

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 Act, 2017)

BENCH

Mr Sydney D'Silva, Joint Commissioner, CGST & CX (Member)
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST (Member)

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services 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 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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Arihant Dredging Developers Private Limited
Address	6B, Dr. Rajendra Prasad Sarani, Hare Street Kolkata- 700001
GSTIN	19AAHCA2225K1ZO
Case Number	16 of 2019
ARN	AD190419002536Z
Date of application	16/04/2019
Order number and date	04/WBAAR/2019-20 dated 10/06/2019
Applicant's representative heard	Sumit Nishania, CA

1. Admissibility of the application

1.1 The Irrigation and Waterways Directorate, Govt of West Bengal (hereinafter the recipient), has awarded the Applicant a contract for resectioning of river Jamuna from the upstream of Charchat Bridge to the downstream of Ghonja Haspur Bridge in Block and P.S Swarupnagar, Habra – 1 and Gaighata in North 24 Parganas. The Applicant seeks a ruling on whether an exemption under SI No. 3 or 3A of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017 (hereinafter the Exemption Notification), as amended from time to time, applies to the above supply.

1.2 The question is admissible under section 97(2)(b) of CGST Act 2017/WBGST Act, 2017 (hereinafter collectively called GST Act) read with clause (xviii) of section 20 of the IGST Act, 2017. The concerned officer from the Revenue has not objected to the admission of the application and informs that the question raised by the Applicant is not pending or decided in any forum.

1.3 The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 SI No. 3 of the Exemption Notification exempts from payment of GST any "pure service" (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority

or a governmental authority or a government entity by way of any activity in relation to any function entrusted to a panchayat under Article 243G of the Constitution or in relation to any function entrusted to a municipality under Article 243W of the Constitution. SI No. 3A of the Exemption Notification extends it to a “composite supply of goods and services” in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

2.2 The Applicant submits that the recipient is the State Government. He submits a price schedule that describes the work and its value. He argues that the work involves earthwork in excavation and re-excavation of the drainage channels and riverbed, and is pure service or a composite supply where the supply of goods is negligible. He claims that the work is an activity in relation to a function entrusted to a panchayat under Article 243G and/or a municipality under Article 243W. In his support, the Applicant submits a copy of a letter vide memo no 469 dated 22/04/2019 from the recipient, which states that project is in relation to a function entrusted to a panchayat under Article 243 G and/or a municipality under Article 243W.

3. Observations and findings of the Bench

3.1 In its Circular No. 51/25/2018-GST dated 31/07/2018 the Central Government clarifies that the service tax exemption under SI No. 25(a) of Notification No. 25/2012 dated 20/06/2012 (hereinafter the ST Notification) has been *substantially*, although not in the same form, continued under GST vide SI No. 3 and 3A of the Exemption Notification. SI No. 25(a) of the ST notification under the service tax exempts “services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and up-gradation.” The Circular further explains in relation to the specific issue of ambulance service to the Government by a private service provider (PSP) that such service is a function of ‘public health’ entrusted to municipalities under Art 243W of the Constitution, and, therefore, eligible for exemption under SI No. 3 or 3A of the Exemption Notification.

3.2 The above Circular leaves no doubt that the phrase ‘in relation to any function’, as applied to SI No. 3 or 3A above, makes no substantial difference between SI No. 25(a) of the ST Notification and SI No. 3 or 3A of the Exemption Notification. Under the previous service tax regime, the exemption was limited to certain functions specified in SI No. 25(a) of the ST Notification, whereas, under the GST the ambit has been broadened to include any such functions that are performed by a panchayat or a municipality under specific provisions of the Constitution. These functions are in the nature of public welfare service that the governments on their own, and sometimes through governmental authorities/entities, do provide to the citizens. When the activity is in relation to any such function, the supply to the governments or governmental authorities/entities or local authorities is exempt from paying GST under SI No. 3 or 3A of the Exemption Notification, provided it is a pure service or a composite supply where supply of goods does not constitute more than 25% of the value.

3.3 The Applicant’s eligibility under SI No. 3 or 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the supply being made is pure service or a composite supply, where supply of goods does not exceed more than 25% of the value of the supply, (2) whether the recipient is government, local authority, governmental authority or a government entity, and (3) whether the supply is being made in relation to any function entrusted to a panchayat or a municipality under the Constitution, as clarified in the above paragraphs.

3.4 The recipient is the State Government. The contract is meant for resectioning of river Jamuna. It involves the earthwork in the excavation of the drainage channels and deposit of the excavated materials to locations outside the government land. The total contract value includes the cost of services like loading and unloading, transportation, the arrangement of land etc. It is evident from the description of the work that it is a composite supply of various services, where excavation and re-excavation of the drainage channel is the principal supply. Supply of goods, if any, is purely incidental, and is not accounted for separately in the price schedule.

3.5 Before deciding the applicability of SI No. 3 or 3A of the Exemption Notification, the functions of a panchayat under the Constitution needs to be discussed. Article 243G of the Constitution discusses the powers, authority and responsibilities of Panchayats, stating that "Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government..... subject to such conditions as may be specified therein, with respect to.....the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule", which contains the following twenty-nine functional items:

1	Agriculture including agricultural expansion
2	Land improvement, implementation of land reforms, land consolidation and soil conservation
3	Animal Husbandry, Dairying and poultry
4	Fisheries
5	Minor irrigation, water management and watershed development
6	Social forestry and farm forestry
7	Small scale industries in which food processing industry is involved
8	Minor forest produce
9	Safe water for drinking
10	Khadi, village and cottage industries
11	Rural housing
12	Fuel and fodder
13	Rural electrification, including distribution of electricity
14	Road, culverts, bridges, ferries, waterways and other means of communication
15	Education including primary and secondary schools
16	Non-conventional sources of energy
17	Technical training and vocational education
18	Adult and non-formal education
19	Public distribution system
20	Maintenance of community assets
21	Welfare of the weaker sections of the in particular of the schedule caste and schedule tribes
22	Social welfare, including welfare of the handicapped and mentally retarded
23	Family welfare
24	Women and child development
25	Markets and Fairs
26	Health and sanitation including hospitals, primary health centres and dispensaries
27	Cultural activities
28	Libraries
29	Poverty Alleviation Programmes

3.6 The recipient is engaged in the development of irrigation and waterways, which includes activities in relation to the function listed under SI No. 5 of the Eleventh Schedule, and, therefore, entrusted to a panchayat under Article 243G of the Constitution of India. The recipient certifies that the work awarded to the Applicant, involving drainage of channels and riverbeds, is an activity undertaken in relation to the function referred to above.

3.7 The Applicant's service to the recipient, therefore, is exempt under SI No. 3A of the Exemption Notification.

Based on the above discussion, we rule as under,

RULING

The Applicant's supply to the Irrigation and Waterways Directorate, Govt of West Bengal, as mentioned in para 1.1, is exempt from the payment of GST under SI No. 3A of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017, as amended from time to time.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


(SYDNEY D'SILVA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling