

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:
Mr. A.P.S Suri, Member
Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 09/WBAAAR/APPEAL/2019 dated 03.07.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by the Assistant Commissioner, State Tax, Park Street Charge, Kolkata.

Present for the Appellant: Sri Samir Kumar Jana, Assistant Commissioner, State Tax, Park Street Charge, Kolkata.

Present for the Respondent: Dr. Samir Chakraborty, Senior Advocate
And
Mr. Arnab Chakraborty, Advocate

Matter heard on: 12.09.2019

Date of Order: 25.09.2019

1. This Appeal has been filed by the Assistant Commissioner, State Tax, Park Street Charge, Kolkata (hereinafter referred to as "the Appellant") on 03.07.2019 against Advance Ruling No. 01/WBAAR/2019-20 dated 02.05.2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) in the matter of M/s. Bengal Peerless Housing Development Company Limited (hereinafter referred to as "BPHDCL").
2. BPHDCL, located at 6/1A, Moira Street, Mangaldeep Building, Ground Floor, Kolkata – 700017 holding GSTIN 19AABCB3038P1ZE 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. In addition to the construction service, BPHDCL provides services like preferential location service (PLS), which includes services of floor rise and directional advantage.

3. The Respondent sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on whether the supply of these services of PLS including floor rise, directional advantage constitutes a composite supply with construction service as the principal supply, and if so, whether 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 referred to as the "Rate Notification") is applicable on the entire value of such composite supply.
4. The WBAAR in its Ruling No. 01/WBAAR/2019-20 dated 02.05.2019, observed *inter alia*, that the agreement between BPHDCL and the buyer refers to the sale of immovable property. The buyer agrees to pay in advance for certain other services that he will enjoy in addition to the construction service, and to pay a single consolidated amount for all these supplies. While examining whether these services 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, the WBAAR has observed that the term 'naturally bundled' is not defined in the GST Act and has relied on Section 9.2.1 of the Education Guide that CBEC published in 2012 in this regard, which says that *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*. The WBAAR has further relied upon Section 9.2.4 of the Education Guide *ibid* which says that 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 indicators like whether a large number of service receivers reasonably expect such services to be provided as a package or whether a majority of the service providers in a particular area of business provide these services in a bundle. According to the WBAAR, 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, which is defined as predominant element of a composite supply under Section 2(90). The WBAAR finally held that in the present case, the PLS has to be bought as a package, where the construction service remains the predominant element, while accepting the fact that the buyer has the option not to pay for such service. The WBAAR concluded that BPHDCL

is providing a composite supply of the bundle of services, where construction service is the principal supply and hence entire value of the composite supply is to be treated for the purpose of taxation as supply of construction service.

5. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR on the following grounds:
 - (a) The Respondent (BPHDCL) applied for ruling for the limited purpose to know whether the supply of PLS constitutes a composite supply with construction service as the principal supply or not. But, the ruling has been passed not only for this purpose but also for “right to use of car parking space”. However, PLS does not include any facility related to car parking space.
 - (b) The WBAAR erred in treatment of PLS as a composite supply with construction service, which resulted in inclusion of the value for PLS with the value for construction services. Consequently, the WBAAR erred in law by confirming the applicability for abatement prescribed for construction service under sl. No. 3(i) read with paragraph 2 of the Rate Notification on the entire value of the composite supply which ultimately would cost dear to the government exchequer.
6. At the onset of hearing the Appellant verbally prayed for condoning of delay in filing the appeal petition. The WBAAR accepted his prayer and admitted the appeal petition for hearing on 12.09.2019 itself. The respondent raised no objection in the matter.
7. During the course of hearing the Appellant reiterated the points as stated in the Grounds of Appeal. He also reiterated his reliance on the observations of the Hon’ble Delhi High Court in the case of Suresh Kumar Bansal vs. Union of India reported in 2016(43) S.T.R. 3(Del.) that preferential location charges cannot be traced directly to the value of any goods or value of land but are as a result of the development of the complex as a whole and the position of a particular unit in context with that of the complex.
8. The Respondents contested the appeal against the Advance Ruling, wherein, they have *inter alia*, submitted that in the Agreement for Sale, composite price comprising all elements of price is mentioned as consideration. However, since the price elements have been separately specified in the General Terms and Conditions, BPHDCL has been discharging CGST and SGST aggregating 18% on the charges for floor rise and directional advantage without claiming any abatement in respect thereof, as applicable for supply of construction service.
9. They further submitted that the allotment of a dwelling unit is made to a purchaser on the basis of the floor and the directional advantage selected by him. In the Agreement for Sale, the complete description, including the location and floor, of the dwelling unit is clearly mentioned in the Second Schedule thereto. It is not the case that the floor rise and directional

advantage services are supplied subsequent to the allotment of a residential unit which is never a possibility in as much as the Agreement for Sale is entered into for a specific dwelling unit in entirety covering the unit, floor and direction. The respondent also submitted that the supplies of floor rise and directional advantage are integral to the principal supply of construction service and in the absence of any one, the principal supply of construction cannot be effected. These services, that is to say, construction service and services attributable to choice of the purchaser in respect of floor rise and directional advantage are therefore naturally bundled and supplied with each other in the ordinary course of business of which construction service is the principal supply.

10. The respondents placed reliance on the decision of the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as the CESTAT), in the case of Logix Infrastructure Pvt. Ltd. vs. Commissioner of C. Ex. & S.T., Noida, 2019 (25) GSTL 59 (Tri. - All), wherein on the same issue involved, though under the erstwhile Finance Act, 1994, as amended with effect from July 1, 2012, Section 66F was inserted. The Learned Tribunal, upon due consideration of the provisions of Section 66F sub-section (3) of the Finance Act, 1994 observed and held that after the introduction of Section 66F on the statute, the provisions of Section 66F will prevail over any clarification or view taken by C.B.E.&C and therefore the components such as preferred location charges, external development charges, etc. are part and parcel and for various elements of the main service which is Residential Complex Service and therefore the entire consideration received by the appellants are eligible for abatement under the said Notification No. 26/2012-ST.
11. The respondents submitted that reliance by the appellant on the judgment of the Hon'ble Delhi High Court in the case of Suresh Kumar Bansal Vs. Union of India, 2016 (43) STR 3 (Del) is completely misplaced as the said decision pertains to the period prior to July 1, 2012, and has no manner of application to the changed statutory provisions under the Finance Act, 1994 effective July 1, 2012 and thereafter under the GST Act.
12. The matter is examined and written and oral submissions made before us are considered. As the application for Advance Ruling was only on the purpose of PLS, the discussion in the present proceedings will also be limited to that extent.
13. The WBAAR in its order accepted the claim of the builder that they are providing a composite supply, construction service being the main supply and the other ones are incidental or ancillary to the construction service. The WBAAR also concluded that the services provided are naturally bundled. Services are considered to be naturally bundled in the ordinary course of business when a large number of service receivers reasonably expect such services to be provided as a package. For example where goods are packed and transported with insurance, the supply of goods, packing materials, transport and

insurance together form a composite supply of which supply of goods is the principal supply. However, in the instant case, as per the respondent's own submissions, PLS is attributable to the choice of the purchaser in respect of floor rise and directional advantage. Hence, it is evident that PLS cannot be treated as naturally bundled with construction service in the ordinary course of business.

14. The Learned Senior Advocate for the respondent has argued that in the erstwhile Service Tax regime, with effect from 01/07/2012, the concept of "bundled services" was introduced under Section 66F sub-section (3) of the Finance Act 1994, which is similar to that contained in Section 8 sub-section (a) of GST Act. The Learned Advocate claimed that as held by the Learned CESTAT in the case of Logix Infrastructure Pvt. Ltd._Vs. Commissioner of C.Ex. & S.T., Noida, 2019 (25) GSTL 59 (Tri. - All), after introduction of Section 66F sub-section (3), the entire consideration received is eligible for abatement in this case.
15. However, we find that the said legal interpretation was applicable for pre-GST era. Moreover, in the Service Tax regime, a special category of service namely Builder's Special Services having a separate tax collection head 00440616 was also in existence to take care of such services provided by the builders, which specifically included services for providing preferential location [Section 65(105)(zzzzu) of the Finance Act, 1994] on which no abatement was available. In the said Section, the "taxable service" was defined as *any service provided or to be provided to a buyer, by a builder of a residential complex, or a commercial complex, or any other person authorized by such builder, for providing preferential location or development of such complex but does not include services covered under sub-clauses (zzg) – management, maintenance or repair service, (zzq) – commercial or industrial construction service, (zzzh) – construction of complex service and in relation to parking place.* In CBEC Instruction F. No. 334/1/2010-TRU dated 26/02/2010, it was clarified that *preferential location meant any location having extra advantage which attracted extra payment over and above the basic sale price depending on direction, floor, vastu or number.* As erstwhile Service Tax regime has been imbibed in spirit into the present GST system, hence the same treatment should be applicable to PLS and there should be no abatement on the value of such PLS, which are realised separately from the buyers.
16. We also find that it has been submitted by the respondent in their submission that they have been paying CGST and SGST on the charges for floor rise and directional advantage without claiming any abatement in respect thereof. We have also perused sample invoices, wherein we find that they have raised separate invoices on account of 'Unit Sales', 'PLC Charges' and 'Floor Rise Charges'. It reinforces the conclusion in the preceding paragraph that PLS can in no way be associated with land. PLS comes into

being as the builder charges the buyer separately for providing a better location, which may be in relation to the direction in which the flat is constructed, the floor on which it is located, the views from the particular flat opted by the buyer etc. Thus, the abatement, which is allowed on the value of construction service, as the plot of land on which construction is done is not liable to GST, cannot be deemed to be applicable in respect of PLS, which is altogether a separate service having no association with the land.

17. The rate of GST and abatement on value of construction service have been stipulated in notification no. 11/2017-Central Tax(Rate) dated 28/06/2017 [corresponding State Notification No. 1135-FT dated 28/06/2017]. The rate is provided in Sl. No. 3 of the Table provided in the said Notification, which categorizes three types of construction services, which are as follows :

(i) 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service).

(ii) Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.

(iii) Construction services other than (i) and (ii) above.

It is clear from the said categorization that PLS should come under category no. 3(iii) as the other two categories are clearly defined. Abatement to the extent of 1/3rd of the total amount charged for supply of the service mentioned under Sl. No. 3(i) of the Rate Notification has been allowed under para 2 of the said Notification. No abatement has been provided for service mentioned under Sl. No. 3(iii) of the said Table.

18. In his verbal submission, the Senior Advocate for the respondent has relied upon the decision of Hon'ble Supreme Court of India in the case of Union of India vs. UTV News Ltd., wherein the Hon'ble Division Bench has deferred disposal of the case until disposal of the main issues pending before the nine judges Bench in Mineral Area Development Authority and Others vs. Steel Authority of India [(2011) 4 SCC 450]. We have carefully perused the said decision of the Hon'ble Apex Court reported in 2018(13) G.S.T.L. 3(S.C.). We find that the said issue relates to legislative competence of the Union Parliament to impose Service Tax on renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of business or commerce under Section 65(105)(zzzz) of the Finance Act, 1994, which is in no way

akin to the issue involved in the instant case. Hence, we find that the cited decision has no bearing on this case.

In view of above discussion, it is held that no 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 is applicable on the value of Preferential Location Service realised separately from the buyers.

It is noticed that BPHDCL had sought a ruling on whether the abatement prescribed for supply of construction service in terms of serial number 3(i) of Notification No. 11/2017-Central Tax (Rate) and corresponding State Notification No. 1135-FT dated 28/06/2017 read with Paragraph (2) appended thereto will also apply for supply of services of Floor Rise and Directional Advantage being Composite Supply with the principal supply of Construction. However, the WBAAR has 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 application for Advance Ruling. The appellant namely, the Assistant Commissioner, State Tax, Park Street Charge, Kolkata, has also prayed for suitable order in respect of right to use car parking space along with PLS, while filing the instant appeal. We hold that the decision as above in respect of PLS will also hold for right to use car parking space.

Accordingly, the Advance Ruling No. 01/WBAAR/2019-20 dated 02.05.2019 is modified to this effect and the Appeal stands disposed of as above.

Send copy of this order to the Appellant and the Respondent for information.

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(Smaraki Mahapatra)

Member

West Bengal Appellate Authority
for Advance Ruling

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(A.P.S Suri)

Member

West Bengal Appellate Authority
for Advance Ruling