

WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015

Before:
Mr. A.P.S Suri, Member
Ms. Smaraki Mahapatra, Member

In the matter of

Appeal Case No. 10/WBAAAR/APPEAL/2019 dated 26.08.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by Sri. Ashis Ghosh, Old 1042, Pratima Corner, Ward-8, Chakdah, Nadia-741222

Present for the Appellant: Sri. Shobhaganu Bhattacharya, Advocate.

Present for the Respondent: 1. Sri. Rajneesh Meena, Assistant Commissioner, CGST & CX, Kalyani Division, Kolkata North Commissionerate;
2. Sri. Tapan Dutta, Superintendent, CGST & CX, Kalyani Division, Kolkata North Commissionerate.

Matter heard on: 20.11.2019

Date of Order: 21.11.2019

1. This Appeal has been filed by Sri. Ashis Ghosh (hereinafter referred to as "the Appellant") on 26.08.2019 against Advance Ruling No. 09/WBAAAR/2019-20 dated 25.06.2019, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) in the matter of M/s Ashis Ghosh.



2. M/s Ashis Ghosh, located at Old 1042, Pratima Corner, Ward-8, Chakdah, Nadia-741222 holding GSTIN 19AHRPG7984M1Z7 procured two contracts from M/s Mackintosh Burn Limited (hereinafter referred to as MBL) for filling in the compound, tank, lowland, etc. with silver sand and earthwork in layers, including spreading and compacting the same at the New Central Correctional Home, Baruipur.
3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on whether this can be classified as supply of sand (HSN 2505).
4. The WBAAR observed that by the description of the job contained in the work orders, the Appellant was required to fill the foundation or plinth by silver sand in layers and consolidate the same by saturation with water ramming. The work further involved earthwork for filling in the compound, tank, lowland, ditches, etc. with good earth spread in layers, including breaking clods and consolidate the same by ramming and dressing. The WBAAR concluded that the contract is not for supply of goods, but the transfer of property in such goods in the course of site preparation for construction of the New Central Correctional Home, Baruipur and thus is a works contract, as defined under section 2(119) of the GST Act. The WBAAR finally held that the Appellant's supply to MBL is works contract service, classifiable as site preparation service (SAC Group 99543) and taxable @18% under Serial No. 3(xii) of Notification No. 11/2017-CT(Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017) as amended from time to time (hereinafter referred to as GST Rate Notification).
5. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside/modify the impugned Advance Ruling passed by the WBAAR or pass any such further or other orders as may be deemed fit and proper in the facts and circumstances of the case on the following grounds:
 - a) The WBAAR erred in classifying the supply as supply of services instead of supply of silver sand and earth.
 - b) The WBAAR erred in classifying the supply as works contract, the nature of job being site preparation. The Appellant is not entitled to perform any job work like site preparation, designing, engineering works, measurements, designs, engineering services which fall under site preparation service.
 - c) The Appellant submits that the supply is a composite supply as defined under clause 30 of section 2 of the GST Act and the principal supply in this case is supply of silver sand and earth which constitutes over 90% value of the total work order.
 - d) The WBAAR observed MBL to be a State Government Company and not a government entity as only 51.01% equity shares are held by the State Government. The WBAAR did not consider the fact that MBL is only the Principal Contractor and



Principal Contractee is West Bengal Police Housing and Infrastructure Development Corporation Limited (hereinafter referred to as WBPHIDCL) which is a government authority.

6. The Appeal petition was filed on 26.08.2019 against the WBAAR's Ruling dated 25.06.2019 which was received by the Appellant on 29.06.2019. As per Section 100(2) of the GST Act the Appeal should have been filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned applicant. The Appellant submitted petition for condonation of delay in filing Appeal which was taken up for hearing on 12.09.2019. None appeared on behalf of the Respondent and no objection was raised in connection of admission and condonation of delay in filing appeal petition. The delay in filing appeal was condoned and the appeal was admitted.
7. During the course of hearing the Appellant reiterated the points as stated in the Grounds of Appeal. He emphasized on the nature of supply being that of composite supply where the principal supply is that of silver sand. The service portion involved therein like filling the designated areas with sand, compacting and leveling the same are ancillary to the principal supply. The Appellant's authorized representative argued that the WBAAR in its observation was also satisfied that in terms of total contract value the major portion was that of value of sand and less than 25% of value of contract was that of service involved. The Appellant referred to Order No. JHR/AAR/2018-19/01 dated 03.11.2018 of the Authority for Advance Ruling, Jharkhand in the matter of M/s P. K. Agarwala where the Authority for Advance Ruling, Jharkhand observed that the work order being supply of services with material and as more than 75% of the value of supply constitutes earthwork, the supply will be taxable under Serial No. 3(vii) of Notification No. 39/2017-IGST dated 13.10.2017. The Appellant argued that as nearly 90% of value of supply in the instant case is that of supply of sand it will be principal supply and tax rate ought to be at the rate of tax of sand.
8. The Respondent submitted that MBL was a commercial company. The Respondent further submitted that the nature of supply is not only a composite supply but works contract involving supply of sand, loading and unloading of the same, filling the site with silver sand and earth, spreading and compacting and water ramming etc. All these activities were carried out by the Appellant to make a particular land fit for subsequent construction work. The Respondent concluded that in the light of the nature of the job it can be termed as site preparation and merits classification under SAC 9954 and taxable @18% under GST Rate Notification.
9. The matter is examined and written and oral submissions made before us are considered.
10. "Composite Supply" as defined under Section 2(30) of the GST Act, 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. Therefore, the definition implies that a supply of goods and or services will be treated as composite supply if it fulfills the following criteria:

- (a) there must be supply of two or more taxable supplies of goods or services or both, and
- (b) these goods or services or both are naturally bundled, that is they are supplied together in conjunction with each other in the ordinary course of business.

As per the work orders issued by MBL, the Appellant is required to fill in the foundation or plinth by silver sand in layers and consolidate the same. Further the job also involves filling in the compound, tank and other low lying areas with sand and good earth and consolidating the same by ramming and dressing. The activities undertaken by the Appellant amount to improvement and modification of land for future construction. In the circumstances, it is not a case of composite supply where principal supply constitutes of sand, as argued by the Appellant, but a case of transfer of property in goods in course of site preparation for construction of the New Central Correctional Home at Baruipur.

In view of above, we find no infirmity in the ruling pronounced by the West Bengal Authority for Advance Ruling in the matter and hence there is no reason to interfere with it.

The appeal thus fails and stands disposed of accordingly.

Send a copy of this order to the Appellant and the Respondent for information.

1/-

(Smaraki Mahapatra)
Member
West Bengal Appellate Authority
for Advance Ruling

2/-

(A.P.S Suri)
Member
West Bengal Appellate Authority
for Advance Ruling

