates, monitors and maintains the essential infrastructure and fit outs. Consequently, the provision of air-conditioning systems, fire sprinkler systems, DG sets, and electrical installations to tenants should not be classified merely as the supply of goods. Instead, it constitutes a comprehensive service. This service includes not only the installation but also the ongoing operation, monitoring, and maintenance of the air-conditioning systems, fire sprinkler systems, DG sets, and electrical installations.

Given the scope of activities performed by TCGUIH, the nature of the provision is considered a comprehensive service rather than a simple supply of goods.

2.27 Based on the analogy drawn from the recent circular on data hosting services, applicant submits that the services provided by TCGUIHPL should be classified as support services under SAC 998599 with an applicable GST rate of 18%. This classification more accurately reflects the comprehensive nature of the services provided and ensures proper compliance with GST regulations.

Submission of the Revenue

3.1 The concerned officer from the revenue refrains from expressing any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the

authorized representatives of the applicant during personal hearing.

4.2 According to the submission, the applicant is a real estate development and investment company engaged in development, construction, leasing and sale of commercial properties and providing the fit-outs and related infrastructure on hire to various tenants of the properties held by Bengal Intelligent Parks Private Limited (BIPPL). It is reiterated that in a Deed of Lease, the Governor of the State of West Bengal has granted West Bengal Electronics Industry Development Corporation Limited (WEBEL) a lease for a period of 999 years of a plot of land in Block EP and GP in Sector V of Bidhannagar in the district of North 24 Parganas. The lease was granted with the object of developing the demised land for setting up of Electronics Industries. WEBEL has divided the demised land into diverse plots and has allotted the same for the purpose of setting up Electronics Industries. This sub-lease was granted to the Bengal Intelligent Parks Private Limited. The applicant (erstwhile known as “Boulevard Services Private Ltd-BSPL) entered into an agreement with BIPPL for setting up of exquisite infrastructure and provide space and facilities to several hi-tech firms, companies, corporations etc., where the permission was granted to the applicant to provide assets on lease/hire to BIPPL’s lessees at the said demised space/plots and common areas of that park.

4.3 The applicant raises questions regarding the classification of its activities/services of providing assets on lease/hire to BIPPL’s lessees at the said demised space/plots and common areas of that park. With a view to appreciate the submissions made before us, it would be relevant to have a look at the description of assets, which are agreed to be provided by the applicant to the tenants of BIPPL.

Schedule II of the agreement enumerates scope of assets to be provided by the applicant as follows:

- Basement and service area ventilation systems
- HVAC systems to tenant premises upto predetermined delivery points
- Hard and soft landscaping including fountains, plantations, lighting etc
- Suspended ceiling and floor raceways for common areas only
- Sub mains, cables and distribution systems for common areas and building mains up to entry to tenant premises
- Low tension systems for the building common areas and feeder up to the tenant points
- Power back up/DG set for essential equipment or as decided by the BIPPL/occupants
- Electrical fixtures and fittings for common areas only
- Building water systems including different pumping systems
- Building sprinkler fire-fighting system
- Sewerage Treatment Plant and system for liquid waste

- Any other specialized fits out, if needed by BIPPL

4.4 The applicant used to pay tax @ 28% vide serial no 17(iii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 considering its supply of service of providing fitted assets to lessees under SAC 997314 from commencement of GST regime. It may be mentioned that one of the lessees of BIPPL namely Sun Knowledge Pvt Ltd approached to WBAAR with the following question:

“Rate at which CGST & SGST is to be charged under SAC Code 997314 as appeared in the invoices submitted by the service provider TCG Urban Infrastructure Holdings Private Limited having GSTIN No. 19AADCS8821M1ZS”

In the aforesaid case, Sun Knowledge Pvt Ltd had entered into an agreement with TCGUIH to avail facilities and services installed in the building as well as sub-leased space. It has been informed that inside the building, there is a central air conditioning plant in order to provide air conditioning facilities and supply of cooling air to each floor through installed Air Handling Unit (AHU) Duct systems. Also, there is common DG set in order to provide emergency power back up for each floor. There are also fit outs, assets like electrical equipment, fire extinguishing sprinkler system etc. installed to provide required facilities and services through such assets to the said sub-leased space. Lessees/tenants have no control/title over the said fit outs and assets, but have the right to use the facilities and services of such fit outs, fixed assets and services on payment of agreed rate as hire charges.

As per the agreement between TCGUIH and Sun Knowledge Pvt Ltd, the legal possession of the assets shall be with TCGUIH at all times. Sun Knowledge Pvt Ltd enjoys only right to use the said fit outs and assets, facilities/ services till the period of the agreement.

4.5 In its order vide no 29/WBAAR/2023-24 dated 31.01.2024, this authority has held that supply from TCGUIH to Sun Knowledge Pvt Ltd failed to feature as composite supply but can be regarded as mixed supply. Since the instant case deals with the same fact and the applicant in its application has also referred to the aforesaid case of Sun Knowledge Pvt Ltd, we find it relevant to reproduce following observations as made in the said order:

“1.19 In the instant case, admittedly the applicant receives multiple supplies for a single price. We therefore proceed to analyze whether the supply may be classified as a composite supply as defined in clause (30) of section 2 or as a mixed supply as defined in clause (74) of section 2 of the GST Act or as a ‘leasing or rental services’ as contended by the applicant. We find that the applicant has entered into an agreement with TCGUIH to receive supplies in respect of hiring of certain goods e.g., electrical equipment, air conditioning system, sprinkler system comprising fire detectors, DG set with accessories. To qualify such supplies to be a composite supply, there must be only one principal supply. The term ‘principal supply’ has been defined in

clause (90) of section 2 of the GST Act as 'the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary'. However, from the agreement made between the applicant and TCGUIH, we do not find any such predominant element as well as any other supplies which are ancillary to that predominant element. Even the intention of the applicant and the supplier both do not appear to be so. We are therefore on the same page of the applicant that the instant supply cannot be treated as a composite supply.

1.20 Now to determine whether the instant supply may be treated as a mixed supply, we need to examine whether the supply involves following characteristics:

- (1) that the supply is consisting of two or more individual supplies of goods or services, or any combination thereof;
- 2) that such different supplies are made in conjunction with each other for a single price;
- 3) that the supply does not constitute a composite supply.

We have already expressed our view that the instant supply does not constitute a composite supply. Further, the supplies are made for a single price. Furthermore, in the instant case, we find that two or more individual supplies, independent of each other, are supplied in conjunction with each other out of which any particular supply does not bear the predominant element. In other way, the supply is a combination of two or more individual supplies without any principal supply against a single price. We are of the view that all the conditions specified in clause (74) of section 2 of the GST Act get satisfied in respect of the instant supply and we, therefore, hold the supply to be a mixed supply.

1.22 So, in order to determine the rate of tax of the instant supply, it is necessary to ascertain the supply that attracts highest rate of tax. As per serial number 17(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration attracts same rate of tax as on supply of like goods involving transfer of title in goods. We find that the supplies received by the applicant include hiring of air conditioning system up to the floor Air Handling Unit with existing ducting's and diffusers, sprinkler system comprising fire detectors for true ceiling. As per serial number 119 of Schedule IV of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017, as amended (corresponding West Bengal State Notification No. 1125 F.T. dated 28.06.2017), 'Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated' under tariff heading 8415 attracts tax @ 28%. Further, 'Mechanical appliances (whether or not hand- operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged;

spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than and Nozzles for drip irrigation equipment or nozzles for sprinklers] under tariff heading 8424 attracts tax @ 18% vide serial number 325 of Schedule III of the said notification. In this context, Note 4 and 5 of Section XVI of the Customs Tariff Act may be referred to which reads as follows:

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

5. For the purposes of these Notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

1.23 It thus appears that hiring of air conditioning machine and fire extinguisher would attract tax @ 28% and @ 18% respectively being the same rate applicable for supply of such items and when such are supplied in conjunction with each other for a single price, the supply being a mixed supply would attract tax @ 28%. However, in the instant case, we are of the view that air conditioning system and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods.”

4.6 The applicant has submitted that central air conditioning systems along with components are grouped and process of circulation of air are performed through ducting to individual plots/tenants. We find that the applicant's scope of supply is restricted up to tap off points and applicant is not responsible for quality of input power supply. It is clear that the applicant gives leasing services of benefit of those machineries for smooth functioning of lessees. The individual machinery as “goods” is not leased out to those lessees. This authority has referred to the cases of Solid and Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)], and Varachha Co-op. Bank Ltd [2023] 156 taxmann.com 4 (AAAR-GUJARAT)[04-10-2023] to express the view that permanently installed machineries to BIPPL lost nature of movable properties and cannot be considered as ‘goods’ in GST.

4.7 It is learnt from the Scheme of Classification of Services as annexed to the rate notification that SAC 99731 describes services of “Leasing or rental services concerning office machinery and equipment (except computers) without operator”. Rate of tax of leasing or rental services under Heading 9973 has been specified in serial number 17 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (corresponding West Bengal State Notification No. 1135 F.T.

dated 28.06.2017), as amended from time to time. As on date, the said entry reads as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
17	Heading 9973 (Leasing or rental services, without operator)	(i) omitted		
		(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right.	9	
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	§	
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	§	
		§ Same rate of State tax as on supply of like goods involving transfer of title in goods		
		(v) omitted		
		(vi) Leasing of motor vehicles purchased and leased prior to 1st July 2017;	Ω.	
		(vii) omitted		
		(viia) Leasing or renting of goods	§	
		(viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi), and (viia) above.	9	
		Ω 65 per cent. of the rate of State tax as applicable on supply of like goods involving transfer of title in goods. Note: - Nothing contained in this entry shall apply on or after 1st July, 2020		

4.8 The applicant has enquired whether their supplies can be regarded as 'support services' under SAC 998599. The applicant contends that he operates as an independent entity that provides comprehensive support services to the BIPPL. This includes a range of infrastructure and fit outs such as air-conditioning systems, fire sprinkler systems, DG sets, and electrical

installations to tenants. The applicant advocates that he is responsible for creating proper infrastructure and a facility in the building and therefore hiring of asset can be classified as other support system (998599). In regard to this submission, we like to draw attention to the explanatory note on the scheme of classification of service as available in the website of the GST Council where SAC 998599 "Other support service n.e.c" falls under SAC 99859 (Other support service) reads as follows:

" 998599 This service code includes business brokerage and appraisal services other than for real estate; business services of intermediaries and brokers; specialist advice other than for real estate, insurance and engineering (specialist services in art, specialist services for courts of law, etc.); services by agencies and agents on behalf of individuals seeking engagements in motion pictures, theatrical productions, modelling or other entertainment or sports attractions; placement of books, plays, artwork, photographs, etc., with publishers, producers, etc.; issue of reduced-price coupons and gift stamps; management services for copyrights and their revenues (except from films); management services for rights to industrial property (patents, licences, trademarks, franchises, etc.); auctioning services other than in connection with legal procedures; reading of electric, gas and water meters; data preparation services; specialized stenotype services such as court reporting; public stenography services; other business support services not elsewhere classified"

We find that the description of services as scripted in the explanatory note under heading 998599 does not vouch for services provided by the applicant.

4.9 A lease is a contractual arrangement where the lessee (user) pays the lessor (Owner) for use of an asset like property, building and vehicles, industrial machineries etc. are common assets that are leased. There is lease agreement which is commonly called as contract between two parties, the lessor and the lessee. The lessor is the legal owner of the asset. The lessee obtains the right to use the asset in return for regular rental payments. The lessee also agrees to abide by various conditions regarding their use of the property or equipment. Point no 1.1, and 3.1.1 of 'Agreement for hire of fitted assets" made between the applicant and one of the tenants namely Sun Knowledge Pvt Ltd speaks about hire charges from tenants for right to use the asset in return for regular rental consideration. Legal possession of asset lies with the applicant.

4.10 The term "renting" as defined under clause (41) of section 65B of the Finance Act, 1994 (erstwhile service tax) means allowing, permitting, granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of

possessions or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. It thus transpires that the phrase 'renting' is wide in its ambit and covers all the type of transactions that the trade and business enter in day to day business. The activities/ services being undertaken by the applicant fall squarely with the definition of renting, as stated above. The applicant allows granting access to utilities of those scheduled fits outs sans transfer of possessions or control of the said immovable property against periodic rental payment from lessees of that demised plot.

4.11 The applicant has referred to Circular No. 232/26/2024 dated 10.09.2024 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing to pave the way of his argument that applicant's nature of service is a comprehensive pattern spanning of services that include installation and maintenance of air-conditioning systems, fire sprinkler systems, DG sets, electrical installations, with data hosting services involves a range of activities including operating data centers, ensuring uninterrupted power supplies, backup generators, network connectivity, firewall services, and monitoring and surveillance services as stated in circular [supra] in respect of data hosting service. The applicant advocates that services provided by him are essential for the proper functioning of the building and are not limited to mere leasing or renting of individual assets.

4.12 We have duly considered the argument made by the applicant. We find that the above-referred circular has been issued to clarify the place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India. The issues which have been clarified in the circular are found to be as under:

- (i) Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers and thereby whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.
- (ii) Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and thereby the place of supply of the same is to be determined as per section 13(3)(a) of IGST Act;
- (iii) Whether the data hosting services are provided directly in relation to "immovable property" and thereby the place of supply of the same is to be determined as per section 13(4) of IGST Act;

4.13 We find that section 12 the IGST Act, 2017 deals with place of supply of services where location of supplier and recipient is in India. On the other hand, section 13 of the IGST Act deals with place of supply of services where location of supplier or location of recipient is outside India. The above-referred circular has been issued only to clarify place of supply issues and that

too under section 13 of the IGST Act where either the location of the supplier of services or the location of the recipient of services is outside India. However, in the case in our hand, the issue is not to determine the place of supply rather we are dealing with the classification of services. Further, the fact of the case in the said circular is that the cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services and there appears to be no contact between data hosting service provider and the end users/ consumers/ subscribers of the overseas cloud computing service provider. We find that the nature of activities involved in the case we are dealing now also differs from the supply of data hosting services. As a result, we are unable to accept the argument as advanced by the applicant in this regard.

4.14 In the light of foregoing discussions, we are of the opinion that in the instant case, the supply of services as provided by the applicant would be regarded as leasing or rental services and each of the supplies would attract tax @ 18% under serial number 17(viii) of the Notification No. 11/2017– Central Tax (Rate) dated 28.06.2017, as amended, as leasing or rental services and therefore, supplies provided by the applicant, being a mixed supply, would also be taxable @ 18% i.e., supply which attracts the highest rate of tax.

In view of above, we rule as under:

RULING

Supply of services as provided by the applicant would be covered by serial no 17(viii) of the Notification No. 11/2017– Central Tax (Rate) dated 28.06.2017 as leasing or rental services and as a mixed supply, would attract tax @ 18%.

(Dr. TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 14th January, 2025

To,

TCG URBAN INFRASTRUCTURE HOLDINGS PRIVATE LIMITED

BETA BUILDING, BENGAL INTELLIGENT PARK, GROUND FLOOR, PLOT A2, M2,
N2, BLOCK EP AND GP, SALT LAKE ELECTRONIC COMPLEX, SALT LAKE
SECTOR V, 700091

Copy to,

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector,
Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector,
Kolkata-700107
- (4) The Charge Officer, Barasat Charge, 48, Jessore Road, Barasat, Pincode-700124
- (5) Office Copy