

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

Before:
Mr. Ashutosh Awasthi, Member
Mr. Khalid Aizaz Anwar, Member

In the matter of

Appeal Case No. 01/WBAAAR/APPEAL/2023 dated 24.01.2023

- 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 M/s Eden Real Estates Private Limited, located at 4th floor, N-410 Ideal Plaza Building, 11/1 Sarat Bose Road, Kolkata- 700020 against the Ruling passed by the West Bengal Authority for Advance Ruling vide Order No. 19/WBAAAR/2022-23 dated 22.12.2022.

Present for the Appellant: Mr. Ankit Kanodia, Advocate
Ms. Megha Agarwal, Advocate

Present for the Respondent: Mr Santanu Das, Sr. Joint Commissioner of State Tax

Matter heard on: 28.03.2023

Date of Order: 20.04.2023

1. This instant appeal was filed by M/s Eden Real Estates Private Limited (hereinafter referred to as “the Appellant”) on 24.01.2023 against Order No. 19/WBAAAR/2022-23 dated 22.12.2022, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the “WBAAR”).
2. The appellant is stated to be in the business of construction of residential apartments intended for sale to buyers and one such project is named “EDEN CITY MAHESHTALA” which has multiple towers in different stages of completion. It is submitted by the Appellant that the prospective buyers are given an option to acquire car parking space along with the apartment being booked by them and accordingly the buyers who opt to avail the car parking facility are charged a certain sum towards the car parking space and the same forms part of the total consideration charged by the Appellant from the prospective buyer. It is to be mentioned that the project commenced prior to 01.04.2019 and the Appellant exercised option to remain in the old tax rate prior to 01.04.2019.

3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “GST Act”) before the WBAAR on the following questions:
- (a) Whether the amounts charged by the applicant for right to use of car/two wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST/WBGST Act, 2017.
 - (b) If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the applicant from its prospective customers.
 - (c) If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a non GST supply under Schedule III of the CGST/WBGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space.
 - (d) Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e. the customer had not opted for the car parking space at the time of purchase of the under constructed unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate.
4. The WBAAR observed that the appellant provided services of right to use of parking space on the basis of option exercised by a prospective apartment buyer or existing apartment owner. It is to be mentioned that throughout the order passed by WBAAR the discussion has been on open car parking space. The Appellant submitted before WBAAR that it is the choice of the prospective buyer or existing apartment owner whether he will avail the facility of parking space. Though the Appellant argued that the services of open parking space was an ancillary supply with the principal supply being that of the construction services towards apartment, WBAAR observed that as parking facility was an optional facility the services of right to use of parking space is not a naturally bundled service along with the construction services of the apartment and should not be construed as a composite supply. According to the observation of the WBAAR the rate of GST applicable for such supply of services of right to use of open parking space will be 18% (CGST9%+WBGST9%) without any abatement on value of land. It also ruled that in those cases where sale of apartments along with parking spaces are executed after receipt of completion certificate, then as they are not bundled service, tax will be payable only on the consideration for services of right to use of parking spaces. The consideration received for apartments will be treated as non GST and will not attract any tax.
5. The Appellant has filed the instant appeal against the above mentioned order of WBAAR dated 22.12.2022 with a prayer to set aside/modify the said order or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:

- a) The WBAAR erred in not considering the supply of car parking space by the Appellant to its prospective customers along with allotment of units in the project as a composite supply;
 - b) The WBAAR failed to pass a speaking order and merely referred to the earlier order of the Appellate Authority without analyzing the facts of the instant case and ignored the submissions made by the Applicant.
 - c) The WBAAR erred in interpreting the definition of composite supply.
 - d) The WBAAR has failed to realize the aspect that the car parking space cannot be given to any person who does not possess/opt for a residential unit inside the project area and stamp duty is paid on the entire consideration charged by the Applicant towards the unit price of the apartment and car parking space at the time of conveyance of the said property.
 - e) The WBAAR erred in stating that the Circular No. 177/09/2022-TRU dated 03.08.2022 was not applicable in the instant case as the said Circular dealt with leasing transactions while the instant case is a matter of construction services.
6. During the course of hearing held on 28.03.2023, the Appellant's authorized representative reiterated the points as stated in the Grounds of Appeal. The Appellant is in the business of constructing residential housing projects and one such project is Eden City Maheshtala which has multiple towers in different stages of completion with both covered and open car parking facilities. The prospective buyers can opt for car parking facility at the time of booking apartments or at a later date. This option is open only to a prospective buyer of apartment or an existing apartment owner. No person without booking/possessing an apartment in the project can avail this facility. The Appellant is not treating open and covered parking spaces in the same manner. In case of open parking space the consideration received from customer is treated as consideration for **services rendered for right to use of such parking space**. The appellant argued that this service of right to use of parking space along with the construction services of apartment constitutes composite supply of services to the customer where the main supply is that of construction services for the apartment. Appellant's authorized representative also argued that the facility of parking space was an ancillary supply as the buyers were given an option for availing car parking facility. Any person who did not buy or own an apartment in the project could not book any parking space and this facility was open to the flat owners or prospective buyers only. The primary objective of a customer is to buy an apartment in such residential project which also offer some added benefits like parking facility, landscaped gardens, community and recreational centre, swimming pool, etc. As the parking space came with the apartment they were naturally bundled. He further argued that the principal supply being the construction services of the apartment, the appellant was charging tax @9% CGST and @9% SGST along with 1/3 rd abatement on the value of land on the entire consideration

of construction services of the apartment along with the services of right to use of parking space. So the effective rate was @6% CGST and @6% SGST for the bundled supply. The other facilities were being charged @9% CGST and @9% SGST without any abatement.

7. In those cases where completion certificate has already been obtained from the competent authority and as the principal supply becomes a non GST supply consequently the entire supply (apartment and right to use of open parking space) being a bundled supply is treated as non GST supply and hence no GST is charged on it. The Appellant's representative further stated that the appellant was registering the deed of conveyance of both sale of apartment and right to use of open parking space and payment of statutory stamp duty was being made on the entire consideration received from the bundled supply. Reference was drawn by the Appellant's representative to Circular No.34/8/2018-GST dated 01.03.2018, where it was clarified that "the primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature of the composite supply". It was further clarified in case of re-treading tyres the essential supply was the service of re-treading and the supply of rubber in the process was an ancillary supply. In line with this argument the Appellant's authorized representative stressed on the point that the facility of right to use of open parking space is naturally bundled with the construction services for /sale of apartment.
8. The Appellant's authorized representative also relied on the rulings given by both WBAAR and WBAAAR in the matter of M/s Bengal Peerless Housing Development Co. Ltd. where both agreed that car parking space was ancillary supply to the principal supply of construction services for apartment. In view of this observation the Appellant's authorized representative argued that the construction services for the apartment together with the right to use of open parking space is a bundled supply and will attract tax of that of the principal supply and will also qualify for the abatement given on the value of land for both principal and ancillary supply. Thus in case of an apartment sold after receipt of completion certificate, it being a sale of building covered under Schedule III of the GST Act and the right to use of car parking space being a part and parcel of composite supply will also not attract any tax under the GST Act.
9. The Appellant's authorized representative further argued that these open parking spaces have been shown in the sanctioned plan of the project and at the time of registering the deed of conveyance appropriate stamp duty is paid on the entire consideration received from this right to use of parking space. During the course of hearing the Appellant's authorized representative submitted copies of allotment letters issued by the Appellant to its customers and they show valuation of apartments, parking spaces and other charges along with the amount of abatement given and the amount of tax charged under the GST Act.
10. The Respondent was of the view that as the parking facility was an optional facility as stated by the Appellant the right to use of open parking space along with the construction services for the apartment cannot be classified as composite supply. Further the nature of service being

right to use means that the ownership of the space is not being transferred to the allottee. Hence, the right to use of open parking space is a separate service altogether.

11. The matter is examined carefully and written and oral submissions made before us are considered. The moot question here is whether parking space open or covered along with construction services of the apartment will be a bundled service as argued by the Appellant.
12. It is common knowledge that in any residential apartment blocks, mainly two types of parking spaces are offered, open and covered. Though the Appellant's authorized representative submitted that in the current project of the Appellant there are both covered and open parking spaces, during the course of hearing he argued on the supply of services of right to use of open parking spaces only.
13. Now let us look at the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the RERA). For the sake of clarity certain definitions from the said Act are reproduced below:

“allottee” [sub-section (d) of section 2] in relation to a Real Estate Project means *the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent*

“common area” [sub-section (n) of section 2] means

- (i) *the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*
- (ii) *the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
- (iii) *the common basements, terraces, parks, play areas, **open parking areas** and common storage spaces;*
- (iv) *the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*
- (v) *installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
- (vi) *the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*
- (vii) *all community and commercial facilities as provided in the real estate project;*
- (viii) *all other portion of the project necessary or convenient for its maintenance,*

safety, etc., and in common use

“garage” [sub-section (y) of section 2] means

*a place within a project having a roof and walls on three sides for parking any vehicle, but **does not include an unenclosed or uncovered parking space such as open parking areas***

“sanctioned plan” [sub-section (zq) of section 2] means

*the site plan, building plan, service plan, **parking** and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project*

14. It transpires from plain reading of the above provisions of RERA that though a sanctioned plan requires inclusion of parking layout, an uncovered parking space such as open parking area is not included in the definition of “garage” but falls within the meaning of “common area”. **Now the “common area” belongs to all apartment owners jointly or the owners’ association when formed and no portion can be sold/transferred/leased out to any person by the promoter.** So in the instant case the sanctioned plan may have open parking spaces but **the Appellant has no right to transfer ownership or lease out or allow right to use of the said spaces to allottees.** The owners’ association on joint agreement of its members may lease out the open parking space on rent at a future date but that question is beyond the ambit of the current discussion. So it is clear that the consideration collected from allottees for right to use of open parking spaces will not form a part of value of composite supply as prayed for by the Appellant. The amount charged by the appellant for right to use of car/two wheeler vehicle parking space, though not permissible as per RERA, constitutes a separate supply under the GST Act and the appellant is therefore liable to pay tax @ 18% on such supply. Further, the question of one-third abatement of valuation of land for open parking space is not maintainable as the “common area” which includes such open parking space is considered in the valuation of apartment and one-third abatement on supply of construction services is being availed before levy of tax under the GST Act.
15. Further, it has been submitted by the appellants that their prospective buyers are given an option to opt for car parking space along with the apartment being booked by the customers and accordingly, the customers who opt for availing the car parking facility also, are charged a certain sum towards the car parking space. A customer of a flat may avail car parking facility even after the issuance of completion certificate of the project. A customer may choose to opt or not opt for car parking at the time of purchase/booking of an apartment.
16. As per Sec 2(30) of the GST Act, —*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;

17. So, it is evident that sale/right to use car parking service and construction services are separate services which are not dependent on sale and purchase of each other. Therefore, sale/right to use car parking is not naturally bundled with construction services and hence, it can not be treated as composite supply of construction services.

18. In view of the above discussion WBAAR Ruling No. 19/WBAAR/2022-23 dated 22.12.2022 is confirmed. The appeal thus fails and stand disposed.

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

-Sd/-

(Mr. Khalid Aizaz Anwar)
Member, West Bengal Appellate
Authority for Advance Ruling

-Sd/-

(Mr. Ashutosh Awasthi)
Member, West Bengal Appellate
Authority for Advance Ruling