

# Construction services bundled with other related services constitute ‘composite supply’: West Bengal AAR

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## Summary

The West Bengal Authority for Advance Ruling (AAR) in a recent decision<sup>1</sup> held that the provision of construction services of a house in a residential complex bundled with related services like preferential location services, right to use car parking space, common areas and other facilities qualifies to be a ‘composite supply’, wherein the ‘construction services’ shall be treated as the principal supply. The AAR further held that the entire value of composite supply should be considered for the purpose of computing abatement.

## Facts of the case

- The Applicant<sup>2</sup> entered into a joint venture (JV) with the West Bengal Housing Board for constructing a residential housing project in the state of West Bengal.
- The Applicant is availing the abatement<sup>3</sup> prescribed for construction services.
- In addition to the construction services, the Applicant also provided services like
  - Preferential location services, which include services of floor rise and directional advantage
  - Right to use allotted car parking space

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<sup>1</sup> West Bengal AAR No. 01/WBAAR/2019-20 dated 2 May 2019

<sup>2</sup> Bengal Peerless Housing Development Company Limited

<sup>3</sup> Sr. No. 3(i) read with para 2 of the Notification No. 11/2017 – CT (Rate) dated 28 June 2017

- Right to use other common areas and recreational facilities such as gym, club house, swimming pool, community hall, etc.
- The Applicant approached the AAR seeking its ruling on:
  - whether the supply of above services qualifies as ‘composite supply’<sup>4</sup> treating ‘construction service’ as the principal supply
  - whether abatement is applicable on the entire value of composite supply
- Before the AAR, the Tax Department conceded that provision of construction services along with other related services by the Applicant should qualify to be a ‘composite supply’ where construction services are to be regarded as the principal supply. Further, the department submitted that the abatement shall be available to the entire supply including such ancillary services.

### **West Bengal AAR’s observations and ruling**

- The AAR noted that the agreement between the Applicant and the potential buyer is for the sale of immovable property. The AAR also observed that the buyer agrees to pay in advance for certain other services that he will enjoy after obtaining possession of the property.
- Further, the AAR noted that the buyer could enjoy other related services after making the required payment for such services and only after completion of construction services.
- Thereafter, the AAR observed that while one could choose not to opt for such services, developers usually offer these services in a bundle and a buyer cannot buy such services separately.
- Thus, the AAR concluded that ‘construction services’ remain the predominant element in such cases and all naturally bundled related services are ancillary to such services. Accordingly, the AAR held that the Applicant is providing a ‘composite supply’ where construction service is the principal supply.
- As regards value for the purpose of abatement, the AAR held that the entire value of the composite supply is to be considered for the purpose of abatement.

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<sup>4</sup> Section 8(a) of the Central Goods and Services Act, 2017 (CGST Act)

## **Our comments**

This is a welcome ruling by the AAR as it provides clarity to the real estate sector regarding taxation of ancillary services. The availability of abatement on the entire value of services of construction of residential units would directly benefit homebuyers on account of reduction of their GST outgo. It should be noted here that many builders were charging GST at 18% on such ancillary services (without considering the abatement). Though the AAR's decision is applicable only to the Applicant, it should assist other builders providing similar services.

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