

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

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

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	M/s Dipak Kanti Mazumder Dynamic Engineers
Address	2A, 2 nd floor, 43, Raja Subodh Mallick Road, Ganguly Bagan Kolkata-700084
GSTIN	19AEVPM3879E1ZQ
Case Number	50 of 2019
ARN	AD191219001061K
Date of application	19/12/2019
Order number and date	44/WBAAR/2019-20 dated 06/03/2020
Applicant's representative heard	Mr. Pinaki Sen, Advocate

1. Admissibility of the Application

1.1 The Applicant is stated to be providing conservancy/solid waste management service to the Howrah Municipal Corporation (hereinafter the HMC). The HMC, however, is deducting TDS while paying consideration for the above supply in terms of Notification No. 50/2018 – Central Tax dated 13/09/2018 (corresponding State Notification No. 1344 – FT dated 13/09/2018) and State Government Order No. 6284 – F(Y) dated 28/09/2018 (hereinafter collectively referred to as TDS Notifications). The Applicant seeks a ruling on whether the above supply is exempted in terms of SI No. 3 or 3A of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time (hereinafter collectively referred to as Exemption Notification), and if so, whether the notifications regarding TDS are applicable in his case.

1.2 The questions are admissible under section 97(2)(b) of the GST Act. The concerned officer from the Revenue has not objected to the admission of the application. 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, being a municipal corporation, is a local authority. He submits copies of the work orders issued, specification and terms and conditions of the work etc. to establish that he supplies pure service and, therefore, the exemption under SI No. 3 of the Exemption Notification applies to his supplies.

3. Submission of the Revenue

3.1 The concerned officer of the Revenue has commented that the above-mentioned work of the applicant is covered under Notification No 1136 F.T. dated 28/06/2017 and exempted from paying of tax.

4. Observations and findings of the Bench

4.1 In its Circular No. 51/25/2018-GST dated 31/07/2018 the Central Government clarifies that the service tax exemption at serial 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.

4.2 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 either a pure service or a composite supply, where supply of goods does not constitute more than 25% of the value.

4.3 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.

4.4 The recipient is a municipal corporation, which is a local authority as defined under section 2(69) of the GST Act.

4.5 In the Work Orders issued to the Applicant the recipient describes the nature of the work as operation of bucket machine sets at zone A, B and C of HMC, operation of combined Jetting Cum Suction Machine at different parts of HMC. After lifting and removing of daily garbage accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area, those garbage are brought to the compactor station. Applicant performs compaction service and transport compacted garbage to the dumping station with the help of hook loaders mounted in compactor machine. There is, however, no reference to any supply of goods in the course of executing the work. The consideration to be paid measures the work only in terms of the quantity of the garbage lifted and removed. Based on the above documents, it may, therefore, be concluded that the Applicant's supply to HMC is a pure service.

4.6 Furthermore, Article 243W of the Constitution that discusses the powers, authority and responsibilities of a Municipality, refers to the functions listed under the Twelfth Schedule as may be entrusted to the above authority. SI No. 6 of the Twelfth Schedule refers to public health, sanitation, conservancy and solid waste management. The Applicant's supply to HMC is a function mentioned under SI No. 6 of the Twelfth Schedule.

4.7 The Applicant's service to HMC, therefore, is exempt under SI No. 3 of the Exemption Notification.

4.8 The TDS Notifications bring into force section 51 of the GST Act, specifying the persons under section 51(1)(d) of the Act and have mandated and laid down the mechanism for deduction of TDS. These notifications, therefore, are applicable only if TDS is deductible on the Applicant's supply under section 51 of the GST Act. Section 51(1) of the Act provides that the Government may mandate inter alia a local authority to deduct TDS while making payment to a supplier of *taxable* goods or services or both. As the Applicant is making an exempt supply to HMC the provisions of section 51 and, for that matter, the TDS Notifications do not apply to his supply.

Based on the above discussion, we rule as under,

RULING

The Applicant's supply to the Howrah Municipal Corporation, as described in para 4.5, is exempt from the payment of GST under SI No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time.

As the Applicant is making an exempt supply, the provisions of section 51 and, for that matter, Notification No. 50/2018 – Central Tax dated 13/09/2018 (corresponding State Notification No. 1344 – FT dated 13/09/2018) and State Government Order No. 6284 – F(Y) dated 28/09/2018, to the extent they mandate and deal with the mechanism of TDS, do not apply to his supply.

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


(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling