

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, Additional 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 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	Vrinda Engineers Private Limited
Address (correspondence)	181/B, Chittaranjan Avenue Kolkata-700007
GSTIN	19AAACV9131E1ZC
Case Number	WBAAR 14 of 2020
ARN	AD190920001470H
Date of application	21/09/2020
Order number and date	14/WBAAR-20-21 dated 04/12/2020
Applicant's representative heard	Sri Rip Das, FCA

1. Admissibility of the application

1.1 The applicant is a supplier of building structure, railway bridge equipment, technical structure, blast furnace shell, civil structure. Apart from supplying items, the applicant does job work on the materials and design belonging to another registered person. The applicant wants to know the applicable rate of tax in terms of SI No. 26 of Notification No. 11/2017- Central Tax (Rate) dated 28/06/2017, amended time to time, (hereinafter "Rate Notification"). An advance ruling is admissible on this question under section 97(2)(b) of the GST Act.

1.2 The applicant declares that the issue raised in the application is not pending nor decided in any proceedings under any provisions of the GST Act. The officer concerned from the revenue has not objected to the admission of the application. The application is, therefore, admitted.

2. Submissions of the applicant

2.1 The applicant states that M/s S.P. Singla Construction Pvt Ltd (hereinafter the Principal) is engaged in the reconstruction of the Majherhat Railway Overbridge (ROB). The Principal has contracted with the applicant for fabrication, painting and transportation at the site of the

'Viaduct and Cable Stay' part of the ROB. The applicant submits that the activities in terms of the above contract should be treated as job work. It provides a copy of the agreement.

2.2 According to the contract, the Principal provides all materials and drawing for fabrication. The painting is done as per guidelines of the PWD, Government of West Bengal.

2.3 The applicant's contention is that their job work attracts GST @12% under SI No. 26(id) of the Rate Notification.

3. Submissions of the revenue

3.1 The concerned officer raises the point that the agreement does not clarify who would supply the paints. If the applicant supplies the paint, the activity should be regarded as works contract. On the other hand, if the Principal provides the paint, the agreement should be treated as that of job work. The concerned officer also likes to focus on the issue that performance of fabrication, paintings and transportation should come under the ambit of mixed supply and should attract the highest rate of tax.

4. Observations and findings of the Authority

4.1 Job work has been defined under section 2(68) of the GST Act as any treatment or process undertaken by a person on goods belonging to another registered person. Rule 2(h) of the Cenvat Credit Rules, 2004 defines job work as processing or working upon raw materials or semi-finished goods supplied to the job worker to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforementioned process. Job work within the meaning of section 2(68) of the GST Act, therefore, is nothing but manufacturing service, classifiable under SAC 9988, supplied to a registered taxable person.

4.2 It is necessary to analyze the terms of the contract between the Principal and the applicant. The Principal delivers the raw materials for fabrication at the applicant's unit free of cost (Clause no 4). The fabrication work is inspected at different stages by the designated engineer/client/Principal (Clause 14). The applicant is required to paint as per the approved specification. But, the scope of painting is restricted to surface preparation, metal spraying and one coat of paint at the shop (Clause 15). The final coat of paint will be done on-site after the completion of the erection. On receipt of the fabricated structures at the site, the Principal will do weighment, and the work shall be measured as per the above weighment (Clause 23). After completion of the fabrication work, the applicant has to return the excess materials to the Principal (Clause no 24).

4.3 The Principal sends physical inputs (goods) to the applicant. Both the Principal and the applicant are registered taxable persons (RTP) under the GST Act. The applicant has to do fabrication work on the goods so provided and return the Principal the excess material. As regards the fabrication job, the applicant's liability ends after delivery of the fabricated structures at the site. But it needs to apply a coat of paint after the structures are erected.

4.4 The applicant's activities can, therefore, be segregated into (1) job-work of fabrication on the material provided by the Principal and delivery thereof, (2) supply of paint on the fabricated structures and (3) works contract involving the application of a coat of paint on the erected structures and thereby improving / maintaining an immovable property. It appears from the

payment schedule (Clause 29) that the applicant receives 80% of the payment on delivery of the fabricated structures at the site. At the same time, the balance amount shall not be released till the applicant applies the final coat on the erected structures and the competent authority issues the completion certificate. Moreover, although the applicant is not responsible for erection of the fabricated structures, retention money @ 5% of the value of the work, deducted from each running bill, will be released only after successful completion of each span, which includes erection/launching of the spans (Clause 30). Therefore, the works contract part of the contract is inseparably linked with the job-work portion, and they cannot be treated as two separate contracts.

4.5 Notification No. 5050-F(Y) dated 16/08/2017 of the Government of West Bengal clarifies that works involving the supply of taxable goods along with the labour to any movable property (e.g. servicing of motor vehicles with motor parts, AMC for computers or AC machines or generator, repair of furniture etc.) are composite supplies, as the supply of goods and labour are naturally bundled and made in conjunction with one another. The principal supply, according to the said notification, is determined by the predominant nature of the contract. For example, in the case of servicing of motor vehicles or AMCs, the principal supply is 'service'. On the other hand, in a contract for supply-cum-installation of an AC machine, the principal supply will be the AC machine.

4.6 The job work of fabrication, applying a coat of paint and transportation of the movable structures to the site all constitute a composite supply the predominant nature of which is the job work. It is the principal supply, and the application of a coat of paint on the fabricated structures and their transportation for delivery at the site are ancillary to it. But whether the inseparable linkage of the contract with the stage when the fabricated structures lose their movable nature turns the entire activity into a works contract is a more complex issue.

4.7 Two questions are involved – liability of the applicant and the payment schedule. The significant portion of the applicant's liability ends with the delivery of the fabricated structures. It is required to apply a coat of paint after the structures are erected. But the contract does not make it responsible for the work of erection in any way. After delivery of the fabricated structures, its liability extends only to applying a coat of paint to the erected structures. Although the applicant will not receive the full amount of the consideration till the structures are erected and the completion certificate is issued by the competent authority, it cannot be penalized for a breach of contract for any defect in the erection work. Mere extension of the payment schedule does not turn the applicant's job description into a works contract.

4.8 The contract combines two separate services: (1) the job work of fabrication of steel structures and delivery thereof at the site with incidental supply of paint, and (2) works contract of applying a coat of paint to the steel structures after erection. Although they are supplied in conjunction with each other at a single price, they are not naturally bundled. The job work of fabrication ends with the delivery of the fabricated structures at the site. The works contract of applying paint to the erected structures is a separate supply made in conjunction with the job work. It is, therefore, a mixed supply.

4.9 The taxability of the mixed supply depends on the applicable rate of tax on each of the two supplies. Being supply of the manufacturing service (SAC 9988) to a registered taxable

person, the supply of the job work is taxable @ 12% in terms of SI No. 26 (id) of the Rate Notification. On the other hand, The Principal (M/s S P Singla Construction Pvt Ltd) is the main contractor engaged by the Public Works (Roads) Department of the State Government for the reconstruction of the Majherhat ROB. The applicant's works contract service, being that of a sub-contractor engaged by the main contractor, therefore, is taxable @ 12% in terms of SI No. 3(ix) of the Rate Notification. The mixed supply is, therefore, taxable @ 12% in terms of the provisions under section 8(b) of the GST Act.

Based on the above discussion we rule as under:

RULING

The applicant supplies a mixed supply constituting of the job work of fabrication of steel structures and the works contract of applying paint to the erected steel structures. It is taxable @ 12% in terms of the provisions under section 8(b) of the GST Act.

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

(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling

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