

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 Susmita Bhattacharya, Joint Commissioner, CGST & CX (Member)
Mr Parthasarathi Dey, Additional 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 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	Reach Dredging Ltd
Address	3B, Orbit House, 3 rd Floor, Garstin Place, Esplanade, Kolkata 700001
GSTIN	19AAECR9181L1ZN
Case Number	08 of 2020
ARN	AD190620004653C
Date of application	03/07/2020
Order number and date	07/WBAAR/2020-21 dated 10/08/2020
Applicant's representative heard	Sumit Nishania, CA

1. Admissibility of the application

1.1 The Irrigation and Flood control Department, Govt of Jammu and Kashmir (hereinafter the recipient) has awarded the applicant a contract for construction of channels across Hokersar Wetland along the old alignment from RD 13182m to RD 16713m of flood spill channel, including its side slope protection and dredging of drainage flowing into Hokersar Wetland. The applicant seeks a ruling on whether SI No. 3 (vii) of Notification No 08/2017 – Integrated Tax (Rate) dated 28/06/2017 (hereinafter the IGST Notification), as amended from time to time, applies to the above supply.

1.2 The question is admissible under section 97(2)(b) of the GST Act read with clause (xviii) of section 20 of the IGST Act, 2017. The applicant declares that the question raised is not pending or decided in any forum. The concerned officer from the Revenue has not objected to the admission of the application.

1.3 The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The applicant submits work allotment order and related documents. He provides a price schedule that describes the work and its value and argues that he is supplying works contract service involving earthwork in excavation and re-excavation of the drainage channels, and it consists of more than 75% of the value of the contract.

2.2 The applicant submits that the recipient was the State Government. But, after the amendment of Article 370 of the Constitution of India, the Government of India has bifurcated the erstwhile State of Jammu and Kashmir into two union territories, being the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. The recipient now is the Union territory of Jammu and Kashmir.

2.3 Based on the above submissions, the applicant argues that the supply is taxable @ 5% in terms of SI No. 3 (vii) of the IGST Notification.

3. Submission of the concerned Officer

3.1 The concerned officer submits that it is difficult to ascertain from the available information whether the involvement of materials in the contract exceeds 25% of the contract value. He refrained himself from offering comment as there is a dearth of information in the application itself.

4. Observations and findings of the Bench

4.1 Entry No. 3 (vii) of the IGST Notification provides that a supply is taxable @ 5% if the contract is a composite supply of works contract as defined under section 2(119) of the GST Act, involving earthwork exceeding 75% of the contract value and the recipient is the Central Government, State Government, Union Territory, a government authority or a government entity.

4.2 The applicant submits an allotment order vide no DB/179 of 2018-19 dated 01/02/2019, which mentions that the recipient awards the applicant a contract of Rs. 2055.56 lakhs for the construction of channels across Hokersar Wetland along the old alignment from RD 13182m to RD 16713m of flood spill channel, including its side slope protection and dredging of drainage flowing into Hokersar Wetland by way of earthwork excavation in all kinds of soils like earth, clay, silt, sand, gravel, boulders and lake bed materials etc. by mechanical means. Annexure A of the Order specifies the scope of the work with an emphasis on earthwork in the excavation.

4.3 The concerned Executive Engineer has issued a letter dated 19/03/2020 where he certifies that total value of the works contract constitutes mainly of dredging and earthwork excavation and involvement of material is less than 15 per cent of the total value of the work.

4.4 The work is aimed at the improvement of immovable property and involves the supply of various services and goods in the course of its execution. It is works contract within the meaning of section 2 (119) of the GST Act, where earthwork exceeds more than 75% of the contract value. The recipient being a Union Territory, all the conditions of Entry No. 3 (vii) of the IGST Notification are satisfied.

Based on the above discussion, we rule as under,

RULING

The applicant's supply, as mentioned in para 1.1, to the Irrigation and Flood control Department, Govt of Jammu and Kashmir, is taxable under Entry No. 3(vii) of Notification No 8/2017 – 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.

(SUSMITA BHATTACHARYA)
Member
West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)
Member
West Bengal Authority for Advance Ruling