

13.12.2022

Sl no. 25

Ct no. 2

P.M.

WPA 24200 OF 2019

**Bengal Peerless Housing Development
Company Limited**

- Vs -

West Bengal Authority for Advance Ruling & Ors.

Mr. Anil Kumar Dugar,
Mr. Rajarshi Chatterjee,
Mr. Gobinda Dey

... for the petitioner

Mr. K. K. Maiti,
Ms. Ekta Sinha

... for CGST authorities.

Mr. Anirban Ray, Ld. Govt. Pleader
Md. T. M. Siddiqui
Mr. D. Ghosh

... for the State.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned order dated 25th September, 2019 passed by the West Bengal Appellate Authority for Advance Ruling which was filed by the respondent against the order of the Advance Ruling authority dated 2nd May, 2019. The said appeal was filed by the respondent GST authority challenging the advance ruling on the following grounds :

- a) The respondent (BPHDCL) applied for ruling for the limited purpose to know whether the supply of PLS constitutes a composite supply with construction service as the principal*

supply or not. But, the ruling has been passed not only for this purpose but also for “right to use of car parking space”. However, PLS does not include any facility related to car parking space.

b) The WBAAR erred in treatment of PLS as a composite supply with construction service, which resulted in inclusion of the value for PLS with the value for construction service. Consequently, the WBAAR erred in law by confirming the applicability for abatement prescribed for construction service under sl. No. 3(i) read with paragraph 2 of the Rate Notification on the entire value of the composite supply which ultimately would cost dear to the government exchequer.

The appellate authority of advance ruling modified the aforesaid order of the Advance Ruling Authority.

The petitioner challenges the aforesaid ruling of the Advance Ruling Appellate Authority by relying on a circular by way of clarification dated 3rd August, 2022 which was issued much after the passing of the order of the Advance Ruling authority as well as the

order of the Appellate Advance Ruling Authority, by contending that the said circular is a clarificatory in nature and applies to the case of the petitioner and further contends that the same should be treated as retrospective in nature. I find that the aforesaid circular is not applicable to the case of the petitioner since it does not directly cover the issue and subject raised by the petitioner, secondly order of the Advance Ruling Appellate Authority can not be faulted since the circular in question if at all presumed to be applicable in case of the petitioner, was not at all in existence at the relevant time or at the time of passing the impugned order.

On perusal of the impugned order of the appellate authority and the reasons given therein I am not inclined to interfere with the aforesaid impugned order dated 25th September, 2019.

Accordingly this writ petition being WPA 24200 of 2019 is dismissed.

(Md. Nizamuddin, J.)