

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	RDL-ZYCHL-JV
Address	1, Orbit House, 3 rd Floor, Garstin Place, Esplanade, Kolkata 700001
GSTIN	19AAGAR4122D1ZR
Case Number	18 of 2020
ARN	AD191220000850P
Date of application	21/12/2020
Order number and date	16/WBAAR/2020-21 dated 05/02/2021
Applicant's representative heard	Sumit Nishania, CA

1. Admissibility of the application

1.1 The Wular Conservation and Management Authority (hereinafter the recipient) has awarded the applicant a contract for the dredging of Wular Lake from RD 0 –RD 2090 metres along the Jhelam Bank with its feeder channels near village Saderkote Payen and Banyari for conservation and management of the lake. The applicant seeks a ruling on whether Sl 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 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 shortage of information in the application itself.

4. Observations and findings of the Bench

4.1 Entry No. 3 (vii) of the 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 01/WUCMA of 2020-21 dated 02/06/2020 which mentions that the recipient awards applicant a contract of Rs. 148.5968 crore for increasing water holding capacity of Wular lake by way of earthwork excavation in all kinds of soils like earth, clay, silt, peat, sand 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 Superintending Engineer, Wular Conservation & Management Authority, has issued a letter vide no SE/WUCMA/20-21/262 dated 11/11/2020 certifying that involvement of material is less than 2 per cent of the total work order.

4.4 The work is aimed at the improvement of an immovable property (Wular lakebed) 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 first two conditions, as discussed in para 4.1 above, are, therefore, satisfied. The applicant thus satisfies two conditions of entry 3(vii) of the Notification. It now needs to be examined whether the recipient is the State Government, Union Territory, or a Governmental Authority within the meaning of para 5 (ix) of the IGST Notification.

4.5 The expression "Governmental Authority", as defined in para 5 (ix) of the IGST Notification, means an authority or a board or any other body -

- (i) Set up by an act of Parliament or a State Legislature, or
- (ii) Established by any government

With ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W or a Panchayat under Article 243G of the Constitution.

4.6 It appears from Notification No. 311 dated 25/09/2012 of the Forest Department of State Government (now a Union Territory) that the recipient is constituted as an authority under section 3 (1) of the Jammu and Kashmir Development Act, 1970 for preservation and conservation of Wular Lake. The Board of the recipient, constituted the same day by Notification No. 314, ensures 100% control of the State Government (now a Union Territory). The powers and functions of the recipient are described in Govt Order No. 396 FST of 2012 dated 10/10/2012 of the Forest Department, Government of Jammu and Kashmir. They broadly conform to the function of promoting urban forestry, protection of environment and ecology entrusted to a municipality under article 243W of the Constitution. The recipient is, therefore, a Governmental Authority within the meaning of para 5(ix) of the IGST Notification.

Based on the above discussion, we rule as under,

RULING

The applicant's supply, as mentioned in para 1.1, to the Wular Conservation and Management Authority is taxable under SI 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