

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. M. Rammohan Rao, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD2702210064989
GSTIN Number, if any/ User-id	27AAACU6053C1ZL
Legal Name of Applicant	M/s. United Breweries Limited
Registered Address/Address provided while obtaining user id	United Breweries Limited, Plot No. M1, MIDC, Taloja, Tal-Panvel, Raigad, Maharashtra-410206
Details of application	GST-ARA, Application No. 78 Dated 22.02.2021
Concerned officer	RAI-VAT-E-004, Raigad
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Registered tax payer
	United Breweries Limited (herein after referred to as the 'Applicant') a registered Company having their registered office at UB City, No. 24, Vittal Mallya Road, Bengaluru-560001 is engaged in the manufacture of Beer under various brand names such as "Kingfisher", "UB Export", "Kalyani" etc. The applicant is a leading manufacturer of Beer in the country. The applicant is also engaged in the manufacture of bottled drinking water under the brand name "Kingfisher". The applicant is primarily involved in the manufacture and supply of Beer under various Trade Marks (Brands) out of its own Units located in various States.
Issue/s on which advance ruling required	<ul style="list-style-type: none"> Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 78/2020-21/B- 109

Mumbai, dt. 01/12/2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by **M/s. United Breweries Limited**, the applicant, seeking an advance ruling in respect of the following question.



Whether assignment/transfer of leasehold rights in land & structures standing there by the applicant to M/s. Greenscape IT Park LLP would qualify as 'supply' and liable to GST and if so, then under which section of GST Act?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

The submissions made by M/s United Breweries Limited, the Applicant, are as under:-

- 2.1 *The Applicant, engaged in the manufacture of Beer & bottled drinking water had a lease hold land measuring 24,300 Sq. mtrs., which was leased out to them by the Maharashtra Industrial Development Corporation (MIDC). The applicant was holding this long term leased property, after obtaining necessary approvals, permissions, Commencement certificate from MIDC/NMMC and concerned Authorities, have constructed Industrial structures thereon as per the approved building Plans. The applicant had also obtained building Completion Certificate from MIDC.*
- 2.2 *The applicant has executed an agreement dated 24.12.2020 known as “Deed of Assignment Cum Transfer” by virtue of which applicant have agreed to transfer its rights over the land & structures standing thereon to M/s. Greenscape IT Park LLP ('Greenscape' for short) for an un-expired lease period viz. more than 30 years for an agreed consideration of Rs. 72, 90, 00,000/-.*
- 2.3 *The Applicant had also obtained NOC and complied with all terms and conditions as mentioned in MIDC Order dated 02nd March 2020 before execution of “Deed of Assignment Cum Transfer”.*

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW APPLICANT'S INTERPRETATION

- 2.4 *The applicant submits that a taxation statute has to be construed strictly & any ambiguity must be construed in favour of assessee. Under GST Laws, since the charge is on supply of Goods or Services, to attract the levy the item being supplied should satisfy the test of goods or services.*
- 2.5 *The terms 'goods' defined in section 2(52) of the CGST Act, 2017 and the term 'service' is defined in Section 2(102) of the CGST Act, 2017. Further, the term 'supply' as per Section 7 of the CGST Act, 2017.*
- 2.6 *A lease is a grant of right to enjoy the property as per Section 105 of the Transfer of Property Act, 1882.*
- 2.7 *An assignment is a transfer of any right. The meaning of the term 'Assignment' as per 'Black's Law Dictionary' is as under:
“The act of transferring to another all or part of one's property, interest, or rights. A transfer or making over to another of the whole of any property, real or perpetual, in possession or in relation, or of any estate or rights therein. It includes transfers of all kinds of property (Higgins v. Monokton, 28 Cal. App 2nd 723, 83 F 2d 516, 519) including negotiable instruments. The transfer by a party of all of its rights to some kind of property, usually intangible property such as rights in a lease,*



mortgage, agreement of sale or a partnership. Tangible property is more often transferred by possession and by instruments conveying title such as a deed or a bill of sale.”

- 2.8 It can be seen from the above that assignment is transfer of one's property, interest or rights. In general, transfer of rights in real property or Personal property to another that gives the transferee the rights that the owner or holder of the property i.e. the transferor had prior to such transfer.
- 2.9 A co-joint reading of the above makes it clear that there is no sale or supply of goods in this case and the transaction relates to transfer of a right to enjoy immovable property.
- 2.10 It can be seen from the definition of immovable property as per Section 3(26) of General Clauses Act, 1897, the phrase 'benefits to arise out of land' is relevant to the instant case. Benefits arise out of land is nothing but the interest in land.
- 2.11 The applicant submits that lease simplicitor alone should attract levy of GST. Assignment of leasehold rights on land, on the other hand, is nothing but the transfer of immovable property akin to the sale of land and buildings and no GST is leviable on such assignments.
- 2.12 'Sale' means the transfer of property or title for a price. Assignment of the leasehold rights effectively transfers possession, title and interest to the assignee for a price. It is nothing but akin to sale of immovable property and out of the purview of GST.
- 2.13 It is further submitted that the very nature of service excludes circumstances in which title is transferred in a thing (movable or immovable). Hence, assignment can never be construed as service unless it is expressly deemed to be so in the statute for the purposes of taxation, subject, of course, to the validity of the said provision if it deems it so. Renting of immovable property is one such instance that is as a supply of service by expressly including it as a supply of service by the Act. In the absence of such inclusion, since assignment of lease amounts to transfer of a right to enjoy immovable property and amounts to creation of an interest in the property, it is outside the scope of taxation of under the Act.
- 2.14 The applicant submits the decision of Hon'ble Authority of Advance Ruling, West Bengal in the case of IN RE: M/S ENFIELD APPARELS LTD cannot be referred in as much as:
- It is specific to the facts of that case;
 - The said ruling is binding only intra party thereto;
 - The implications of the provisions of the Transfer of Property Act, 1882, which have a direct bearing on the issue in this case have neither been canvassed nor considered.

Additional submission dated 09.11.2021:-

- 2.15 'Supply includes all forms of supply other than supply specified in Schedule III of the CGST Act. The heading / title of Schedule III is "Activities or Transactions Which Shall Be Treated Neither as a Supply of Goods or a Supply of Services". Given this, the activities/ transactions covered under Schedule III cannot be treated as 'goods' or 'services'. Accordingly, activities specified in Schedule III of CGST Act are outside the purview of GST. Sr. no. 5 of the said Schedule III prescribes as under: **'5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building'**
- 2.16 Given the aforesaid, GST is not leviable on:
- Sale of land
 - Sale of building (post Completion Certificate)

In the instant case, there is transfer of completed building with value of INR 29,75,67,480/- (on which Stamp Duty is calculated)



- 2.17 Further, the principle of law is that what is exempted cannot be taxed indirectly. It is a well settled principle that if there is specific entry provided in the statute then the specific provision would prevail over the other general provision.
- 2.18 Reliance in this regard is placed on the case of CCE, Ludhiana v. Dr. Lal Path Lab (P) Ltd. [2007 (11) STT 307 (Punj. & Har.) = 2007 (8) S.T.R. 337 (P & H)]
- 2.19 In the instant case as a completed 'building' was transferred, the transfer of the said building should not be subject to GST.

Transaction is covered under Not. No. 41/2017-GST

- 2.20 Not. No. 12/2017-CT, as amended from time to time, provides as under:

SI NO.	Chapter, Section, Heading, Group or Service (Tariff Code)	Description of Services	Rate (Per cent.)	Conditions
41	Heading 9972	(Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having [20] per cent, or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.]	Nil	-----

- 2.21 It may be noted that to avail the exemption following conditions need to be satisfied:

SR	Condition	Remarks
1	Amount payable should be in respect of service by way of granting of long term lease of thirty years, or more)	Yes, its for more than 30 years
2	It should be, inter-alia, for industrial plots provided by the State Government, Industrial Development Corporations etc	Yes, its industrial plot provided by Maharashtra Industrial Development Corporation (MIDC)

- 2.22 As the conditions are satisfied, applicant is entitled for the exemption in the instant case.

Additional submissions dated 25.11.2021:-

- 2.23 Applicant refers to the Advance Ruling Hearing held on 9th November 2021 wherein the Authority has requested additional submissions regarding the maintainability of the application at the time of the final hearing. In this regard, the additional submissions are as under:
- 2.24 Section 97(2) (g) of CGST Act provides as below:

"Section 97. Application for Advance Ruling

- (2) The question on which the advance ruling is sought under this Act, shall be in respect of, -



(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term”

It can be observed that the word "done" in section 97(2) (g) aforesaid suggests something which is completed or finished.

- 2.25 Further, the advance ruling can be submitted in respect of an activity which is being undertaken' and the instant activity is an ongoing supply, as the amount collected, although one time, is towards long-lease of more than 30 years. Given the aforesaid, applicant requests to admit and help the taxpayer to decipher the issue under consideration.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSIONS DATED 28.10.2021:-

- 3.1 The applicability of the General Clauses Act, 1897 in the context of a Special Act like the CGST Act, 2017, is limited to areas where no express provisions are made under the said Special Act.
- 3.2 Section 7 (1A) read with Schedule II under the GST Act provides which of such supplies shall be treated as supply of goods or services. Paragraph 2 of Schedule II provides that with respect to transactions relating to land and buildings, any lease, tenancy, easement, license to occupy the land, letting out of a building including a commercial, industrial or residential complex for business or commerce is the supply of services. In other words, benefits arising from land in the forms specified in paragraph 2 of Schedule II are not to be treated as transactions in immovable property but as the supply of service for the purpose of the GST Act. It is observed from the impugned deed of assignment cum transfer, that there is the transfer of lease rights. The applicant can, therefore, transfer to the assignee only his right to receive the service of the lease for the unexpired period after obtaining prior approval of the MIDC on payment of the transfer fee.
- 3.3 From the facts of the case, it is evident that MIDC who owns the land has leased the allocated land to applicant for a period of 99 years, who, by virtue of the lease conditions, does not possess the right to sub-let any part or whole of the property leased to them. However, the applicant may transfer the leasehold rights to any other person with the approval of MIDC. Thus, it is clear that the applicant holds the leasehold rights which he may agree to transfer to any other person but the applicant cannot transfer the leasehold rights to such person on his own. The only option that exists for the applicant is to request MIDC to approve such an agreement entered into by the applicant with the other person and request MIDC to approve and execute the modified deed of the lease for the remaining period. Accordingly, Applicant had agreed to transfer leasehold rights held by them in respect of the land to GREENSCAPE IT PARK LLP (GREENSCAPE), for consideration and MIDC has approved the request and stipulated the payment of the differential cost of land & processing fees by applicant Ltd and thereupon to execute the modified lease deed by both United Breweries Ltd and GREENSCAPE for their respective leaseholds.
- 3.4 In the case at hand, the applicant, vide the agreement has agreed to transfer their interests in the leasehold rights held by them, to GREENSCAPE. Since as per the lease deed executed between MIDC and itself, the applicant can transfer their interests in the land leased to them only with the approval of MIDC. If the approval had been denied by MIDC, then the applicant would not be able to transfer their interests. In the agreement, the conditions of supply are made exclusively by



applicant & GREENSCAPE. As the applicant can transfer their interests only with the approval of MIDC, the compensation for parting with the interests is definitely a consideration for agreeing to transfer the interests held by applicant in the leasehold. The transaction is not a transfer of leasehold as United Breweries Ltd by the clauses of Lease deed executed with MIDC is not permitted to sub-lease without the approval of MIDC. The activity of applicant as seen from the impugned agreement executed & the approval letter of MIDC, is only a transaction in which United Breweries Ltd agrees to transfer the leasehold interests it possesses for the remaining lease period in favor of GREENSCAPE with the approval of MIDC in respect of the land required by GREENSCAPE. Therefore, the activity is not a transfer of leasehold rights by United Breweries Ltd to GREENSCAPE but is an activity of agreeing to transfer the leasehold interests that the United Breweries Ltd holds on the land to be leased to GREENSCAPE by MIDC. The modified lease deed is also executed by United Breweries Ltd and GREENSCAPE independently with MIDC and GREENSCAPE is to pay the differential cost of lease rentals and processing charges to MIDC, as seen from the approval letter of MIDC. The above, clearly establishes that the activity undertaken by United Breweries Ltd in agreeing to transfer the interests of the leasehold rights in the land required by GREENSCAPE for the furtherance of their business, against a consideration is an activity of 'agreeing to do an act, which is a taxable service classifiable under 'Other Miscellaneous Services', with SAC 9997.

3.7 Since the applicant, apart from the conditional possession of the said Premises, enjoys no title or ownership, the assignment, therefore, does not amount to transfer of any benefit other than leasehold rights in terms of the Deed for the unexpired period of the lease and is no transfer of any immovable property in the context of the GST Act.

3.6 The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed stand extinguished. Neither does it create fresh to benefit from land other than the leasehold right. It is like compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable @ 18% under SI No. 35 of Notification No. 11/2017 – CTR dt 28/06/2017, as amended from time to time.

3.7 Further, the question that, Whether assignment/transfer of leasehold rights in land & structures standing thereon by the applicant would qualify as 'supply and liable to GST and if so, then under which section of GST Act has already been decided by the West Bengal Authority for Advance Ruling in case of M/s ENFIELD APPARELS LTD. In this case, the applicant, the activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favor of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable @ 18%.

In view of this above discussion, the activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favor of the assignee. It is a service classifiable under "Other miscellaneous service" (SAC 999792) and taxable @ 18% under SI No.35 of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time.



04. HEARING

- 4.1 Preliminary e-hearing in the matter was held on 09.11.2021. Authorized representatives of the applicant, Shri. Sujan Devaraju and Shri. Pritam Mahure learned CA, were present. Jurisdictional officer was absent. The Authorized Representatives made oral submission with respect to admission of their application. It is brought to the notice of the applicant that the Applicant has sought Advanced Ruling for past transaction. As per Section 95(a) of GST Act, the application is not maintainable. The applicant was directed to submit relevant agreement copies, documents and written submission regarding maintainability of application before or at the time of final hearing. The application was admitted for further process.
- 4.2 Final part e-hearing was held on 1.11.2022. Authorized representative of the applicant, Shri. Pritam Mahure, Learned CA & Shri. Sujan Devaraju, Learned Tax Head were present. The Jurisdictional officer Shri. Vivekanand Sawale, Deputy Commissioner RAI-E-004, was present. Applicant was heard.

05. OBSERVATIONS AND FINDINGS:

- 5.1 We have gone through the facts of the matter, documents on record and submissions made by the applicant as well as the jurisdictional officer.
- 5.2 The Applicant has transferred its lease rights in respect of lease hold land measuring 24,300 Sq. Mtrs., which was leased out to them by the Maharashtra Industrial Development Corporation (MIDC), to M/s. Greenscape IT Park LLP under an agreement dated 24.12.2020 known as “Deed of Assignment Cum Transfer” (by virtue of which applicant have agreed to transfer its rights over the land & structures standing thereon) for an agreed consideration of Rs. 72, 90, 00,000/-.
- 5.3 During the course of the Final Hearing, the applicant stated that the consideration amount of Rs. 72,90,00,000/- was received by them prior to the date of filing of this application. On the question of maintainability of the application, the applicant has submitted that the subject application is maintainable because it is in respect of an activity which is being undertaken and the instant activity is an ongoing supply, as the amount collected, although one time, is towards long-lease of more than 30 years.
- 5.4 Since the applicant has submitted that the impugned supply of service is ongoing and has not been completed, we refer to Section 13 of the CGST Act, 2017 which deals with the ‘time of supply of service’.

13. Time of Supply of Services. —



CA

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) the date of receipt of payment shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a); or

(b)

Provided that

Provided further that

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or



(b) in any other case, be the date on which the tax is paid.

(6)

- 5.5 As per the provisions of Section 13 (2) mentioned above, the time of supply of services in the instant case is the date of receipt of payment by the applicant and as per the submissions made by the applicant, the date of receipt of payment against the impugned supply of services is much prior to the date of filing of the subject application. In view of the same we find that the supply has been completed prior to the date of filing of the subject application.
- 5.6 We now reproduce relevant clause (a) of Section 95 of the CGST Act defines 'advance ruling' which is as under:-
- (a) "Advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant*
- 5.7 As per Section 95 a there are two conditions to be fulfilled for making an advance ruling application: firstly, the question asked should be in relation to supply undertaken by the applicant and secondly the question should be in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
- 5.8 We find that in the subject case, the first condition mentioned above is satisfied in as much as it is the applicant who has provided the impugned services.
- 5.9 Further, with respect to the second condition for the supply 'to be undertaken or proposed to be undertaken' we observe that the applicant has executed the subject agreement on 24.12.2020 known as "**Deed of Assignment Cum Transfer**" by virtue of which applicant have agreed to transfer its rights over the land & structures standing thereon to M/s. Greenscape IT Park LLP ('Greenscape' for short) for an un-expired lease period viz. more than 30 years for an agreed consideration of Rs. 72, 90, 00,000/- which has also been received by the applicant prior to the date of filing of the subject agreement i.e. 22.02.2021.
- 5.10 Hence we find that, on the date on the filing of the subject application the subject supply was already completed (in all respects) and was neither being undertaken, nor was proposed to be undertaken.
- 5.11 In view of the above facts we find that the applicant/application does not satisfy the conditions of Section 95 of the CGST Act, 2017 and the application is, therefore, rejected as being not maintainable.



06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question asked: Whether assignment/transfer of leasehold rights in land & structures standing there by the applicant to M/s. Greenscape IT Park LLP would qualify as 'supply' and liable to GST and if so, then under which section of GST Act?

Held: Based on the submissions made by the applicant and hearings conducted, the subject application is rejected as being non-maintainable as per Section 95 of the CGST Act, 2017 because the questions raised by the applicant are in respect of past and completed supply as on the date of the application and not supply, which is being undertaken/proposed to be undertaken.




M. RAMMOHAN RAO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.