

**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING IN GOODS AND  
SERVICE TAX, IN THE STATE OF HARYANA, PANCHKULA**

**Appeal Case No. :** HAAAR/2020-21/07

**Dated: 28.09.2020**

GSTIN of the Applicant	06AAACD3494N1ZC
Name	M/s DLF Limited
Address / Registered Address	5 <sup>th</sup> Floor, DLF Gateway Tower, DLF City, Phase III, Gurugram, Haryana - 122002
Present for the Applicant	Sh. Sujit Ghosh

**Order under Section 101 of Central Goods and Service Tax Act, 2017 /  
Haryana Goods and Service Tax Act, 2017**

The present appeal has been filed under Section 100 (1) of Central Goods and Service Tax Act, 2017 / Haryana Goods and Service Tax Act, 2017 (hereinafter referred to as CGST Act / HGST Act, respectively) by M/s DLF Limited against the Advance Ruling No. HAR/HAAR/R/2019-20/06 issued vide Memo No. 1046/AAR dated 28.08.2020 in Application No. 06/2019-20 dated 18.06.2019.

A copy of order of the Advance Ruling Authority issued on 28.08.2020 was received by the appellant on 31.08.2020 and the appeal has been filed on 28.09.2020 which is within time in terms of Section 100(2) of the CGST Act 2017.

**I. BRIEF FACTS OF THE CASE:**

M/s DLF Limited, Gurugram is a centrally administered taxpayer registered under GST in Gurugram. They are engaged in the construction of residential as well as commercial properties. While selling such properties or providing the construction service they are also engaged in the recovery of various charges including Preferential Location Charges (PLC) from the Buyers.

The Applicant had requested for Advance Ruling on the questions: -

1. "Whether PLS collected along with consideration for sale of properties attracts GST rate of 12% or 18% where sale/transfer of constructed property has taken place before issuance of completion/Occupation certificate (CC/OC)?"
2. "Whether PLS collected along with consideration for sale of properties attracts GST rate of 5% or 18% where sale/transfer of constructed property has taken place before issuance of CC/OC under new projects which commence on or after 01.04.2019?"
3. "Whether PLS collected along with consideration for sale of properties is outside the scope of supply where sale/transfer of constructed property is entered into by the Applicant after issuance CC/OC?"
4. "If as per above, question, PLS attracts concessional rate of tax/exemption (whether 12% or 5% or nil as the case may be), whether, in facts and circumstances of the case, Applicant/or customers can claim adjustment/refund of the excess GST amount paid as (18% less

12%) or (18% less 5%) or (18% less Nil), as the case may be, on such charges?"

5. "In case differential prices are charged for sale/transfer of different properties/units in a real estate project due to various commercial factors such a location of apartment etc., whether GST can be charged on whole price at the similar rate i.e.12% (in case of sale before issuance of CC/OC)/5% (in case of sale before issuance of CC/OC under new projects which commence on or after 01.04.2019)/Nil % (in case of sale after issuance of CC/OC)?"

In the Appeal the applicant has submitted the following: -

- i) The applicant has paid GST at 18% on the sale of properties in the GST law. The GST law is in infancy and concepts there under like the concepts of 'composite supply' are in a nascent stage, there is a certain ambiguity about the taxability of PLS collected by the Applicant. Therefore the applicant has filed this advance ruling for obtaining clarity on the same.
- ii) In case of sale/transfer of constructed property before the issuance of CC/OC, the applicant is paying GST @18% on PLS since inception of the GST Law. As per applicant opinion that such charges should qualify as composite supply and should be taxable @12% or 5% or NIL as applicable. Therefore, applicant should be allowed/refund of the excess GST paid on PLS so that the benefit can be provided to the customers.
- iii) In some cases, applicant recovers lump sum price for sale/transfer of properties/units. Such lump sum price can be different for various properties/units on account of various commercial factors such as location of the property/unit. In such cases, applicant opinion that GST should be applicable at a single rate on lump sum prices charged even if differential prices are charged for different property/unit @ 12% or 5% or Nil as applicable on whole lump sum price.

The Advance Ruling Authority rejected party request for advance ruling on the basis that the party failed to appear for personal hearing despite giving many opportunities.

#### **Statement of Facts in Appeal**

The Appellant has submitted the following in the 'Statement of Facts' adduced in the Appeal: -

1. They are a limited company with registered office in Gurugram;
2. They are engaged in the construction of Residential and Commercial properties; They enter into *agreements* with buyers to effect sale;
3. Units of sale are *Apartments* in a Residential, and *Shops* in a Commercial property;
4. As a normal practice they enter into said agreements both before or after completion of construction;

5. Agreements entered into are to *Total* price of the unit which contains many components viz. Base Sale Price (BSP), Parking Charges, PLS and Other Charges. These charges are generally collected based on per Square Feet or per Square Meter or can also be on percentage or a lump sum price depending upon the project;
6. Based on location of property within a project, the lump-sum price can be different for different properties;
7. Where the Appellant enters into agreement with buyers before issue of OC/CC by the competent authority, it collects some consideration;
8. This being construction service, the same is taxable in GST @12% i.e. @18% less one-third as abatement towards undivided portion of land, as provided in Notification 11/2017-CT(R) dated 28<sup>th</sup> June 2017;
9. W.e.f. 1.04.2019, a new rate of 5%, i.e. less one-third abatement for undivided portion of land, has been prescribed for new projects commencing w.e.f. 1.04.2019 or old projects where the option for availing earlier rate had not yet been exercised, vide notification 3/2019-CT(R) dated 29<sup>th</sup> March 2019 amending Notification 11/2017-CT(R) *ibid*;
10. Under the said agreements the Appellant recovers BSP and a PLS (Preferential Location Charges) based on location viz. garden facing, swimming pool facing etc.;
11. As submitted, the PLS can be collected as a percentage of BSP or as per square feet/ meter or as a lump-sum;
12. That, nature of the PLS is as under: -
  - a. PLS is a premium for a preferential location;
  - b. Standard Buyer's Agreement contains definition of PLS (on the above lines);
  - c. A Delhi High Court decision in the Service Tax case **Suresh Kumar Bansal vs. Union Of India** (June 2016) has been relied upon by the Appellant.

In this case the petitioners had entered into agreements with the Builder for buying flats. They contested that agreements with builder being for purchase of immovable property, and also there being no machinery for computation of value of services if any involved in construction of a complex, there's no legislative competence to levy service tax on such a transaction.

Hon'ble High Court further found/ held: -

"39. In the present case, we find that there is no machinery provision for ascertaining the service element involved in the composite contract. In order to sustain the levy of service tax on services, it is essential that the machinery provisions provide for a mechanism for ascertaining the measure.



45. Whilst Rule 2A of the Rules provides for mechanism to ascertain the value of services in a composite works contract involving services and goods, the said Rule does not cater to determination of value of services in case of a composite contract which also involves sale of land.

53. ... neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract.

54. *Insofar as the challenge to the levy of service tax on taxable services as defined under Section 65(105)(zzzzu) [Preferential Location Service] is concerned ...we do not find any merit in the contention that there is no element of service involved in the preferential location charges levied by a builder. We are unable to accept that such charges relate solely to the location of land. Thus preferential location charges are charged by the builder based on the preferences of its customers. ... are in one sense a measure of additional value that a customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of a customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provide in the complex etc. As stated earlier, service tax is a tax on value addition and charges for preferential location in one sense embody the value of the satisfaction derived by a customer from certain additional attributes of the property developed. Such 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 the context of the complex.*

55. In view of the above, we negate the challenge to insertion of clause (zzzzu) in Sub-section 105 of Section 65 of the Act. However, we accept the Petitioners contention that no service tax under section 66 of the Act read with Section 65(105)(zzzh) of the Act could be charged in respect of composite contracts such as the ones entered into by the Petitioners with the builder. The impugned explanation to the extent that it seeks to include composite contracts for purchase of units in a complex within the scope of taxable service is set aside."

- d. The dominant intention of both the Customer and the Builder is to avail and provide construction service.
- e. PLS recovered is directly linked with the BSP (Base Sale Price) of the Property.
- f. There cannot be any separate recovery of PLS as it goes hand in hand with the Construction Service and follows as a consequence of supply of construction service.

- g. Without there being a sale of the property there can be no question of recovery of PLS; there can be no standalone existence of PLS without construction activity.
13. That, according to them (Appellant) the taxability of PLS shall be as under: -
- a. Preferential Location Charges (PLS) are liable to be included in the Construction Service charges and are subsumed within this single supply and would be chargeable at effective GST rate of 12%/ 5% and not at the residuary rate of 18%.
  - b. Without prejudice to the above, the supply of the said 2 services is a composite supply of service.
  - c. That, where buyer enters into agreement before issue of OC/CC (Occupation Certificate/ Completion Certificate) the PLS shall be chargeable to tax at the abated rate of 12%/ 5% in terms of Notification 11/2017-CT(R) dated 28.06.2017, viz. the rate applicable to Construction Service.
  - d. That, where buyer enters into agreement after issue of OC/CC (Occupation Certificate/ Completion Certificate) the PLS shall be outside the scope of a Supply.
  - e. That due to GST law being in infancy and there being ambiguities, the Appellant is paying the GST @18% on a conservative basis and has preferred Advance Ruling for clarity.
  - f. That Appellant should be allowed adjustment/ Refund of the excess paid tax.
- a. Differential Prices for Different units: The Appellant further submitted that different prices for different units within a project are recovered due to locational or other factors but there should be single/ same rate of GST.

## **II. GROUNDS OF APPEAL:**

The Appellant has pleaded the denial of personal hearing opportunity by the Advance Ruling Authority (after they missed certain number of opportunities) and the delayed communication/ passing of the Order by the Advance Ruling Authority (AAR) as the Grounds for their Appeal.

The following have been pleaded by the Appellant in their 'Grounds of Appeal':-

1. Order has been passed almost one year from the date of application: -
  - That, application has been rejected due to binding time-limitation;
  - That, it is their substantive right to receive the ruling in view of Kerala High Court's Order in the case of Government Wood Works vs. State of Kerala

- That, an order made late is as good as not made in view of Supreme Court's order in State of Andhra Pradesh vs. m Ramakishtaiah and Co.
  - That, due to order issued after expiry of time limitation, the issue has been decided in favour of assessee by Kolkata Income Tax tribunal in Shri Subrata Roy vs. Income Tax Officer
  - That on this ground the AAR Order is liable to be set aside;
2. Lack of Opportunity of being heard: -
- AAR grossly violated the principles of natural justice in passing the orders without granting personal hearing;
  - That, order so passed is liable to be quashed as did the Calcutta High Court in Kasturilal Haralal Ltd. vs. CCE which set aside and quashed the order passed without giving petitioner and opportunity of hearing;
  - That, Supreme Court has also held that this rule of fair play must not be jettisoned, in Swadeshi cotton Mills Co. Ltd. vs. Union Of India;
  - That, Supreme Court of India has further held, in R B Shreeram Durga Prasad vs. Settlement Commission that order passed in violation of principles of natural justice is of no value;

The Appellant has concluded the Grounds of Appeal in following words:

*"2.8 Therefore considering the above, the AAR has erred in passing the Order, in spite of the fact no reasonable opportunity of being heard was afforded to the Appellant. Considering the same, on this ground alone, the impugned AAR Order is liable to be set aside."*

#### ORDER of AAR

The Advance Ruling Authority (AAR) has rejected the Application for Advance Ruling holding that since it is bound to pronounce the Ruling within 90 days in terms of Section 98(6) and the Appellant is requesting for Hearing beyond that limit which cannot be granted, the Application is rejected under Section 98(2) of the CGST Act 2017.

Relevant provisions are reproduced below: -

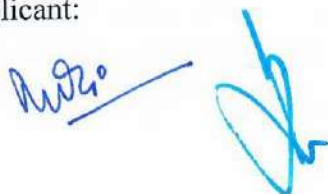
#### **"98. Procedure on receipt of application.—**

....

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:



Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

....

....

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application..

### **III. Record of Personal Hearing**

Sh. Sujit Ghosh, Advocate attended the hearing on 25.08.2021 through webex on behalf of the Applicant and represented vehemently in favour of the view in the Appeal. However no fresh points were made in furtherance of the already submitted facts or the grounds in appeal. The representation was thus limited to re-iteration of the earlier submissions and there arose no new arguments for consideration.

### **IV. DISCUSSION AND FINDINGS**

We find that the following questions were raised for Advance Ruling thereupon:

1. "Whether PLS collected along with consideration for sale of properties attracts GST rate of 12% or 18% where sale/transfer of constructed property has taken place before issuance of completion/Occupation certificate (CC/OC)?"
2. "Whether PLS collected along with consideration for sale of properties attracts GST rate of 5% or 18% where sale/transfer of constructed property has taken place before issuance of CC/OC under new projects which commence on or after 01.04.2019?"
3. "Whether PLS collected along with consideration for sale of properties is outside the scope of supply where sale/transfer of constructed property is entered into by the Applicant after issuance CC/OC?"
4. "If as per above, question, PLS attracts concessional rate of tax/exemption (whether 12% or 5% or nil as the case may be), whether, in facts and circumstances of the case, Applicant/or customers can claim adjustment/refund of the excess GST amount paid as (18% less 12%) or (18% less 5%) or (18% less Nil), as the case may be, on such charges?"
5. "In case differential prices are charged for sale/transfer of different properties/units in a real estate project due to various commercial factors such a location of apartment etc., whether GST can be charged on whole price at the similar rate i.e.12% (in case of sale before issuance of CC/OC)/5% % (in case of sale before issuance of CC/OC under new projects which commence on or after 01.04.2019)/Nil % (in case of sale after issuance of CC/OC)?"

The ground for Appeal are that rejecting of the application for Advance Ruling by the State Authority for Advance Ruling, is incorrect in law and needs to be set aside.

In the Appeal, the applicant has submitted the following also while requesting for the Rulings: -

- i) The applicant has paid GST at 18% on the sale of properties in the GST law. The GST law is in infancy and concepts there under like the concepts of 'composite supply' are in a nascent stage, there is a certain ambiguity about the taxability of PLS collected by the Applicant. Therefore the applicant has filed this advance ruling for obtaining clarity on the same.
- ii) In case of sale/transfer of constructed property before the issuance of CC/OC, the applicant is paying GST @18% on PLS since inception of the GST Law. As per applicant opinion that such charges should qualify as composite supply and should be taxable @12% or 5% or NIL as applicable. Therefore, applicant should be allowed/refund of the excess GST paid on PLS so that the benefit can be provided to the customers.
- iii) In some cases, applicant recovers lump sum price for sale/transfer of properties/units. Such lump sum price can be different for various properties/units on account of various commercial factors such as location of the property/unit. In such cases, applicant's opinion is that GST should be applicable at a single rate on lump sum prices charged even if differential prices are charged for different property/unit @ 12% or 5% or Nil as applicable on whole lump sum price.

We are taking up the issues in the Appeal, on merits.

### **Pleadings in Appeal**

Essentially, the Appellant's plea is that the providing of Preferential Location was a component of the Construction Service and was entitled for abatement of one-third from the value/ consideration of landed/ immovable property.

Also, the Appellant has expressed the view that there has to be a uniform rate applicable to the construction service which should be 5% or 12% and since they have already paid the GST rate of 18% on construction service the same needs to be refunded to them.

To understand the ground for this claim viz. 5%/ 12% GST, the scheme of taxation of construction service, and the GST rates as were applicable from time to time, need to be understood, first.

### **GST rates on Construction Service:**

The Rate of GST on Construction Service was uniformly 18% in the beginning i.e. w.e.f. 1.07.2017. The abstract of the Table of Notification 11/2017-CT(R) dated 28.06.2017 as relevant at that time, is reproduced below:

Sl No .	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
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(1)	(2)	(3)	(4)	(5)
1		Chapter 99	All Services	
2		Section 5	Construction Services	
3	<b>Heading 9954</b> (Construction services)	(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. <b><u>(Provisions of paragraph 2 of this notification shall apply for valuation of this service)</u></b>	9	-
	(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.		9	-
	(iii) construction services other than (i) and (ii) above.		9	-

The Paragraph 2 (Explanation 2) under the Notification read at that time:

*"2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.*

*Explanation .- For the purposes of paragraph 2, "total amount" means the sum total of,-*

*(a) consideration charged for aforesaid service; and*

*(b) amount charged for transfer of land or undivided share of land, as the case may be."*

Thus the Value of the Land/ Undivided portion of the Land was deemed to be the one-third of the 'Total Amount' of the property. The consideration for the Construction Service, which included the value of the Goods involved, was thus deemed to be the two-third of the total amount charged for the immovable property.

However, the Paragraph 2 was amended w.e.f. 25.01.2018 vide Notification 1/2018 (dated 25.01.2018) as under:

*"(ii) for paragraph 2, the following shall be **substituted**, namely: -*

*2. In case of supply of service specified in column (3), **in item (i)**; sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), **against serial number 3 of the Table above**, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share*

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of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

*Explanation.* –For the purposes of this paragraph, “total amount” means the sum total of,-

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.”.

Thus the earlier ambiguity was removed and no value of any Goods involved was made a component of the deemed values. Now the Value of the Land/ Undivided portion of the Land was deemed to be the one-third of the ‘Total Amount’ of the property, and consideration for the Construction Service deemed to be at two-third of the total amount charged for the immovable property..

**However Section 15 of the CGST Act and the relevant Rules meant for determination of the Value of Supply of the Construction Service still applied, after deducting the value of the land/ share of land from the ‘immovable/ landed property’ for arriving at the value of consideration for the supply (of construction service).**

The Notification 11/2017-CT (R) dated 28.06.2017 *ibid* was amended several times and entries were added or substituted, but the above position did not alter until 01.04.2019 when Notification 3/2019-CT (R) dated 29.03.2019 (made effective from 01.04.2019) split the Sr. No. (i) under Column 3 (opposite Sr. No. 3 *ibid* of the Notification) into 7 new categories such as, “Construction of Affordable Residential Apartments by a Promoter in a Residential Real Estate Project (RREP)” ; “Construction of other than Affordable Residential Apartments by a Promoter in a Residential Real Estate Project (RREP)” ; “Construction of Affordable Residential Apartments by a Promoter in a Real Estate Project (REP) other than a Residential Real Estate Project (RREP)” ; “Construction of other than Affordable Residential Apartments by a Promoter in a Real Estate Project (REP) other than a Residential Real Estate Project (RREP)” and “Construction of Commercial Apartments viz. Shops/ Offices” etc. etc.

Presently, these entries attract CGST Rates varying from 0.75% (for Affordable Residential Apartments) to 3.75% (for other than Affordable Residential Apartments) where such project commenced on or after 1.04.2019 and 6% for on-going projects on the date of Notification viz. 29.03.2019. Commercial Construction continued attracting 9% CGST (18% IGST).

With one-third of the total transacted value of an immovable property being attributable to the Land/ share of Land in view of the ‘Paragraph 2’ *ibid*, the 5% GST Rate, viz. two-third of (3.75+3.75), claimed (*supra*) by the Appellant pertains to the other than Affordable Residential Projects to commence w.e.f. 1.04.2019.

*Signature*

Similarly 12% GST Rate, viz. two-third of (9+9) claimed by the Appellant pertains to other projects including commercial projects.

#### PREFERENTIAL LOCATION SERVICE

It is clear from the Appellant's pleas that they are claiming the rates of 5% or 12% for Preferential Location service and simultaneously claiming these services as *Construction Service/ a component of Construction Service*. It is also clear that the claim includes entitlement to abatement of one-third from the value/ consideration of landed/ immovable property.

#### Whether Preferential Location Service (hereinafter PLS), is CONSTRUCTION SERVICE?

The Applicant's plea that PLS is nothing but Construction Service appears not acceptable. Despite the preferential location coming into existence as a consequence of the construction activity undertaken by the Developer, the amount charged for the Preferential Location is a consideration paid by the prospective buyer for provisioning of an exclusive service viz. of providing a location which is more preferential to a buyer of a house or commercial property even after the issue of a completion certificate.

As admittedly stated by the Appellant, the different rates of the houses can be on account of different locations. Thus premiumness of a location attracts a commensurate consideration which the buyer pays for an *identified* advantage, viz. view/ direction/ sunlight/ airiness/ vicinity/ serenity/ parking facility etc. etc., or a combination of these. This makes the provided service an exclusive service capable of providing even by a dealer in immovable property. The same therefore need not necessarily be a component of construction service.

#### CONDITIONS FOR TAXATION of PLS

Question arises whether the provisioning of Preferential Location Service (PLS) would be considered as provided even when the entire consideration for the immovable property is received after the issue of Completion Certificate or Occupation Certificate.

The answer, even prima-facie, is yes, since the service is identifiable separately from the construction service in the same way as a property agent's service is separate from the sale of a landed property or renting of a landed property.

#### PLS – Whether a Component of IMMOVABLE PROPERTY:

It may be argued here that the Service of PLS can be offered only once and the occupier/ purchaser of the flat/ immovable property cannot further offer such a service to a buyer from him, it is a component of immovable property and thus would not qualify as a Supply under GST.

In this regard the Group 99721/ SAC 997213 above may be seen. The description against the Entry 997213 reads, "*Trade services of buildings.*"

The Explanatory Notes on the SAC reads as under:

**"997213 Trade services of buildings"**

This service code includes:

- sales on own account of buildings and associated land in cases where the sales are treated as sales of trading stock by the seller, but not sales of property where the sales are disposals of the fixed assets of the selling unit

- sales of houses with associated land, multiple-dwelling buildings with associated land and individual dwelling units within such buildings, such as individual apartments or condominiums

Note: Such property can either be leasehold or freehold

This service code does not include:

- sales of vacant land, cf.997215"

The above makes it clear that when a building is being sold as a '*Stock in Trade*', the same would qualify as a Supply under GST as any other trading service. Accordingly, the related services, including PLS, would also be taxable supplies.

From the Explanatory note above also it is clear that the sales of '*Buildings and Associated Lands*' as sales of trading stock is a service. The consideration charged for providing a preferential location is, thus, clearly for the service over and above the said sales, even if it is provided by a dealer of '*stock-in-trade*' buildings.

In fact while going through the Scheme of Classification of Services notified vide Notification 11/2017-CT(R) dated 28.06.2017, one can find several Services which are integrally linked to Real Estate/ Landed Property/ Building and can only be provided through a real estate/ landed property, but are clearly identifiable as exclusive/ separate services viz. Hotel Accommodation Service (Heading: 9963, Group: 99631); Demolition Service (Heading: 9954, Group: 99543); Warehousing Service (Heading: 9967, Group: 99672) etc.

It may be pointed out here that even within a Warehouse, if provided in a portion of it, the service is *Refrigerated Storage Service*, it classifies under SAC 996721, if it is *Bulk Liquid or Gas Storage Service*, it classifies under SAC 996722 and if it is normal/ *other Storage Service*, it would classify under Heading: 9967, Group: 99672, SAC 996723.



Similarly, Preferential Location Service is integrally linked to, and is provided through, an Immovable Property/ Real Estate/ Landed Property but it is identifiable as a separate and exclusive Service.

Hon'ble High Court of Delhi, in SURESH KUMAR BANSAL Versus UNION OF INDIA [2016 (43) S.T.R. 3 (Del.)] has held the Preferential Location Service which was then defined as a taxable service under Section 65 (105) (zzzzu), as a taxable activity, -

*"54. Insofar as the challenge to the levy of service tax on taxable services as defined under Section 65(105)(zzzzu) is concerned, we do not find any merit in the contention that there is no element of service involved in the preferential location charges levied by a builder. We are unable to accept that such charges relate solely to the location of land. Thus, preferential location charges are charged by the builder based on the preferences of its customers. They are in one sense a measure of additional value that a customer derives from acquiring a particular unit. Such charges may be attributable to the preferences of a customer in relation to the directions in which a flat is constructed; the floor on which it is located; the views from the unit; accessibility to other facilities provide in the complex, etc..."*

We also note that while rendering a Preferential Location Services i.e. Direction - pool facing, park facing, corner flat; Floor - first floor, top floor, Vastu - having the bed room in a particular direction; Number - lucky numbers, there is no transfer of material from the service provider to the service recipient. Abatement is applicable where there is any transfer of materials. Thus Service Tax in respect of the PLS is applicable at full rates.

'Construction of Complexes/ Buildings' and 'Preferential Location' are separate and different activities. Usually, all the houses/floors in a complex/building may not have preferential location. Therefore, a builder may not charge the PLC (preferential location charges) in respect of all the houses/floors. Thus, Construction of a Complex, Building etc. is an independent activity/ service in itself, even without Preferential Location, and vice-versa.

#### CLASSIFICATION of PLS

The Scheme of Classification of Services (classification scheme) notified vide Notification 11/2017-CT(R) dated 28.06.2017, wherein above mentioned Services of Construction, Accommodation and Warehousing are also comprised, doesn't exclusively mention/ classify the Preferential Location Service.

However for the sake of providing a frame of reference, the Headings and the Groups and their descriptions in respect of competing/ relevant entries under the Notification, are being reproduced: -

Annexure: Scheme of Classification of Services			
S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
12	Group 99542		General construction services of civil engineering works
22	Group 99543		Site preparation services
29	Group 99544		Assembly and erection of prefabricated constructions
35	Group 99545		Special trade construction services
45	Group 99546		Installation services
54	Group 99547		Building completion and finishing services
64	Section 6		Distributive Trade Services ; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services
65	Heading 9961		Services in wholesale trade
66	Group 99611		Services provided for a fee or commission or on contract basis on wholesale trade
68	Heading 9962		Services in retail trade
69	Group 99621		Services provided for a fee or commission or on contract basis on retail trade
71	Heading 9963		Accommodation, food and beverage services
72	Group 99631		Accommodation services
76	Group 99632		Other accommodation services
80	Group 99633		Food, edible preparations, alcoholic and non-alcoholic beverages serving services
89	Heading 9964		Passenger transport services
90	Group 99641		Local transport and sightseeing transportation services of passengers
98	Group 99642		Long-distance transport services of passengers
107	Heading 9965		Goods Transport Services
108	Group 99651		Land transport services of Goods
113	Group 99652		Water transport services of goods
116	Group 99653		Air and space transport services of goods
119	Heading 9966		Rental services of transport vehicles with or without operators
120	Group 99660		Rental services of transport vehicles with or without operators
125	Heading 9967		Supporting services in transport
126	Group 99671		Cargo handling services
131	Group 99672		Storage and warehousing services
135	Group 99673		Supporting services for railway transport
138	Group 99674		Supporting services for road transport
144	Group 99675		Supporting services for water transport (coastal, transoceanic and inland waterways)
149	Group 99676		Supporting services for air or space transport
159	Heading 9968		Postal and courier services
160	Group 99681		Postal and courier services
165	Heading 9969		Electricity, gas, water and other distribution services
166	Group 99691		Electricity and gas distribution services
170	Group 99692		Water distribution and other services
174	Section 7		Financial and related services; real estate services; and rental and leasing services

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175	Heading 9971	Financial and related services
176	Group 99711	Financial services (except investment banking, insurance services and pension services)
182	Group 99712	Investment banking services
184	Group 99713	Insurance and pension services (excluding reinsurance services)
193	Group 99714	Reinsurance services
201	Group 99715	Services auxiliary to financial services (other than to insurance and pensions)
211	Group 99716	Services auxiliary to insurance and pensions
217	Group 99717	Services of holding financial assets
220	Heading 9972	Real estate services
221	Group 99721	Real estate services involving owned or leased property
227	Group 99722	Real estate services on a fee or commission basis or on contract basis
232	Heading 9973	Leasing or rental services with or without operator
233	Group 99731	Leasing or rental services concerning machinery and equipment with or without operator
241	Group 99732	Leasing or rental services concerning other goods
250	Group 99733	Licensing services for the right to use intellectual property and similar products
260	Section 8	Business and Production Services
261	Heading 9981	Research and development services
262	Group 99811	Research and experimental development services in natural sciences and engineering
267	Group 99812	Research and experimental development services in social sciences and humanities
270	Group 99813	Interdisciplinary research services
272	Group 99814	Research and development originals
278	Heading 9982	Legal and accounting services
279	Group 99821	Legal services
286	Group 99822	Accounting, auditing and bookkeeping services
291	Group 99823	Tax consultancy and preparation services
294	Group 99824	Insolvency and receivership services
296	Heading 9983	Other professional, technical and business services
297	Group 99831	Management consulting and management services; information technology services
305	Group 99832	Architectural services, urban and land planning and landscape architectural services
314	Group 99833	Engineering services
324	Group 99834	Scientific and other technical services
334	Group 99835	Veterinary services
338	Group 99836	Advertising services and provision of advertising space or time
345	Group 99837	Market research and public opinion polling services
348	Group 99838	Photography and videography and their processing services
356	Group 99839	Other professional, technical and business services
365	Heading 9984	Telecommunications, broadcasting and information supply services
366	Group 99841	Telephony and other telecommunications services
373	Group 99842	Internet telecommunications services
379	Group 99843	On-line content services
385	Group 99844	News agency services
389	Group 99845	Library and archive services
393	Group 99846	Broadcasting, programming and programme distribution services
400	Heading 9985	Support services
401	Group 99851	Employment services including personnel search, referral service and labour supply service
410	Group 99852	Investigation and security services

420	Group 99853	Cleaning services
430	Group 99854	Packaging services
435	Group 99855	Travel arrangement, tour operator and related services
444	Group 99859	Other support services
454	Heading 9986	Support services to agriculture, hunting, forestry, fishing, mining and utilities
455	Group 99861	Support services to agriculture, hunting, forestry and fishing
462	Group 99862	Support services to mining
465	Group 99863	Support services to electricity, gas and water distribution
470	Heading 9987	Maintenance, repair and installation (except construction) services
471	Group 99871	Maintenance and repair services of fabricated metal products, machinery and equipment
481	Group 99872	Repair services of other goods
490	Group 99873	Installation services (other than construction)
498	Heading 9988	Manufacturing services on physical inputs (goods) owned by others
499	Group 99881	Food, beverage and tobacco manufacturing services
509	Group 99882	Textile, wearing apparel and leather manufacturing services
513	Group 99883	Wood and paper manufacturing services
516	Group 99884	Petroleum, chemical and pharmaceutical product manufacturing services
520	Group 99885	Rubber, plastic and other non-metallic mineral product manufacturing service
524	Group 99886	Basic metal manufacturing services
526	Group 99887	Fabricated metal product, machinery and equipment manufacturing services
534	Group 99888	Transport equipment manufacturing services
537	Group 99889	Other manufacturing services
546	Heading 9989	Other manufacturing services; publishing, printing and reproduction services; materials recovery services
547	Group 99891	Publishing, printing and reproduction services
550	Group 99892	Moulding, pressing, stamping, extruding and similar plastic manufacturing services
552	Group 99893	Casting, forging, stamping and similar metal manufacturing services
556	Group 99894	Materials recovery (recycling) services, on a fee or contract basis
559	Section 9	Community, social and personal services and other miscellaneous services
560	Heading 9991	Public administration and other services provided to the community as a whole; compulsory social security services
561	Group 99911	Administrative services of the government
566	Group 99912	Public administrative services provided to the community as a whole
576	Group 99913	Administrative services related to compulsory social security schemes
581	Heading 9992	Education services
582	Group 99921	Pre-primary education services
584	Group 99922	Primary education services
586	Group 99923	Secondary Education Services
589	Group 99924	Higher education services
594	Group 99925	Specialised education services
596	Group 99929	Other education and training services and educational support services
603	Heading 9993	Human health and social care services
604	Group 99931	Human health services
613	Group 99932	Residential care services for the elderly and disabled
616	Group 99933	Other social services with accommodation
621	Group 99934	Social services without accommodation for the elderly and disabled

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624	Group 99935	Other social services without accommodation
629	Heading 9994	Sewage and waste collection, treatment and disposal and other environmental protection services
630	Group 99941	Sewerage, sewage treatment and septic tank cleaning services
633	Group 99942	Waste collection services
638	Group 99943	Waste treatment and disposal services
642	Group 99944	Remediation services
647	Group 99945	Sanitation and similar services
650	Group 99949	Others
652	Heading 9995	Services of membership organisations
653	Group 99951	Services furnished by business, employers and professional organisations Services
656	Group 99952	Services furnished by trade unions
658	Group 99959	Services furnished by other membership organisations
668	Heading 9996	Recreational, cultural and sporting services
669	Group 99961	Audiovisual and related services
675	Group 99962	Performing arts and other live entertainment event presentation and promotion services
680	Group 99963	Services of performing and other artists
684	Group 99964	Museum and preservation services
687	Group 99965	Sports and recreational sports services
691	Group 99966	Services of athletes and related support services
694	Group 99969	Other amusement and recreational services
700	Heading 9997	Other services
701	Group 99971	Washing, cleaning and dyeing services
708	Group 99972	Beauty and physical well-being services
713	Group 99973	Funeral, cremation and undertaking services
716	Group 99979	Other miscellaneous services
723	Heading 9998	Domestic services
724	Group 99980	Domestic services
726	Heading 9999	Services provided by extraterritorial organisations and bodies
727	Group 99990	Services provided by extraterritorial organisations and bodies

Accordingly, for classifying the Preferential Location Service (PLS), the competing entries are reproduced along with their *Services Accounting Codes* (SAC) and the *Descriptions*, for examination: -

**Construction Services of Buildings** (Heading 9954/ Group 99541):

4	<b>Group 99541</b>	<b>Construction services of buildings</b>
5	995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6	995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7	995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8	995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9	995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10	995416	Construction services of other buildings nowhere else classified
11	995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the buildings covered above

As may be seen, the construction service is the construction simplicitor whether in respect of single or multiple dwelling units or residential or

commercial buildings. In the Scheme of Classification, the service of provisioning of preferential location is not classified/ classifiable under construction service. Also, as discussed supra, the PLS service can be offered/ provided even after issue of CC/ OC i.e. at the time of selling of the immovable property and thus would fall beyond the scope of Construction Service.

**Building Completion & Finishing Services** (Heading: 9954/ Group 99547):

54	<b>Group 99547</b>	<b>Building completion and finishing services</b>
55	995471	Glazing services
56	995472	Plastering services
57	995473	Painting services
58	995474	Floor and wall tiling services
59	995475	Other floor laying, wall covering and wall papering services
60	995476	Joinery and carpentry services
61	995477	Fencing and railing services
62	995478	Other building completion and finishing services nowhere else classified
63	995479	Services involving repair, alterations, additions, replacements, maintenance of the completion/finishing works covered above

From the descriptions it is clear that the Preferential Location Service cannot be classified under the above Group/ any of the above Accounting Codes.

**Real Estate Services** (Heading 9972):

220	<b>Heading 9972</b>	<b>Real estate services</b>
221	<b>Group 99721</b>	<b>Real estate services involving owned or leased property</b>
222	997211	Rental or leasing services involving own or leased residential property
223	997212	Rental or leasing services involving own or leased non-residential property
224	<b>997213</b>	<b>Trade services of buildings</b>
225	997214	Trade services of time-share properties
226	997215	Trade services of vacant and subdivided land
227	<b>Group 99722</b>	<b>Real estate services on a fee or commission basis or on contract basis</b>
228	997221	Property management services on a fee or commission basis or on contract basis
229	997222	Building sales on a fee or commission basis or on contract basis
230	997223	Land sales on a fee or commission basis or on contract basis
231	997224	Real estate appraisal services on a fee or commission basis or on contract basis

From the above description of entries under *Real Estate Services* it is clear that PLS would classify under Group 99722 and the SAC **997222 or 997223**.

**CLASSIFICATION:**

The most appropriate entry wherein the instant Service, viz. to be provided by M/s. DLF Ltd., is classifiable is Heading 9972, Group 99722 and Service Accounting Code (SAC) 997222 viz. "*Building sales on a fee or commission basis or on contract basis*". Where the sale of a piece of land is being made as a 'stock in trade' the preferential location service shall classify under SAC 997223 viz., "*Land sales on a fee or commission basis or on contract basis*".

*Autre*



220	<b>Heading 9972</b>	<b>Real estate services</b>
221	<b>Group 99721</b>	<b>Real estate services involving owned or leased property</b>
222	997211	Rental or leasing services involving own or leased residential property
223	997212	Rental or leasing services involving own or leased non-residential property
224	<b>997213</b>	<b>Trade services of buildings</b>
225	997214	Trade services of time-share properties
226	997215	Trade services of vacant and subdivided land
227	<b>Group 99722</b>	<b>Real estate services on a fee or commission basis or on contract basis</b>
228	997221	Property management services on a fee or commission basis or on contract basis
229	997222	Building sales on a fee or commission basis or on contract basis
230	997223	Land sales on a fee or commission basis or on contract basis
231	997224	Real estate appraisal services on a fee or commission basis or on contract basis

#### GST RATE:

The SAC 997222 attracts the GST rate of 18% (CGST 9% + SGST 9%), as provided vide the respective Notifications under IGST/ CGST. The relevant entry of Notification 11/2017-Central Tax (R) dated 28.06.2017, as it stands on this date after amendment vide Notification 01/2018-CT(R) dated 25.01.2018, is reproduced below for ready reference:

Table Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	<b>Chapter 99</b>	<b>All Services</b>		
16	<b>Heading 9972</b>	(i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land.	Nil	-
		(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); sub-item (b), sub-item (c), subitem (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi). Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	Nil	-
		(iii) Real estate services other than (i) and (ii) above.	9	-

Further, the Hon'ble AAAR, West Bengal [in Appeal Case No. 09/WBAAAR/APPEAL/2019 - Bengal Peerless Housing Development Company. In re (2019) 110 taxmann.com - 34/76 GST 701 (AAAR-West Bengal)] decided on September 25, 2019, has held as under:

***“Preferential Location Service is attributable to the choice of the purchaser in respect of floor rise and directional advantage.***

**Hence, it is evident that Preferential Location Service cannot be treated as naturally bundled with construction service in the ordinary course of business.**

**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 and cannot be deemed to be applicable in respect of Preferential Location Service, which is altogether a separate service having no association with the land.**

*It is clear from the categorization that Preferential Location Service should come under Serial No. 3(iii) of the Services Rate Notification No. 11/2017-Central tax (Rate) dated 28.06.2017 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 Serial No. 3(i) of the Services Rate Notification has been allowed under Paragraph 2 of the said Notification. No abatement has been provided for service mentioned under Serial No. 3(iii) of the Rate Notification."*

Thus, the AAAR West Bengal has recognized the ibid PLS service as a service distinct from construction service and that no abatement is applicable on the value of PLS realized separately from the buyers.

However we tend to differ as to the exact classification of the PLS Service and hold that the same classifies under SAC 997222 and attracts the rate of 18% (9% under CGST Act vide Entry (iii) under Column (3) against the Serial Number '16' of the Notification 11/2017-CT(R) dated 28.06.2017 as amended.

## **V. ORDER / RULING**

For the discussion on Rulings/ Answers to the Questions on which Advance Rulings have been requested, the sub-Para titled, "GST rates on Construction Service" under the preceding major Para **IV.** titled as, '**DISCUSSION AND FINDINGS**' may be seen.

The Rulings are, however, as given under: -

### **QUESTION-1**

"Whether PLS collected along with consideration for sale of properties attracts GST rate of 12% or 18% where sale/transfer of constructed property has taken place before issuance of completion/Occupation certificate (CC/OC)?"

RULING:



PLS collected along with consideration for sale of properties attracts GST rate of 18% where sale/transfer of constructed property has taken place before issuance of completion/Occupation certificate (CC/OC).

QUESTION-2

"Whether PLS collected along with consideration for sale of properties attracts GST rate of 5% or 18% where sale/transfer of constructed property has taken place before issuance of CC/OC under new projects which commence on or after 01.04.2019?"

RULING:

PLS collected along with consideration for sale of properties attracts GST rate of 18% where sale/transfer of constructed property has taken place before issuance of completion/Occupation certificate (CC/OC) under new projects which commence on or after 01.04.2019.

QUESTION-3

"Whether PLS collected along with consideration for sale of properties is outside the scope of supply where sale/transfer of constructed property is entered into by the Applicant after issuance CC/OC?"

RULING:

No. The PLS collected along with consideration for sale of properties where sale/transfer of constructed property is entered into by the Applicant after issuance CC/OC, is not outside the scope of supply.

QUESTION-4

"If as per above question, PLS attracts concessional rate of tax/exemption (whether 12% or 5% or nil as the case may be), whether, in facts and circumstances of the case, Applicant/or customers can claim adjustment/refund of the excess GST amount paid as (18% less 12%) or (18% less 5%) or (18% less Nil), as the case may be, on such charges?"

RULING:

No. The Applicant/or customers cannot claim adjustment/refund of the GST amount paid as there cannot be any excess GST) paid in respect of the SAC 99799 which attracts the GST rate of 18% (CGST 9% + SGST 9%).

QUESTION-5

"In case differential prices are charged for sale/transfer of different properties/units in a real estate project due to various commercial factors such a location of apartment etc., whether GST can be charged on whole price at the similar rate i.e.12% (in case of sale before issuance of CC/OC)/5% % (in case of sale before issuance of CC/OC under new projects which commence on or after 01.04.2019)/Nil % (in case of sale after issuance of CC/OC)?"

RULING:

No. The Preferential Location Service is a separate service than Construction Service. Therefore for determining the Value of the same, the Paragraph-2 ibid to the Notification 11/2017-CT(R) dated 28.06.2017 which is applicable exclusively to the Construction Service, shall not be applicable.



**(Shekhar Vidyarthi)**  
Member (SGST)



**(Rajesh Sodhi)**  
Member (CGST)

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**Copy to:**

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2. Assistant Commissioner, Division-East 2, CGST Gurugram, Plot No. 24, Sector 32, Gurugram, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Gurugram.