Bengal Peerless Housing Development Company Limited

Authority for Advance Ruling — West Bengal

01/WBAAR/2019-20 Dated **02.05.2019**

Q Questions Before the Authority

- Whether the preferential location services (floor rise and directional advantage), together with the right to use car parking space and common areas, supplied with construction of a high-income group (HIG) dwelling unit in 'Avidipta II' constitute a composite supply with construction service as the principal supply.
- If so, whether the abatement prescribed for construction service under Sl No. 3(i) read with Paragraph 2 of Notification No. 11/2017-CT(Rate) applies to the entire value of the composite supply.

F Facts

The applicant, a joint venture of the West Bengal Housing Board and Peerless General Finance and Investment Company Limited, is developing the residential project 'Avidipta II' on about 2.63 acres and is availing construction-service abatement. For HIG units, the buyer pays a single consolidated price under the agreement covering construction (SBUA), the right to use a car parking space, preferential location charges, and common areas and recreational facilities, while other charges and taxes are recovered separately. The construction is delivered after the agreement is signed and money paid, while the other services are enjoyed on or after possession.

H Ruling

Whether the bundle of construction with preferential location, car parking and common-area rights is a composite supply, and which element is principal	**Composite supply; construction service is the principal supply**	The other services are naturally bundled and ancillary to construction. Question limited to HIG units; the authority relied on s.2(30) and s.2(90) and the bundle being offered as a package.
Whether abatement under Sl No. 3(i) read with Paragraph 2 of the Rate Notification applies to the entire composite value	**Yes. Entire value treated as supply of construction service, taxable 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. Ruling is subject to s.103 and remains valid until declared void under s.104(1).

The authority held that the construction of the dwelling unit, bundled with preferential location services and the rights to car parking and common areas, is a **composite supply** in which **construction service is the principal supply** . The entire value of that composite supply is to be treated as construction service and taxed under the abatement entry at Sl No. 3(i) read with Paragraph 2 of the Rate Notification.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The authority examined whether the services were naturally bundled and supplied together in the ordinary course of business, using s.2(30) and s.2(90) and, by analogy, the CBEC Education Guide of 2012 (paras 9.2.1 and 9.2.4). It found that the buyer cannot enjoy the other services without buying construction, cannot buy them separately, and that developers of upscale complexes usually sell them as a package. Construction was therefore the predominant element, and s.8(a) directed that the composite supply be taxed as the principal supply. The ruling also relied on the agreement's single consolidated price and on s.7(1), which treats an agreement to supply as a supply where advance payment is made.

P Provisions Relied On

- Section 97(2)(a) and (b) of the GST Act (admissibility)
- Section 100(1), 100(2) proviso and 100(3) of the GST Act (appeal)
- Section 99 and Section 96 of the West Bengal GST Act (Appellate Authority and constitution of the AAR)
- Section 7(1) of the GST Act
- Section 8(a) of the GST Act
- Section 2(30) of the GST Act (composite supply)
- Section 2(90) of the GST Act (principal supply)
- Section 103 and Section 104(1) of the GST Act
- Notification No. 11/2017-CT(Rate) dated 28/06/2017, Sl No. 3(i) read with Paragraph 2
- Corresponding State Notification No. 1135-FT dated 28/06/2017
- CBEC Education Guide (2012), paras 9.2.1 and 9.2.4
- SAC 9954, SAC 9985 and SAC 9972 as referred to in the order

! For the Practitioner

Developers selling HIG units with car parking, floor rise, directional advantage and common-area rights in a single price can use this ruling to tax the whole consideration at the construction-abatement rate. It is binding only on the applicant, and the reasoning rests on the facts of this bundle and the 2012 Education Guide. It does not decide LIG or MIG units, whose prices are regulated, or cases where the ancillary items are separately priced or optional. It also does not address the position under later rate changes or the post-2019 regime.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> 01_wbaar_2019-20-bengal_peerless_hdcl.pdf

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