THE 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, Additional 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	Sky Height Enclave Private Limited
Address	3B Kali Krishna Tagore Street, Kolkata, west Bengal, PIN 700007
GSTIN	19AAJCS1292E1Z8
Case Number	WBAAR 35 of 2025-26
ARN	AD190126003750F
Date of application	January 27, 2026
Jurisdictional authority (State)	Postabazar Charge
Jurisdictional authority (Centre)	Shyambazar Division, Kolkata North Commissionerate
Order number and date	03/WBAAR/2026-27 Dated 25.05.2026
Applicant's representative heard	Mr. Kumaresh Pramanik, Employee Mr. Vinod Kumar Yadav, Employee

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 applicant is engaged in the business of construction and operation of a hotel and is in the process of constructing a hotel building at its principal place of business situated at 3B, Kali Krishna Tagore Street, Kolkata – 700007, which is presently at the finishing stage. Upon completion of the project, the applicant proposes to undertake the business of providing hotel accommodation services, restaurant services, banquet and event related services and other contract food services classifiable under SAC 996311, 996332, 996334 and 996337 respectively. The applicant submits that all the aforesaid outward supplies are taxable supplies under the Goods and Services Tax law and are made in the course or furtherance of business.

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:

(a) Whether Input Tax Credit under Section 16 of the CGST Act, 2017 is admissible on GST paid on works contract services and other inward supplies used for construction of a hotel building, where such building is functionally indispensable and constitutes the very apparatus for providing taxable hotel accommodation services, restaurant services and banquet services, and where such construction is not undertaken "on its own account" but exclusively for providing taxable outward supplies covered under Schedule II of the CGST Act, 2017?

(b) Whether Input Tax Credit is admissible on GST paid on construction and fit-out of areas within the hotel building used for operating a restaurant and banquet facilities, where outward supplies from such areas are taxable under GST?

(c) If Input Tax Credit is admissible, whether such credit is required to be apportioned under Section 17(1) of the CGST Act, 2017 between various taxable outward supplies provided by the Applicant?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (a) & (d) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.6 No information regarding the admissibility of the application was received from the officer concerned from Revenue.

1.7 The application was, therefore, admitted on 03.02.2026 and a date for personal hearing was given on 13.02.2026 and then on 10.03.2026.

1.8 The submissions of the applicant can be summarised as under:

It has undertaken construction of a hotel building including civil construction, interior works, furnishing, fixtures, fittings and decorative installations with the sole intention of operating a hotel business. The hotel building is being developed as an integrated commercial establishment for providing taxable outward supplies in the nature of hotel accommodation services, restaurant services, banquet and event related services and other contract food services.

For the purpose of construction of the hotel building, the applicant has procured various taxable inward supplies including works contract services, interior fit-out services, furnishing items, fixtures and fittings, on which GST has been duly charged by the suppliers and paid by the Applicant. The inward supplies have been received in the course or furtherance of business and are directly linked with the proposed taxable outward supplies to be provided from the hotel premises.

The hotel building along with its restaurant area, banquet facilities and ancillary infrastructure is intended to be used exclusively for providing taxable outward supplies under the GST law. No part of the building is proposed to be used for personal use, self-occupation or any non-business purpose. Further, no portion of the hotel building is intended to be used for exempt supplies. Accordingly, the entire inward supplies used in the construction and fit-out of the hotel building are attributable wholly to taxable business activities.

Section 16 of the CGST Act, 2017 entitles a registered person to avail Input Tax Credit on goods and services used or intended to be used in the course or furtherance of business. In the present case, all inward supplies including works contract services and construction-related inputs have been received wholly and exclusively for carrying out taxable outward supplies and therefore satisfy the conditions prescribed under Section 16 of the CGST Act. The restriction contained under Section 17(5)(d) of the CGST Act relating to immovable property constructed “on his own account” is not applicable in the present case. The hotel building is not being constructed for personal use, self-

occupation or investment purposes. The construction is undertaken exclusively for the purpose of operating taxable outward supplies covered under Schedule II of the CGST Act, 2017. Therefore, the construction cannot be regarded as being undertaken “on its own account” within the meaning of Section 17(5)(d).

The hotel building is not a mere setting in which business is carried on, but constitutes the very tool and apparatus through which taxable outward supplies are provided. Without the hotel building, no hotel accommodation service, restaurant service or banquet service can be rendered by the Applicant. Applying the functional utility and essentiality test, the hotel building qualifies as a business apparatus indispensable for carrying out taxable outward supplies.

The restaurant area and banquet facilities form an integral and inseparable part of the hotel business. The outward supplies made from such areas are taxable supplies under GST and the inward supplies used for construction and fit-out of the said areas are incurred wholly in the course or furtherance of business. Accordingly, Input Tax Credit on inward supplies attributable to such restaurant and banquet areas is also admissible under the provisions of the CGST Act.

In view of the above submissions, the Applicant contends that Input Tax Credit under Section 16 of the CGST Act, 2017 is admissible on GST paid on works contract services and other inward supplies used for construction of the hotel building including restaurant and banquet facilities, since the entire construction is exclusively linked to taxable outward supplies made in the course or furtherance of business. The Applicant further submits that since all outward supplies proposed to be made from the hotel premises are taxable supplies, no apportionment under Section 17(1) of the CGST Act is warranted.

1.9 After the admission of the application and the personal hearing made on 13.02.2026, this authority was informed by mail dated 17.02.2026 by the concerned officer from the revenue that ‘an inspection was carried out at the place of business of the RTP and an Enforcement Case has already been created Vide Case ID AD190126001699X, dated 05/01/2026.’

1.10 This authority sought from the jurisdictional authority the details of the inspection and the proceedings following the inspection. The information received on 05.03.2026 from the jurisdictional authority can be summarized as under:

On the basis of preliminary information that the applicant taxpayer is having a huge amount of ITC in his credit ledger but not having any outward supply, the SGST authority conducted a visit at the principal place of business of the taxpayer on 23.12.2025.
The visiting officers observed that the taxpayer had been constructing a building in the place of business for the purpose of running hotel and restaurant services from the premises. The

jurisdictional officer found that the ITC of the tax payer is blocked under Section 17(5)(d) of the CGST Act, 2017.

Accordingly an enforcement case vide Case ID AD190126001699X, dated 05/01/2026 was created by the jurisdictional authority and the tax payer was asked to reverse ITC as per the provisions of 17(5)(d).

1.11 This authority finds that the questions raised in the application for advance ruling are the same which are pending in the aforementioned proceeding initiated by the jurisdictional authority. By virtue of the proviso to Section 98(2) of the CGST Act, 2017 the authority is debarred from admitting the application for advance ruling where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this act. Had this authority been informed about this fact prior to the admission of the application, the application would have been rejected on the day of hearing for admission after the applicant being provided an opportunity of being heard.

1.14 On 10.03.2026 the facts and circumstances of the enforcement proceeding initiated by the jurisdictional authority are placed before the applicant's representative. He admits in writing that the applicant has the knowledge of the proceeding and the facts narrated by the jurisdictional authority are correct. The applicant's representative does not contest the fact and states that he has nothing to submit in this regard. It appears that the applicant has made wrong representation that the question raised in the application is not already pending/ decided in any proceedings in the applicant's case under any of the provisions of the act. In fact if we look at the chronology of events, it is evident that the applicant has filed the application after the initiation of enforcement case. The case was created in the GST portal on 05.01.2026 and the application for advance ruling was filed in the portal on 09.01.2026.

1.14 The applicant's representative is informed in writing that this authority is of the opinion that no ruling should be given on the questions since the very admission of the question is debarred by the relevant provisions of the act and the questions placed in the application are pending in a proceeding initiated by the SGST authority.

1.16 In view of the above noted facts the application for advance ruling is hereby rejected.

Sd/-
(SHAFEEQ S.)
Member
West Bengal Authority for Advance Ruling

Sd/-
(JAYDIP KUMAR CHAKRABARTI)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata
Date: 25th May, 2026

To,
Sky Height Enclave Private Limited
3B Kali Krishna Tagore Street, Kolkata,
West Bengal, PIN 700007

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, CGST & CX, North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata – 700107
4. The Charge Officer, Postabazar Charge, Commercial Taxes, Block - DF, Sector-1, Jalasampad Bhawan, 7th Floor, Salt Lake, Kolkata - 700091
5. Office Copy