

TAXABILITY OF PLC UNDER GST

UNRAVELLED



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In India, GST is chargeable on purchasing a residential property if it is under construction. However, GST is not chargeable when a property is purchased which is complete, no construction is left to be done, and a property with the preferred location comes with an additional charge.

We always wish to buy a property at par with our convenience. Therefore, to purchase it we don't mind paying more.

When buying any accommodation, we prefer a decent location with excellent facilities, and we pay an extra amount in addition to the consideration for these amenities, known as **preferred location charges ("PLC")**. Treatment of Preferential Location Charges is one such issue taken up and explained in the present article.

Before diving into the specifications of the chargeability of GST on 'Preferential Location Charges,' it is vital to understand the term "Preferential Location Charges." For housing projects, when providing construction services, the developer provides some additional services, which are considered "Preferential Location Charges." PLCs are primarily extra costs that the builder collects from the buyer in consideration of giving specific preferences. **For Example**, a park-facing or pole-facing apartment, an apartment situated towards the corner, a unit facing a park, a swimming pool, a first-floor or top-floor apartment, a Vaastu-specific apartment, etc. If a buyer's apartment has the privilege of any of the above locational advantages, the buyer is expected to pay PLC

Initially, GST was chargeable at the rate of 12% on the value of construction of residential dwellings, excluding the value of the land at 1/3rd of the consideration. To boost the real estate sector, CBIC issued a Notification¹ in which the GST rates were reduced to 5% on value after excluding the value of the land at 1/3rd of the consideration on residential dwellings.



The construction of residential dwellings involves two types of services:

1. construction service and
2. allied service in the form of a preferential location.

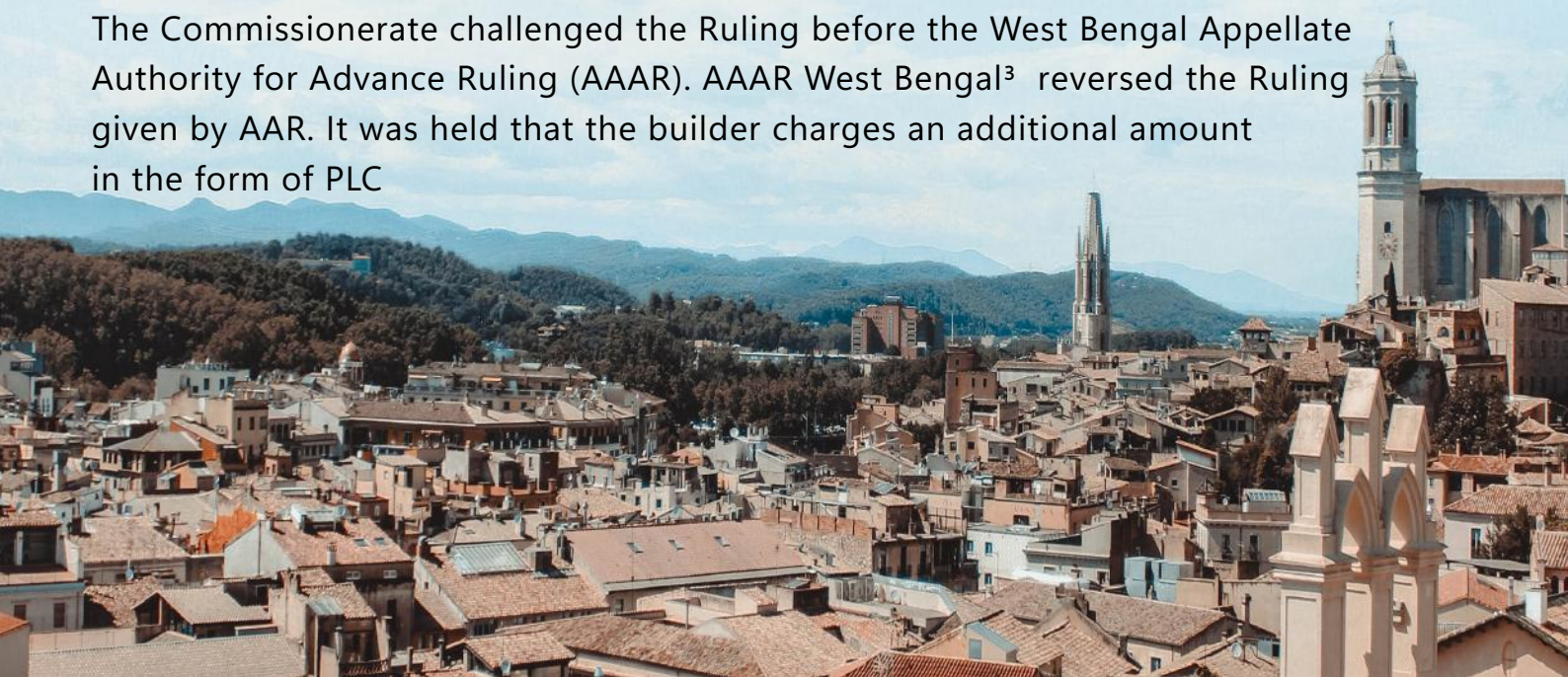
Rightly said by Savigny that law grows with the growth of the society. Likewise, GST was introduced in 2017. GST is also growing with the development of society. There are many ambiguities in the current GST law.

Taxpayers face issues while paying taxes under PLC. There is an ambiguity that whether the construction and preferential location service are to be treated as composite supply, considering the construction service as the principal supply and PLC as a natural bundled with the main supply, or the same should be treated as mixed supply considering that the same cannot be naturally bundled and charged separately and there also an ambiguity that whether the abatement in the form of deduction towards land charges from the consideration amount shall apply to PLC or not?

The issue was brought before the advance Ruling authority of West Bengal in the case of **M/s. Bengal Peerless Housing Development Company²**, where the applicant was engaged in providing construction services and allied services like PLC, right to use car parking space, and common area maintenance services for which a single consolidated price for the construction and aforesaid allied services were being charged from the homebuyer. The authority held that the applicant is providing a composite supply of the group of services, including construction service as the primary service. The entire value of the composite supply should be treated as the supply of construction services.

The abovementioned Ruling clarified the approach to be followed while paying tax. The tax rate, which was to be imposed, relieved developers and homebuyers.

The Commissionerate challenged the Ruling before the West Bengal Appellate Authority for Advance Ruling (AAAR). AAAR West Bengal³ reversed the Ruling given by AAR. It was held that the builder charges an additional amount in the form of PLC



Such charges are a separate service with no association with the land. Hence, the abatement (Deduction of 1/3 amount of consideration towards land charges) cannot be available in respect of such preferential location charges.

AAAR Haryana⁴ also ruled in a similar matter as PLS as an exclusive service and not a component of construction service, as any dealer in immovable property could provide it. However, PLS is identifiable as a separate service. PLC will be identifiable separately from construction service in the same way a property agent's service is separate from the sale of landed property or renting of landed property.

The PLC that builders collect cannot be considered a part of the construction service. It is a separate service and should be subject to the GST at the rate of 18%. The AAAR's Haryana decision follows the same reasoning and reiterates the established position.

Given the impugned judgments, it is clear that PLC should be assessed separately and that the benefit of an abatement (except for the value of the land at a 1/3 of the consideration) will not be available on the value of PLC.

There is another issue on PLC whether PLC collected in addition to the lease premium for a long-term lease of land constitutes part of the lease premium or the upfront amount charged for the long-term lease of land and is eligible for GST.

According to our observation after receiving representation from the stakeholders, it is finally clarified by the Circular⁵ that PLC paid upfront in addition to the lease premium for a long-term lease of land constitutes part of the upfront amount charged for the long-term lease of land and are eligible for exemption under Sl. No. 41 of Notification no. 12/2017- Central Tax (Rate) dated June 28, 2017.

¹Notification No. 03/2019-Central Tax (Rate) dated March 29, 2019

²[2019] 105 taxmann.com 58 (AAR-WEST BENGAL) Bengal Peerless Housing Development Co. Ltd.

³[2019] 110 taxmann.com 34 (AAAR-WEST BENGAL)

⁴[2022] 141 taxmann.com 279 (AAAR-Haryana) DLF Ltd.

⁵<https://cbic-gst.gov.in/pdf/cir-177-08-2022-cgst.pdf>





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