

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Shafeeq S, Joint Commissioner, CGST & CX Jaydip Kumar Chakrabarti, Senior Joint
Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	TCG Urban Infrastructure Holdings Private Limited
Address	Beta Building, Bengal Intelligent Park, Ground floor, Plot A2, M2, N2, block EP and GP, Salt Lake Electronic Complex, Salt Lake Sector V, 700091
GSTIN	19AADCS8821M1ZS
Case Number	WBAAR 12 of 2024 (Allotted at the time of first WBAAR application by the applicant)
ARN	AD1906240090557 dated 17.06.2024 (The application was disposed by the West Bengal Authority for Advance Ruling on 14.01.2025 vide order No. 18/WBAAR/24-25 against which the revenue filed appeal and the West Bengal Appellate Authority for Advance Ruling remanded back the case for fresh hearing)
Earlier Date of application	June 24, 2024

Jurisdictional authority (State)	Barasat Charge
Jurisdictional authority (Centre)	Bidhannagar Division, Kolkata North Commissionerate
Present Order number and date	13/WBAAR/2025-26 dated 14.11.2025
Applicant's representative heard	Mr. Priyajit Ghosh, C.A Mr. Vikash Agarwal, CA Ms. Yamini Agarwal, C.A

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression "GST Act" would mean the CGST Act and the WBGST Act both.

1.2 The TCG Urban Infrastructure Holdings Private Limited is a real estate development and investment company engaged in development, construction, leasing and sale of commercial properties and providing the fit-outs and related infrastructure on hire to various tenants of the properties held by Bengal Intelligent Parks Private Limited (BIPPL) and BIP Developers Private Limited, subsidiaries of the Applicant in India and providing related consultancy services.

TCG Urban Infrastructure Holdings Private Limited wishes to understand the appropriate classification of service for hiring of fitted assets and corresponding rate of GST to be charged on such provision of service. Hiring of fitted assets inter-alia includes air-conditioning system, fire sprinkler system, DG Sets, electric installations etc.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling in respect of following questions:

What would be the proper classification of the services being provided by the applicant by way of supplying fitted assets on hire basis and the corresponding rate of GST from the below options:

- (a) Whether the said service will be covered by serial no 17(iii) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 under SAC 997314, attracting a GST Rate of 28% which the Applicant has been following since inception of GST; or
- (b) Whether the said service will be covered by serial no 17(viii) of the Notification No. 11/2017– Central Tax (Rate) dated 28.06.2017 classified as "leasing or rental services concerning

- office machinery and equipment (except computers) with or without operator” under SAC 997314, attracting a GST Rate of 18% as recently held by the West Bengal Authority for Advance Ruling in the case of Sun Knowledge Private Limited vide Order No. 29/WBAAR/2023-24 Dated 31.01.2024; or
- (c) Whether the service will be classified under SAC 998599 under the category ‘Support Service’, attracting a GST Rate of 18%; or
- (d) Any other classification as the Hon’ble authority may deem fit.

1.4 The applicant filed the first advance ruling application on 24.06.2024 and the application was disposed by the authority vide order no 18/WBAAR/24-25 dated 14.01.2025. Being aggrieved by the decision of the WBAAR, Bidhannagar Division under Kolkata North Commissionerate, CGST & CX preferred an appeal vide case no 01/WBAAAR/APPEAL/2025 dated 12.02.2025 to the Appellate Authority. The West Bengal Appellate Authority for Advance Ruling passed its order on 13.05.2025 setting aside advance ruling order no 18/WBAAR/24-25 dated 14.01.2025 and remand the case to the WBAAR for fresh decision after considering all aspects of the matter.

In this context, this authority has heard the case again on 16.07.2025.

2. Submission of the Applicant

2.1. The applicant states that prior to 01 April 2020, the activities of providing fit-outs and related infrastructure support to various tenants of the properties held by BIPPL and BIPD were provided by M/s Boulevard Services Private Limited (BSPL), another subsidiary of the Applicant. The Board of Directors of BSPL at its meeting on 28th May 2020 had approved a scheme of amalgamation whereby BSPL is merged with the Applicant vide the order number 121/KB/2021 dated 16th March 2022.

2.2 The applicant states that by a Deed of Lease dated 19th January, 1987 registered at the office of the Registrar of Assurances, Kolkata on 21st February 1987, the Governor of the State of West Bengal has granted to West Bengal Electronics Industry Development Corporation Limited (WEBEL) a lease for a period of 999 years of 87.555621 acres more or less of a plot of land in Block EP and GP in Sector V of Bidhannagar in the district of North 24 Parganas. The lease was granted with the object of developing the demised land for setting up of Electronics Industries. WEBEL has divided the demised land into diverse plots and has allotted the same for the purpose of setting up Electronics Industries.

2.3 The applicant states that WEBEL, by issuance of an Allotment Letter dated 24th May 1999 and by entering into the Deed of Sub Lease dated 05th November 2002, granted a sub lease of Plot Nos. A2, M2 and N2 for a term of 90 years exclusively for the purpose of setting up of an Electronics industry. This sub lease was granted to the Bengal Intelligent Parks Private Limited (BIPPL) with an option to WEBEL to renew the sub lease before expiry of sub lease for two further terms of 90 years each, provided BIPPL did not breach the covenants of the sub lease.

2.4 Under the deed of sub lease, BIPPL has also been authorized and permitted by WEBEL to grant further sub leases/ licenses in the proposed building or buildings constructed or buildings to be constructed on the sub demised land provided the intending sub lessees/ tenants etc. shall use the said built up space for setting up of electronics industries exclusively and for no other purpose.

2.5 In terms of the deed of sub lease, BIPPL *inter alia* constructed and completed diverse buildings which are collectively known as “Bengal Intelligent Park”. BIPPL decided to sub-lease the building units on a bare shell condition to its licensees.

2.6 The applicant states that BIPPL has made certain arrangements with the applicant to provide assets and fit outs on hire basis to the licensees and sub-lessees of the said building. For this purpose, the applicant (erstwhile BSPL) entered into an agreement with BIPPL on 16th November 2005 for the purpose of providing infrastructure support and facilities of a high standard of various spheres for the benefit of the occupants at Bengal Intelligent Park.

2.7 The relevant extracts of the aforesaid agreement dated 16th November 2005 is produced below:

“G. It is the intention and purpose of BIPPL to provide and ensure infrastructure and facilities of a high standards of various spheres for the benefit of the occupants at Bengal Intelligent Park.

H. BSPL is in the business of providing assets for intelligent park on lease/ hire and has represented to BIPPL that it has the necessary expertise and competence to provide on lease/ hire the Assets in common areas (Assets) at the said demised space.

I. BIPPL has approached BSPL to provide the assets to its Lessees/ Licensees at the said demised space and BSPL has agreed to provide the same.

J. BSPL has also represented that it will charge reasonable hire charges from the occupants of the said demised space.”

Further, the assets to be provided by the applicant are mentioned in Schedule II to the agreement which is produced below:

- Basement and service area ventilation system;*
- HVAC systems to tenant premises upto predetermined delivery points;*
- Hard and soft landscaping including fountains, plantations, lighting etc.*
- Suspended ceiling and floor raceways for common areas only;*
- Sub mains, cables and distribution systems for common area and building mains upto entry to the tenant's premises;*
- Low tension system for the building common areas and feeder up to the tenant point*
- Power back-up/ DG set for essential equipment or as decided by the BIPPL/ occupants;*
- Electrical fixtures and fittings for common areas only;*
- Building water system including different pumping system*
- Building sprinkler firefighting system*
- Sewerage treatment plant and system for liquid waste*
- Any other specialized fit out, if needed by BIPPL*

2.8 The applicant states that based on the aforesaid agreement, the Applicant started entering into the agreements with the licensees for providing the fitted assets on hire basis. In this regard, it is important to note that the applicant after entering into the aforesaid agreement with BIPPL installed the mentioned assets and created the required infrastructure in common areas of 'Bengal Intelligent Park' as well as up to entry point of the tenant's bare shell premises. The tenant shall install, at its sole responsibility and cost, all fixtures and fittings within its premises. On expiry of the sub-lease agreement between the tenant and BIPPL, the tenant has an option to remove such fixtures and fittings which were originally installed by them and restore the said premise to its original bare condition. Otherwise, the tenant can also hand over the said fixtures and fittings to the Applicant against a consideration. In that case, the applicant will become the owner of such assets within the premise which the applicant will give it on hire to the next tenant.

2.9 Accordingly, the applicant generally provides three types of fitted assets:

- a.Assets provided in common areas since the commercial operation was started in the building;

- b.Assets upto the entry point of the tenant's bare shell premise since the commercial operation was started in the building; and
- c.Sometimes, when the tenant vacates the premise, they hand over various assets located within the premise to the Applicant.

2.10 In this regard, a reference can be drawn from a recent agreement entered into by the Applicant with Sun Knowledge Private Limited on 09th November 2022. The relevant extract from the aforesaid agreement is produced below:

1.1Grant of Hire Rights: In consideration of payments to be made by Sub-Lessee to TCGUIH as provided herein, TCGUIH agrees to provide on hire to the Sub Lessee and Sub Lessee agrees to take on hire from TCGUIH the assets, i.e. the Assets for Sub Leased space and Assets for common Areas listed respectively in Part I and Part II of the Second Schedule hereto, on the terms and conditions contained in this agreement.

1.2Legal Possession: At all times the legal possession of the Assets shall be of TCGUIH

3.1.1. Amount: The Sub Lessee shall pay a sum of Rs. 542,235/- (Rupees Five lakh forty-two thousand two hundred and thirty five only) (computed at the rate of Rs. 15/- per sq. ft. for the total super built-up area of 36149 sq. ft.) as Hire Charge in advance plus GST on or before the 10th day of each calendar month, commencing from 1st March 2023 upon receiving bills raised by TCGUIH.

2.11

Second Schedule

[Assets]

Part I

(Fully functional assets of standard quality for sub-leased space)

Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition.

Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the Sub Lessee.

Air Conditioning system up to the floor Air Handling unit along with the existing ducting's and diffusers in as is where is condition.

DG set emergency power supply on chargeable and availability basis as per agreed terms.

Part II

(Fully functional assets of standard quality for common areas)

Electrical equipment comprising electrical wiring, distribution systems and electrical switchboard and luminaries (including fixtures and fittings excluding lamps).

DG set with accessories.

Sprinkler system comprising fire detectors, alarm panel, sprinklers pipe and sprinklers.

Fit outs as per warm shell provision.

2.12 Current Practice followed by the Applicant

The applicant states that since the inception of GST with effect from 01.04.2017, the applicant has been issuing tax invoices to the various tenants for hire of assets at a rate of @28% [Central Tax @14% and State Tax @14%] under SAC 997314 and accordingly deposited the relevant tax on regular basis. While determining the GST rate in respect of hire of assets, the applicant considered various provisions of the CGST Act, 2017. In the instant case, admittedly the tenant takes on hire multiple assets for a single price from the applicant as is evident from the relevant extracts from the agreement with Sun Knowledge Private Limited dated 09th November 2022 as mentioned in para 11 hereinabove.

In terms of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.201 the following rates are notified for different services related to the hiring of goods:

SI No	Description of taxable service	Rate	Conditions
17. Heading 9973 (Leasing or rental services, with or without operator)	(iii) Transfer of the right to use any goods for any purpose (whether or not for a specific period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as an supply of like goods involving transfer of tile in goods	-
	(viii) Leasing or renting services, without operator, other than (i),(ii),(iii),(iv) (vi) and (vii) above	9	-

2.13 In light of the above, serial no 17(iii) of the Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 states that the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration attracts same rate of tax as on supply of like goods involving transfer of title in goods.

At this juncture, it is important to understand the GST rate of various assets given on hire by the Applicant to the tenants. Referring back to the Second Schedule to the agreement with Sun Knowledge Private Limited, as mentioned in para 11 above, it is clear that the Applicant provides assets and fit outs on hire to the tenants which inter-alia includes four types of assets – Electrical Equipment, Sprinkler System, Central Air Conditioning System and DG Set. The GST rate for the said goods is tabled below:

Particulars	Chapter	GST Rate
Electrical Equipment	8502	18%
Sprinkler System	8424	18%
Central Air Conditioning System	8415	28%
DG Set	8511	18%

The applicant submits as the rate of GST in respect of the aforesaid assets involves multiple GST rates against a single supply of “Hiring of Fitted Assets”, it is important to determine the nature of supply i.e., whether the supply of hired assets constitutes a composite supply or a mixed supply.

As per Section 2(30) of CGST Act, 2017, 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.

In the instant case, the Applicant provides individual supply of assets, and the element of any principal supply is missing. Hence, supply of assets in the instant case cannot be treated as composite supply.

The applicant further states that the term mixed supply is defined as per Section 2(74) of CGST Act, 2017 which is as follows:

- that the supply is consisting of *two or more individual supplies of goods or services, or*

any combination thereof;

- that such different supplies are *made in conjunction with each other by a taxable person for a single price;*
- that such supply does not constitute a composite supply.

As in the instant case, the applicant provides individual supply of assets which are independent of each other at a single price such supplies should be treated as mixed supply.

Tax liability on mixed supply has been laid down in Section 8(b) of the CGST Act, 2017 which is as follows:

“(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax”.

In the instant case, the air-conditioning system attracts the highest GST rate of 28%. Therefore, the GST rate in respect of the entire supply of hiring of assets would be 28%.

2.14 Advance Ruling sought by one of the tenants – Sun Knowledge Private Limited

The applicant asserts that recently one of their tenants namely, Sun Knowledge Private Limited ('Sun Knowledge'), has raised concerns about the applicability of 28% GST rate on “Hire of Assets” arguing that the service should be classified as “leasing or rental services concerning office machinery and equipment (except computers) with or without operator” under SAC 997314, attracting a GST Rate of 18%.

For determination of the correct rate to be charged on hiring of assets, Sun Knowledge has sought an advance ruling before the West Bengal Authority for Advance Ruling (WBAAR) on the applicable rate of tax to be charged by the applicant. Vide the order number 29/WBAAR/2023-24 dated 31.01.2024, the WBAAR held as follows:

*“1.23 It thus appears that hiring of air conditioning machine and fire extinguisher would attract tax @ 28% and @ 18% respectively being the same rate applicable for supply of such items and when such are supplied in conjunction with each other for a single price, **the supply being a mixed supply would attract tax @ 28%.** However, in the instant case, **we are of the view that air conditioning system and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods.***

“1.27 In the light of foregoing discussions, we are of the opinion that in the instant case, rate of tax on supply of hiring services of air conditioning system and fire extinguishing system would not be determined vide serial number 17(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. According to our view, each of the supplies would attract tax @ 18% under serial number 17(viii) of the said notification as leasing or rental services and therefore, the supply received by the applicant from TCGUIH, being a mixed supply, would also be taxable @ 18% i.e., supply which attracts the highest rate of tax.”

(emphasis supplied)

2.15 In conclusion, the authority for advance ruling provided that supply on account of hiring of electrical equipment, sprinkler system comprising fire detectors for true ceiling, air conditioning system up to the floor Air Handling Unit with existing ducting's and diffusers, DG set emergency power supply would attract tax @18% under serial number 17(viii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06,2017. ITC shall also be available on the tax charged by the supplier subject to the fulfilment of all the conditions under Section 16 of the CGST Act, 2017.

2.16 Divergent Approach/ Alternative View

After obtaining the ruling of WBAAR as mentioned above, the applicant decided to relook into this matter and discussed the same with various experts. As a result, an alternative view has been formed in respect of the nature of service provided by the Applicant to the tenants. The view is elucidated below:

The applicant submits that hitherto, the discussion has primarily focused on the GST rate applicable on hiring of assets. Now, the Applicant raises a significant question: whether the Applicant recovers hire charges for providing assets *per se* or for the creation of the basic infrastructure and facilities within the building.

The applicant submits that the intention of the BIPPL to engage the Applicant to provide the assets becomes apparent from the agreement dated 16th November 2005 as mentioned in Para 11 above. Para G of the said agreement makes it clear that the intention and purpose of BIPPL is to provide and ensure infrastructure and facilities of a high standard of various spheres for the benefit of the occupants at Bengal Intelligent Park. For this purpose, BIPPL engaged the Applicant to provide assets in the building.

The applicant submits that the Applicant is responsible to provide proper infrastructure in the

building including common areas so that the building can properly function. BIPPL is giving the units in the building on lease to its tenants on a bare shell condition. Without proper infrastructure and facilities as stipulated in Schedule II to the agreement dated 16th November 2005 [refer para 11 of Annexure B], the building cannot even properly function.

The applicant further submits that the Second Schedule to the agreement entered into with Sun Knowledge Private Limited dated 9th November 2022 stipulates the natures of assets provided by the applicant to the Sun Knowledge Private Limited for which the applicant recovers hire charges from Sun Knowledge Private Limited. The same has already been produced in para 15 of Annexure A. However, for the sake of brevity, the same is reproduced below:

Second Schedule

[Assets]

Part I

(Fully functional assets of standard quality for sub-leased space)

Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition

Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the Sub Lessee.

Air Conditioning system up to the floor Air Handling unit along with the existing ducting's and diffusers in as is where is condition.

DG set emergency power supply on chargeable and availability basis as per agreed terms.

Part II

(Fully functional assets of standard quality for common areas)

Electrical equipment comprising electrical wiring, distribution systems and electrical switchboard and luminaries (including fixtures and fittings excluding lamps).

DG set with accessories.

Sprinkler system comprising fire detectors, alarm panel, sprinklers pipe and sprinklers.

Fit-outs as per warm shell condition.

2.17 From the above, it is apparent that the applicant is providing assets for two areas – for sub-leased space and for common areas. The applicant submits that it is clear beyond doubt that the assets provided in common areas is for the use of all tenants and visitors. Therefore, it can be inferred that the assets provided in common areas as mentioned in Part II of the Second Schedule to the Agreement as mentioned above does not mean that the individual assets are provided to the Sun Knowledge Private Limited. Rather, the applicant provides the facilities for all its tenants by installing various assets in common areas and recovers hire charges for the same from each tenant including Sun Knowledge Private Limited.

2.18 Let us also analyse the assets provided for the sub-lease space.

As outlined the applicant furnishes fully functional assets for the sub leased space. The specific functionalities of these assets are delineated below:

Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition: The applicant states that an electric installation within the building includes various components such as machines, transformers, protective devices, wiring systems, other accessories and equipment designed for the purpose of providing electrical energy.

In the existing system, the transformer is positioned in a particular place of the premises. It is linked to an electrical panel that channels the primary power input to the wired circuits and tap-off points distributed throughout the building. These tap-off points are strategically located on each floor of the building, accessible to the respective tenants on that floor. Subsequently, it is the responsibility of each tenant to manage the internal wiring within their premises from the tap-off points. In essence, individual electrical installations are not provided to each tenant. Instead, the Applicant has established a unified system that serves all tenants within the building.

Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the sub-lessee: A fire sprinkler system is an active fire protection method, consisting of a water supply system providing adequate pressure and flowrate to a water distribution piping system, to which fire sprinklers are connected. In the instant case, the water line infrastructure, along with the initial setup of the sprinkler system up to true ceiling, is provided by the Applicant. However, it becomes the

responsibility of each respective tenant to arrange for fire detectors, alarm panel, false ceiling sprinkler pipes etc. The applicant's approach aims to establish a comprehensive and centralized system to serve the needs of all tenants within the building. While the foundational water line and initial setup are provided by the Applicant, the individual components are managed by the respective tenants.

Air conditioning system up to the floor Air Handling Unit along with the existing ducting and diffusers in as is where is condition – The applicant clarifies that in a central air-conditioning system, all the components of the system are grouped together centrally, and conditioned air is distributed from that system to the required places through extensive duct work. The whole system can be divided into three parts:

- (i) Central Air Conditioning Plant Room
- (ii) Air Handling Unit (AHU room)
- (iii) Air Distribution system (Ducting)

The plant room is located away from the room to be air conditioned. Other components are grouped together in an AHU and conditioned air is circulated through air distribution system i.e., ducting with the help of fan or blower to the room to be air conditioned.

In the instant case, the applicant provides that inside the building, there is a central air conditioning plant in order to provide air conditioning facilities and supply of cooling air to each floor through AHU Duct systems, catering to the needs of individual tenants. The AHU is located in each floor wherefrom the tenants are responsible for installing the ducting's, diffusers etc. to its premise. Consequently, no individual assets are provided to tenants, instead, they are furnished with an air-conditioning system, enabling them to install their own units.

DG set emergency power supply on chargeable and availability basis as per agreed terms- The applicant states that there are one or two common DG sets located on the ground floor of the building to serve as an emergency power backup. The facility is available to all the tenants within the building, the benefit for which is enjoyed by all.

2.19 From the above explanation, it is clear that the applicant in case of Sun Knowledge Private Limited has never offered any independent assets or fit outs separately to tenants. Instead, they create a cohesive set of infrastructure elements that are essential for the overall functioning of the building.

2.20 The applicant emphasizes that they are obligated to provide with comprehensive infrastructure support to their tenants. This infrastructure includes essential components such as electrical installations, backup DG sets, a centralized air-conditioning system, and fixed installations that are integral to building's operation and functionality. Without this foundational infrastructure, the building would not be able to operate effectively or efficiently.

2.21 The applicant submits that provision of the infrastructure support and facilities in Bengal Intelligent Park by the applicant and recovers consideration for the same from the tenants should be classified as support service under Heading 9985. It is to be noted the term 'Support Service' has not been defined in GST Law. In this regard, the applicant submits that the reference can be taken from the definition of 'Support Service' from the erstwhile service tax regime.

Section 65B (49) of the Finance Act 1994 defines 'Support Service' w.e.f. 01.07.2012 which is as follows:

"support services" means **infrastructural, operational**, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis; [This definition was omitted vide Finance Act 2015 w.e.f. 01.04.2016]

The applicant further states that prior to 01.07.2012, the term 'Support Service' was defined under Section 65(104C) of the Finance Act 1994 which is as follows:

"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security

2.22 The applicant submits that from the definition of 'Support Services' during the erstwhile service tax regime as mentioned above, it is apparent that support service includes any infrastructural or operational support that may be carried out by the entities itself but may be obtained as services by outsourcing from others for any reason.

In the instant case, BIPPL, being a developer of the building, should create proper infrastructure support and facilities in the said building. However, the same is outsourced to the Applicant. The applicant is responsible for creating proper infrastructure and a facility in the building as already mentioned above and recovers hire charges for the same from the tenants. Therefore, we are of the considered view that hiring of assets should be classified as support under SAC 998599 i.e., other support services nowhere else classified and the GST rate is 18%.

Additional Submission on 17.09.2024

2.23 The applicant seeks an advance ruling on whether the services provided by TCGUIHPL should be classified as comprehensive support service rather than leasing or renting services. This argument is supported by drawing an analogy from a recent circular (Circular No 232/26/2024-GST dated 10 September 2024) issued regarding data hosting services provided by data centers.

Recent Circular on Data Hosting Services (Circular No 232/26/2024-GST dated 10 September 2024)

A recent circular clarified the classification of data hosting services provided by data centers.

The key points from the circular are:

- 1.Comprehensive Service Nature (Para 3.3.3): Data hosting services involves a range of activities including operating data centers, ensuring uninterrupted power supplies, backup generators, network connectivity, firewall services, and monitoring and surveillance services.
- 2.Not Directly Related to Immovable Property (Para 3.3.4): The circular clarified that data hosting services are not directly related to immovable property and thus cannot be classified under section 13(4) of the IGST Act.
- 3.Place of Supply (Para 4): The place of supply for data hosting services provided to overseas entities is determined based on the location of the recipient of the services as per section 13(2) of the IGST Act.

4.Export of Services (Para 5): Such services can be considered as export of services if other conditions mentioned in section 2(6) of the IGST Act are fulfilled.

2.24 Applicability of the Circular to the facts of the present case before the Hon'ble AAR

The applicant proposes to draw an analogy from the above clarification to argue that the services provided by TCGUIHPL should be classified as support services rather than leasing or renting services.

The key points to present are:

(i) Comprehensive Nature of Services:

- Similar to data hosting services, TCGUIHPL provides a comprehensive range of services that include installation and maintenance of air-conditioning systems, fire sprinkler systems, DG sets, electrical installations, etc.
- These services are essential for the proper functioning of the building and are not limited to mere leasing or renting of individual assets.
- Services provided by TCGUIHPL are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to infrastructure. Accordingly, infrastructure services cannot be considered as the services provided directly in relation to immovable property or physical premises.

(ii) Not Directly Related to Immovable Property:

- The assets provided by TCGUIHPL are integral to the infrastructure of the building and are not standalone movable properties.
- The services involve creating a cohesive set of infrastructure elements essential for the overall functionality of the building.

(iii) Not the actual owner of the property:

- Throughout the provision of the infrastructure services, TCGUIHPL does not own property and is not the actual owner. TCGUIHPL independently handles, monitors and maintains the infrastructure of the property.

(iv) Support Services Classification:

- The comprehensive nature of the services aligns more closely with the definition of support services under SAC 998599.
- Support services include infrastructural support which is precisely what TCGUIHPL provides to its tenants.

(v)GST Rate:

- As support services under SAC 998599, the applicable GST rate would be 18%, which aligns with the nature of the comprehensive service provided.

2.25 Decision provided in Advance Ruling by Sun Knowledge Private Limited

- Air conditioning and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods
- Tax on supply of hiring services of air conditioning system and fire extinguishing system would not be determined vide serial number 17(iii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017
- Supply would attract tax @18% under serial number 17(viii) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as leasing or rental services.

By upholding the rationale provided in the Circular, specifically Para 3.2.2 and Para 3.2.3, it is understood that TCGUIH operates as an independent entity, that provides comprehensive support services to the BIPPL. This includes a range of infrastructure and fit outs such as air-conditioning systems, fire sprinkler systems, DG sets, electrical installations to tenants.

2.26 In the instant case, TCGUIH independently handles, operates, monitors and maintains the essential infrastructure and fit outs. Consequently, the provision of air-conditioning systems, fire sprinkler systems, DG sets, and electrical installations to tenants should not be classified merely as the supply of goods. Instead, it constitutes a comprehensive service. This service includes not only the installation but also the ongoing operation, monitoring, and maintenance of the air-conditioning systems, fire sprinkler systems, DG sets, and electrical installations.

Given the scope of activities performed by TCGUIH, the nature of the provision is considered a comprehensive service rather than a simple supply of goods.

2.27 Based on the analogy drawn from the recent circular on data hosting services, applicant submits that the services provided by TCGUIHPL should be classified as support services under SAC 998599 with an applicable GST rate of 18%. This classification more accurately reflects

the comprehensive nature of the services provided and ensures proper compliance with GST regulations.

3. Submission of the Revenue

Bidhan Nagar Division, CGST & CX, Kolkata North Commissionerate filed an appeal aggrieved by the ruling given by WBAAR in respect of TCG Urban Infrastructure Holdings Private Limited vide order dated 18/WBAAR/24-25 dated 14.01.2025. The Revenue filed appeal with following grounds:

- (i) WBAAR has pronounced that “supply of services as provided by the applicant would be covered by serial no. 17(viii) of the Notification 11/2017 Central Tax (Rate) dated 28.06.2017 as leasing or rental services and as a mixed supply would attract tax @ 18%.
- (ii) While deciding the classification, the WBAAR considered the applicant’s activities in para 4.6 of the impugned order as follows:
“We find that the applicant’s scope of supply is restricted up to tap off points and applicant is not responsible for quality of input power supply. It is clear that the applicant gives leasing services of benefit of those machineries for smooth functioning of lessees. The individual machinery as “goods” is not leased out to those lessees. This authority has referred to the cases of Solid and Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)], and Varachha Co-op. Bank Ltd [2023] 156 taxmann.com 4 (AAAR-GUJARAT) [04-10-2023] to express the view that permanently installed machineries to BIPPL **lost nature of movable properties and cannot be considered as “goods” in GST**. (Emphasis supplied)
- (iii) It appears that WBAAR has erred in observing that “*The individual machinery as ‘goods’* is not leased out to those lessees” as even after installation, air conditioners, fire extinguishers etc **retain** their character. They can be dismantled and moved out from premises **without** demolishing the immovable property. They are mere **fixtures** and do **not** form part of immovable property thereby do **not** lose their character as ‘goods’. The WBAAR has thus erred in holding that these goods when installed, lose their character as goods.
- (iv) The Supreme Court of India in its judgement dated 20-11-2024 in the matter of M/s Bharati Airtel Ltd vs The Commissioner of Central Excise, Pune [Neutral Citation: 2024 INSC 880] has laid down a test to determine whether something is to be treated as “goods”.

Relevant paragraphs of the judgement are quoted as below:

“11.8.1 We may summarise some of the principles applied by the Courts in the decisions referred to above to determine the nature of the property as follows:

- 1.**Nature of annexation:** This test ascertains how firmly a property is attached to earth. If the property is so attached that it cannot be removed or relocated without causing damage to it, it is an indication that it is immovable.
- 2.**Object of annexation:** If the attachment is for the permanent beneficial enjoyment of the land, the property is to be classified as immovable. Conversely, if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property.
- 3.**Intendment of the parties:** the intention behind the attachment, which express or implied, can be determinative of the nature of the property. If the parties intend that the property in issue is for permanent addition to the immovable is not meant to be permanent, it indicates that it is movable.
- 4.**Functionality Test:** If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, it is an indication that such fixation is for the benefit of the article, such the property is movable.
- 5.**Permanency test:** If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary and it can be considered to be movable.
- 6.**Marketability Test:** If the property, even if attached to the earth or to an immovable property, can be removed and sold in the market, it can be said to be movable.”

“11.9.9 Applying the tests of permanency, intendment, functionality and marketability, it is quite clearly evident that these items are not immovable but movable within the meaning of Section 3 of the Transfer of Property Act read with Section 3(36) of the General Clause Act.

If we consider the nature of annexation of the tower to the earth, it is seen that the annexation is not for permanent annexation to the land or the building as the tower can be removed or relocated without using damage to it.

It is also to be noted that the attachment of the tower to the building or the land is not for the permanent enjoyment of the building or the land.

Further, the tower is fixed to the land or building for enhancing the operational efficacy and proper functioning of the antenna which is fixed on the tower by making it stable and wobble free.

The fact that the tower, if required can be removed, dismantled in the CKD and SKD and sold in the market is not disputed.

Application of the tests evolved and discussed above on these items clearly points to the movability as opposed to immovability of these items. We are, thus, of the view that mobile towers and PFBs are movable properties and hence, 'goods.'

The ratio laid down in this judgement is squarely applicable in the instant matter as well, since by applying these test, air conditioners and other equipment provided on lease by the applicant in the instant issue are also **movable properties** and hence, 'good'.

- (v)Consequent to the erroneous reasoning as outlined in para 3.2 the service has been held to fall under SI No. 17(viii) of the said Notification by the WBAAR. In fact, SI No 17(viii) thereto is the 'residual entry', when the services cannot be classified under clauses (i), (ii), (iii), (iv), (vi) and (vii)(a) of SI No 17 under SAC heading 9973 ["leasing or rental services, without operator"]
- (vi)If the leased items had been correctly held as 'goods' as they should have been, as discussed above, the correct entry would have been either SI No. 17(iii) of the said Notification ["Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration".] which applicant has self-classified from the inception of the GST or SI No. 17(vii)(a)[Leasing or renting of goods], depending of the contract. Either classification prescribes "**the same rate of tax as on supply of like goods involving transfer of title in goods**"
- (vii)Since the nature of activities/services has already been held to be a "mixed supply", the highest rate, i.e. 28%, pertaining to leasing or renting of air conditioners/right to use air conditioners, would have, therefore, been applicable on merits in this case. The WBAAR has apparently misjudged in holding that these goods, when installed, lose their character as goods. It has consequently held that 18% is the applicable rate of tax, which seems to be unreasoned and improper.

4. Observations & Findings of the Authority

4.1 The present case arises out of the order dated 13.05.2025 passed by the West Bengal Appellate Authority for Advance Ruling. Earlier the applicant appeared before this authority with an application for Advance Ruling vide ARN AD1906240090557. This authority pronounced the ruling on 14.01.2025. The Revenue preferred appeal against the ruling pronounced by this authority. The appellate authority has remanded the case back to this authority for fresh decision with the direction that the WBAAR would take into consideration all aspects of the matter and decide the case afresh.

The appellate authority has also set the guidelines of the case in the observations noted in Paragraph no. 15 of the appellate order. In the said paragraph the appellate authority has observed that 'it is needless to mention that the entire issue depends on the various clauses of the agreement entered into between the concerned parties wherefrom the actual nature of use of the assets concerned is required to be ascertained, i.e. whether they remain to be goods or become a part of an immovable property, which is required to be examined in depth. Fact that respondent was already paying GST at the rate of 28% is also relevant here'.

4.2 We have gone through the appellate order and records of the issue as well as submissions made by the authorized representative of the applicant during personal hearing. We have also considered the view given by the Revenue.

4.3 According to the submission and statement of facts, the applicant is a real estate development and investment company engaged in development, construction, leasing and sale of commercial properties and providing the fit-outs and related infrastructure support on hire to various tenants of the properties held by Bengal Intelligent Parks Private Limited (BIPPL).

It is reiterated that in a Deed of Lease dated 19.01.1987, the Governor of the State of West Bengal has granted West Bengal Electronics Industry Development Corporation Limited (WEBEL) a lease for a period of 999 years of a plot of land in Block EP and GP in Sector V of Bidhannagar in the district of North 24 Parganas. The lease was granted with the object of developing the demised land for setting up of Electronics Industries.

WEBEL has divided the demised land into diverse plots and has allotted the same for the purpose of setting up Electronics Industries. Certain plots were granted to BIPPL vide Deed of Sub Lease dated 05.11.2002 for a term of 90 years. Accordingly BIPPL constructed and completed diverse buildings collectively known as 'Bengal Intelligent Park'. As per the terms of the sub lease, BIPPL was authorised to grant further sub lease/ license of built up space to intending sub lessees or tenants on the condition that the built up space would be used for setting up of electronic industries exclusively and for no other purpose. BIPPL has decided to sub lease the building units on a bare shell condition to its lessees.

The applicant (erstwhile Boulevard Services Private Ltd - BSPL) entered into an agreement dated 16.11.2005 with BIPPL for providing infrastructure support and facilities of a high standard of various spheres for the benefits of the occupants at Bengal Intelligent Park. The applicant is authorized by terms of agreement to charge reasonable hire charges from the occupants at the park.

Under the above circumstance the applicant has sought for proper classification and corresponding rate of tax for the services being provided by the applicant by way supplying fitted assets on hire basis as discussed above.

4.4 The applicant believes that the services rendered by it being in the nature of hiring of infrastructure assts to tenants should be classified under serial no. 17(viii) of Notification No. 11/2017-Central Tax (Rate) Dated 28.06.2017 and be chargeable to GST @ 18%, rather than under serial no. 17(iii) or 17(via) which applies only where there is a transfer of the right to use goods as such.

4.5 Before going into the details of the discussion we must look at the different aspects of the agreement signed between BIPPL and the applicant on the one hand and between the applicant and any of the sub lessees at the premises on the other.

Highlights of the agreement signed between BIPPL and the applicant are as under:

1. The agreement is signed as BIPPL intends that Bengal Intelligent Park should have state-of-the-art assets in accordance with the requirements of the prospective occupants.
2. The agreement is signed between the two since the applicant has the necessary expertise and competence to provide the assts to the occupants.
3. The applicant is to ensure that state-of-the-art assets will be provided on reasonable terms and the applicant had to make concrete arrangements to maintain the assets through a managed maintenance company.
4. There must be a comprehensive insurance policy (including fire, theft, burglary, accident etc.) to cover all the assets installed by the applicant.
5. There is a list of assets in Schedule II of the agreement that are to be provided by the applicant. It is also mentioned that the list is indicative only, and not exhaustive.

The list of assets is under:

- Basement and service area ventilation systems
- HVAC systems to tenant premises up to predetermined delivery points
- Hard and soft landscaping including fountains, plantations, lighting etc
- Suspended ceiling and floor raceways for common areas only
- Sub mains, cables and distribution systems for common areas and building mains up to entry to tenant premises

- Low tension systems for the building common areas and feeder up to the tenant points
- Power back up/DG set for essential equipment or as decided by the BIPPL/occupants
- Electrical fixtures and fittings for common areas only
- Building water systems including different pumping systems
- Building sprinkler fire-fighting system
- Sewerage Treatment Plant and system for liquid waste
- Any other specialized fit outs, if needed by BIPL

4.6 Now we come to the highlights of the agreement signed between the applicant and a tenant. Such an agreement with Sun Knowledge Private Limited as a tenant has been produced for our consideration. The highlights of the agreement are as under:

1. The agreement has been signed for hire and use of assets and fit outs in the sub leased space of the tenant and in the common areas.
2. The agreement is for nine years.
3. The legal possession of the assets shall always be with the applicant.
4. The hire charges will be calculated at the rate of Rupees Fifteen per sq.ft. for the total super built area.
5. The tenant is bound to deliver the possession of the sub leased space along with the assets of the applicant in the same condition (as it is at the time of execution of the agreement) at the time of expiry of the agreement or termination thereof.
6. The applicant will arrange for insurance of assets installed both at the sub leased space and in the common areas.
7. There are two separate lists of assets in the Second Schedule of the agreement. Part I refers to the assets in the sub leased space. Part II refers to assets in the common areas.

Part I enumerates the following assets for the sub leased space:

- A) Electrical equipment up to tap off box at floor rise along with light fixtures and fittings in as is where is condition.
- B) Sprinkler system comprising fire detectors for true ceiling only. Fire detectors, alarm panel, false ceiling, sprinkler pipes will be arranged by the Sub Lessee.
- C) Air Conditioning system up to the floor Air Handling unit along with the existing ducting's and diffusers in as is where is condition.

- D) DG set emergency power supply on chargeable and availability basis as per agreed terms.

Part II enumerates the following assets for the common areas:

- A) Electrical equipment comprising electrical wiring, distribution systems and electrical switchboard and luminaries (including fixtures and fittings excluding lamps).
- B) DG set with accessories.
- C) Sprinkler system comprising fire detectors, alarm panel, sprinklers pipe and sprinklers.
- D) Fit outs as per warm shell provision.

4.7 The following points are derived from both the agreements referred to above:

1. The applicant provides two kinds of assets on hire to the tenants. One is meant for the common areas and the other is meant for the sub leased space of the tenants. The assets meant for the common areas are actually some well integrated systems containing several machines, equipments etc. Basement and service area ventilation systems, HVAC (Heating Ventilation Air Conditioning) systems, suspended ceiling and floor raceways, sub mains, cables and distribution systems, power back up systems for essential equipments, building water system, building sprinkler fire fighting system, sewerage treatment plant etc. are some of the examples of systems to be arranged by the applicant for common areas of the building.

For the sub leased space the applicant has to arrange for electrical equipments up to the tap off box at floor rise along with fixtures and fittings, sprinkler system, air conditioning system up to the floor Air Handling Unit with existing ducting and diffusers and DG set emergency power supply on chargeable and availability basis.

2. The applicant has to arrange for a comprehensive insurance policy to cover inter alia all the assets discussed above.
3. The tenure of agreement between the applicant and the tenant is nine years subject to termination of the agreement.
4. The hire charge that is charged by the applicant is calculated at an agreed rate per sq. ft. for the total super built area of the tenant.

4.8 First of all, we have to decide whether the services provided by the applicant qualify as leasing or renting.

Leasing as such has not been defined in the GST Act. However, 'Scope of supply' as enumerated in Section 7(1) of the CGST Act includes 'all forms of supply of goods or services or both as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business'. In common parlance leasing is a contractual agreement between the lessor (or owner) and the lessee (or user) for use of an asset by the lessee for certain period against regular rental payment. Here the lessor is the legal owner of the asset and the lessee obtains the right to use the asset subject to fulfilling certain conditions as agreed upon by the two. The legal possession of the asset always lies with the lessor.

On the other hand, renting is also not defined under the GST Act. For understanding the concept we may refer to the erstwhile Finance Act, 1994 which governs the Service Tax. The term as defined in the act means allowing, permitting, granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer or possessions or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. It is evident that the concept of renting is wide enough in its ambit.

The services provided by the applicant fit into both the concepts. According to the different clauses of the agreement referred to in Paragraph 4.6, the applicant is the legal owner of the assets described in the agreement. As a lessor he leases out the assets in fitted condition to the lessee for certain period against a consideration agreed upon by the two. On the other hand, through the agreement signed between the applicant and the tenant the former allows granting access to the different kinds of utilities of the scheduled assets without transfer of possessions of the same.

Thus in our considered view the applicant's activity can be regarded as leasing or renting as discussed above.

4.9 Then comes the question of nature of the supply i.e. whether it is a composite supply or a mixed supply.

Section 2(30) of the GST Act defines Composite Supply as 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.

Section 2(74) of the GST Act defines Mixed Supply as supply of two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

From the statement of facts and the agreements furnished it is observed that the applicant provides various kinds of services. It is fact that the charge for the services is calculated at an agreed rate on per sq. ft. basis. That is, the charged rate is a single one covering all the services provided from the machines and systems specified in the schedules. But we cannot identify two or more taxable supplies which are naturally bundled. There is no principal supply to be identified here. Rather, the services provided by the applicant can best be described as supply of two or more services made in conjunction with each other. As we have already mentioned, the consideration for the supply is a single one.

Thus the supply, in our considered view, should be regarded as a mixed supply.

4.10 What we find from the agreements in our hand and the description and images of the relevant assets is that they are actually certain integrated systems that are attached to different parts of building. Let us take the example of HVAC systems to tenant premises up to pre-determined delivery points.

An HVAC system as such is not a normal air conditioning machine only that we find for residential use. It stands for Heating, Ventilation, and Air Conditioning and it represents a technology designed to control the temperature, humidity, and air quality within an enclosed space. It aims to create comfortable and healthy indoor environments. It is actually a well integrated system of different machines and equipments that performs the specific purpose in an integrated manner.

The system can provide heat to warm a space, typically through a furnace or heat pump that distributes warm air or heated water through a network of ducts and radiators.

Ventilation involves the circulation and exchange of air within a space. It is achieved through mechanical systems that draw in fresh air from outside and expel stale air, removing pollutants like carbon dioxide, moisture, and odours from inside.

Air conditioning cools the air by removing heat and humidity. This is usually done through an air conditioner or heat pump, which circulates cool air through the building's ductwork.

Thus the whole system involves large number of machines, equipments, wiring, cables etc. In order to install HVAC system the process begins with selection of areas for fixing the equipments permanently. A lot of designing and drawing is involved. Then certain construction works are carried out to fix the machines and equipments to the building. The whole system refers to large number of inter-dependent and inter-related machines and equipments desired to perform a specific function. Once the HVAC system is installed it becomes a part of the building. The photographs provided by the applicant also suggest that.

Similar issues are involved with Power back up system, Fire fighting system, Building water system, Sewerage treatment plant. All of these are installed after a lot of designing and drawing and construction works. In most of the cases the systems are installed in rooms earmarked for

those systems and there has been a lot of construction works to install the systems. The systems consist of so many equipments, fixtures integrated into one complex system. As such they become parts of the building. A few of the specimen photographs in respect of the chiller plant room, fire sprinkler, centralized HVAC cooling tower, DG room etc. provided by the applicant are attached herewith for reference.



DG ROOM



CENTRALISED HVAC SPRINKLER



CHILLER PLANT ROOM



CENTRALISED HVAC COOLING TOWER



FLOOR FIRE SPRINKLER

4.11 Once the assets become the parts of the building they become immovable and lose their nature as goods as defined in the GST Act. The Supreme Court of India in its judgement in the Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works case has set the guidelines to determine whether a property is immovable or not. The Apex Court has applied the conjoint reading of both the General Clauses Act, 1897 as well as the Transfer of Property Act, 1882. It is in this light that we have to determine whether the assets described in the schedules of the agreement are immovable or not.

Under Section 3(26) of the General Clauses Act, 1897, "immovable property" includes land, benefits arising out of land, and things attached to the earth or permanently fastened to anything attached to the earth. The concept of 'things attached to the earth or permanently fastened to anything attached to the earth' has not been defined in the General Clauses Act, 1897. Here the Transfer of Property Act, 1882 comes to our help.

The Transfer of Property Act, 1882 has defined 'attached to the earth' as

- rooted in the earth, as in the case of trees and shrubs.
- imbedded in the earth, as in the case of walls or buildings.
- attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

All the assets described in the schedules are attached either to the walls or to the floor of the civil structure. This civil structure being a building is embedded in the earth. The installation of the assets requires enormous amount of survey, testing, designing, earthwork, concrete works and installation of complex machines, equipments, pipelines, wires and cables, junction boxes, entire switch panels, main board and sub-distribution board, controlling switches etc. These machines and equipments are to be integrated to function as one unit to serve specific purposes. Some individual equipments/ components may be detached from the installation itself but in its entirety HVAC (Heating Ventilation Air Conditioning) systems, suspended ceiling and floor raceways, sub mains, cables and distribution systems, power back up systems for essential equipments, building water system, building sprinkler fire fighting system, sewerage treatment plant are immovable in nature. If we consider it in terms of degree of annexation, they are not kinds of installation that are capable of shifting from time to time. Rather they can be viewed as permanent both in terms of its use and location. It is not the case that the systems noted here have been installed somewhere today and will be shifted elsewhere the next day.

4.12 During hearing as well as in the view of the Revenue reference has been made to the case of *M/S Bharti airtel Ltd. Vs. The Commissioner of Central Excise, Pune*.

If we consider the present case in the light of the principles set by the Apex Court in the

judgement passed in *M/S Bharti airtel Ltd. Vs. The Commissioner of Central Excise, Pune* we find the followings:

- Nature of annexation: The specified assets are attached to the building in such a way that they cannot be removed or relocated without causing any kind of damage of the immovable property (here different parts of the building such as floor, ceiling, roof, wall etc.) on which they are installed.
- Object of annexation: The assets are annexed to the building for the beneficial enjoyment of the sub leased space and common areas in the building.
- Intendment of the parties: Here the assets are added to the immovable property (here the building) permanently in the sense that the assets will remain there even after the agreement with one particular tenant ends.
- Functionality test: The assets are fixed to the building not because of stable and wobble free operations of the same. Rather, the nature and functions of the assets are such that they are to be attached and fixed to the building for their basic operations.
- Permanency test: The assets are attached with the building in such a way that they cannot be removed without causing any kind of damage to them.
- Marketability test: The assets are integrated in such a manner that they cannot be removed and sold separately in the market. The fixtures and fittings are building specific so that they may not be used in another building with different specification. In this respect we can refer to the observations of the Apex Court in the case of *Globus Stores (P) Ltd. vs Commissioner Of Central Excise And Others* where the Hon'ble Court observed in respect of air conditioning plant that '*prima facie the question to be considered is not whether the air-conditioning parts is immovable or movable; on the face of it, it does not appear to be immovable. The question however is whether it is goods i.e. whether the plant can be taken to the market for being sold as a plant. The department stores, we have been told, is spread over four floors. Various components of the complete plant would be scattered throughout this area. It would be extremely difficult to say that without disturbing the connection between the various components the plant itself can be removed and refitted elsewhere. In that case, it is not the plant that is removed, but the components of it, which when fitted together form the plant*'. The ratio of this judgment can be applied in the present case.

4.13 In view of the above discussion we are of the view that the assets described in the respective schedules of the agreement have lost their characteristics of movable properties and as such they cease to be goods once they are attached with the different parts of the building according to the requirements of the machines, equipments and the integrated system.

We find that the similar views have been taken by different Advance Ruling and Appellate Advance Ruling authorities in the cases of M/S Wago Private Limited (Gujarat AAAR), The Varechha Co Operative Bank Limited (Gujarat AAR) and M/S Tarun Realtors Private Limited (Karnataka AAR).

So we are of the considered view that the applicant is not involved in supply of leasing or renting of goods.

4.14 From the submissions and representations made by the applicant and from the photographs of the systems installed in the building it is evident that there is central air conditioning plant to provide the said facility and supply of cool air is done through installed Air Handling Unit (AHU) duct systems. While the Chiller plant is located in a specified room inside the building, the Centralised cooling towers are installed on the roof of the building. Similarly DG sets are installed in a room specified for that purpose. They provide emergency power back up for each floor. The same is true for the sprinkler system. The system is located in a room and the applicant provides service up to the true ceiling only. Thus all the assets are installed to provide certain required facilities and services through those assets. The tenants have no control or title over the assets. They have the right to use the facilities and services provided through the assets and fit outs.

We clearly find that the applicant provides leasing or renting service of benefits of the assets and machineries attached to the building for smooth functioning of the tenants. The individual machinery as goods is not leased out to the tenants. If we consider the point that the applicant is charging to the tenants at an agreed rate per sq. ft. of super built area of the individual tenant, it becomes clear that the charge is not goods specific. Rather it is calculated on the basis of the specified super built area that a tenant is enjoying.

In our considered view the above supply will qualify for leasing or rental services without operator under heading no. 9973. This heading finds entry under serial no. 17 of the Notification No. 11/2017- Central Tax (Rate) Dated 28.06.2017 (corresponding West Bengal State tax Notification No. 1135 F.T. Dated 28.06.2017 as amended. The relevant portion is reproduced as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
17	Heading 9973 (Leasing or rental services, without operator)	(i) omitted		
		(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right.	9	
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	§	
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	§	
		§ Same rate of State tax as on supply of like goods involving transfer of title in goods		
		(v) omitted		
		(vi) Leasing of motor vehicles purchased and leased prior to 1st July 2017;	Ω.	
		(vii) omitted		
		(viii) Leasing or renting of goods	§	
		(viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi), and (viii) above.	9	
		Ω 65 per cent. of the rate of State tax as applicable on supply of like goods involving transfer of title in goods. Note: - Nothing contained in this entry shall apply on or after 1st July, 2020		

We are of the opinion that the supply of services as provided by the applicant will be regarded as leasing or rental services and being a mixed supply it will attract the highest rate of tax under serial no. 17(viii) as above and to be taxed @ 9% CGST+ 9% SGST.

In view of the foregoing discussion, we rule as under:

RULING

The supply of services by the applicant will be covered by heading no. 9973 (Leasing or rental services, without operator) and as such it will be taxed under serial no. 17(viii) of the Notification No. 11/2017-Central Tax (Rate) Dated 28.06.2017 read with the corresponding state notification. The rate of tax will be 9% CGST+ 9% SGST.

Sd/-

(SHAFEEQ S)

Member

West Bengal Authority for Advance Ruling

Sd/-

(JAYDIP KUMAR CHAKRABARTI)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 14.11.2025

To,

TCG URBAN INFRASTRUCTURE HOLDINGS PRIVATE LIMITED

BETA BUILDING, BENGAL INTELLIGENT PARK, GROUND FLOOR, PLOT A2, M2,
N2, BLOCK EP AND GP, SALT LAKE ELECTRONIC COMPLEX, SALT LAKE
SECTOR V, 700091

Copy to,

- (1)The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2)The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3)The Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata-700107
- (4)The Charge Officer, Barasat Charge, 48, Jessore Road, Barasat, Pincode-700124
- (5)Office Copy