

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 Tax Act, 2017)

Members present:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX  
 Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax 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 Tax 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	Simoco Telecommunications(South Asia) Limited
Address	Block EP And GP, Godrej Genesis Building, 2 <sup>nd</sup> floor, Sector-V, Salt Lake, Kolkata-700091
GSTIN	19AAECS4335F1ZD
Case Number	WBAAR 11 of 2022
ARN	AD1905220038727
Date of application	May 12, 2022
Jurisdictional Authority (State)	Salt lake Charge
Jurisdictional Authority (Central)	Bidhannagar Division, Kolkata North Commissionerate
Order number and date	10 /WBAAR/2022-23 dated 23.09.2022
Applicant's representative heard	Mr. Biswarup Daripa, Authorized Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that the State Urban Development Authority (SUDA, for short) has accepted his offer for design, build, finance, operate and transfer of Municipal Wet Waste processing facility based on Composting and/or Bio-methanation Technology, setting up Semi-Automatic Material Recovery Facility for Dry Waste and construction of Sanitary

Landfill along with operation & maintenance for 10 years (Renewable) under Swachh Bharat Mission/Mission Nirmal Bangla and accordingly has issued "Letter of Acceptance cum Work Order" to him to carry out the said activities in respect of a number of municipalities in West Bengal.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (a) Classification of goods/services as per work order.
- (b) What is the GST rate for above job?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (a) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant has stated that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

## 2. Submission of the Applicant

2.1 It is submitted that in order to execute the work against "Letter of Acceptance cum Work Order" issued by SUDA, the applicant enters into tripartite agreement with the Director of SUDA and the Executive Officer of the respective municipality.

2.2 Scope of the Municipality/ Municipal Corporation, as it appears from the said agreement is as follows:

- The Municipal Corporation/ ULB shall provide and hand over an encroachment free waste processing site and sanitary landfill site of required area.
- Municipal Corporation/ ULB shall also provide approach road, Water Connection, Street Lighting up to the outside of boundary line of waste processing site.
- Municipal Corporation/the ULB shall make arrangement to transport the collected segregated waste up to the Waste Processing Site.
- Provide assistance to the agency towards getting any types of clearance/ NOC or electric / water connections etc.
- Conduct capacity building workshops and through IE&C spread the awareness for waste segregation at source.

2.3 The applicant, on the other hand, has been awarded to carry out following activities as mentioned in the scope of work:

- Design, Build, Finance, Operate and Transfer (DBFOT) of required capacity (based on total wet waste generation as on 2020 + 10%) of Municipal Solid Waste

Processing facility based on Composting and/or Bio-methanation technology with pre-sorting facility during the contract period and Operation & Maintenance for 10 years (Renewable based on effective performance);

- Preparation of design, drawing and specifications of required civil works and installation of plant & machinery together with processing of wet waste.
- Construction of Office Buildings, Boundary walls (if required), Sheds & other civil structures & facilities required for running a processing plant smoothly.
- Procurement of required manpower, plant & machinery, vehicles/ equipment, spare parts, accessories, tyres, tubes, hydraulic oil, lubricants, diesel, petrol etc. for day to day running, operation & maintenance of processing plant and sanitary landfill site.
- Exploring market for sale and disposal of bye-products, recyclable & reusable materials.
- Sale of bye-products, recyclable & reusable materials and maintaining proper books of accounts.

2.4 In light of aforesaid scope of work, the applicant has furnished a flow chart in respect of work process to be carried out by him which is reproduced below:

#### Collection-Receiving-Segregation

(1) Entry Gate

(2) Primary Collection point/Weighbridge Receiving

(3) Segregation point1 (Wet Waste)

- (a) Domestic Kitchen Waste-(Food surplus & left over fish & meat bones, egg shell, raw veg & fruits left over, flowers and garden waste, pet waste etc)
- (b) Commercial & Hospital/Nursing home waste (wet left over & food surplus)

(4) Segregation Point 2 (Solid Waste)

- (a) Domestic solid waste plastic & others like disposable cups and plates, tetra packs, cartoons, foil rappers, old cottons, wooden scraps, broken glass, house hold metals (like blades, nails, etc), different type of plastic carry bags like LDPE/HDPE/PE/Black film, from regular milk, market, parcel for selling to outside vendors and selection of plastics for further reprocessing
- (b) Commercial & Hospital/Nursing home waste (wood board, packing cartoon, paper board, medicine, foil, injection syringe)

(5) Segregation Point 3 (Other Waste for disposal & land filling) like dead animal/bird bodies (rats/street dogs/cats etc)

(6) Weighing machine (1) & data record area for wet waste segregation & receiving point for compost fertilizer processing unit

(7) Weighing machine (2) & data record area of solid waste segregation & receiving point for further scrap sale & disposal products after identification (like different type of plastics glass broken, domestic leather items, wooden scrap, iron scrap, construction debris) and for fuel processing unit (plastics).

#### Waste Processing & Material Management System

(8) Process Units (1) for compost fertilizers with selected wet waste

(9) Process Units (2) for reprocessing of plastic wastes (PP/PE/LDPE/HDPE) to AF

(10) Process Units (3) for land filing and further disposal

(11) Material Management

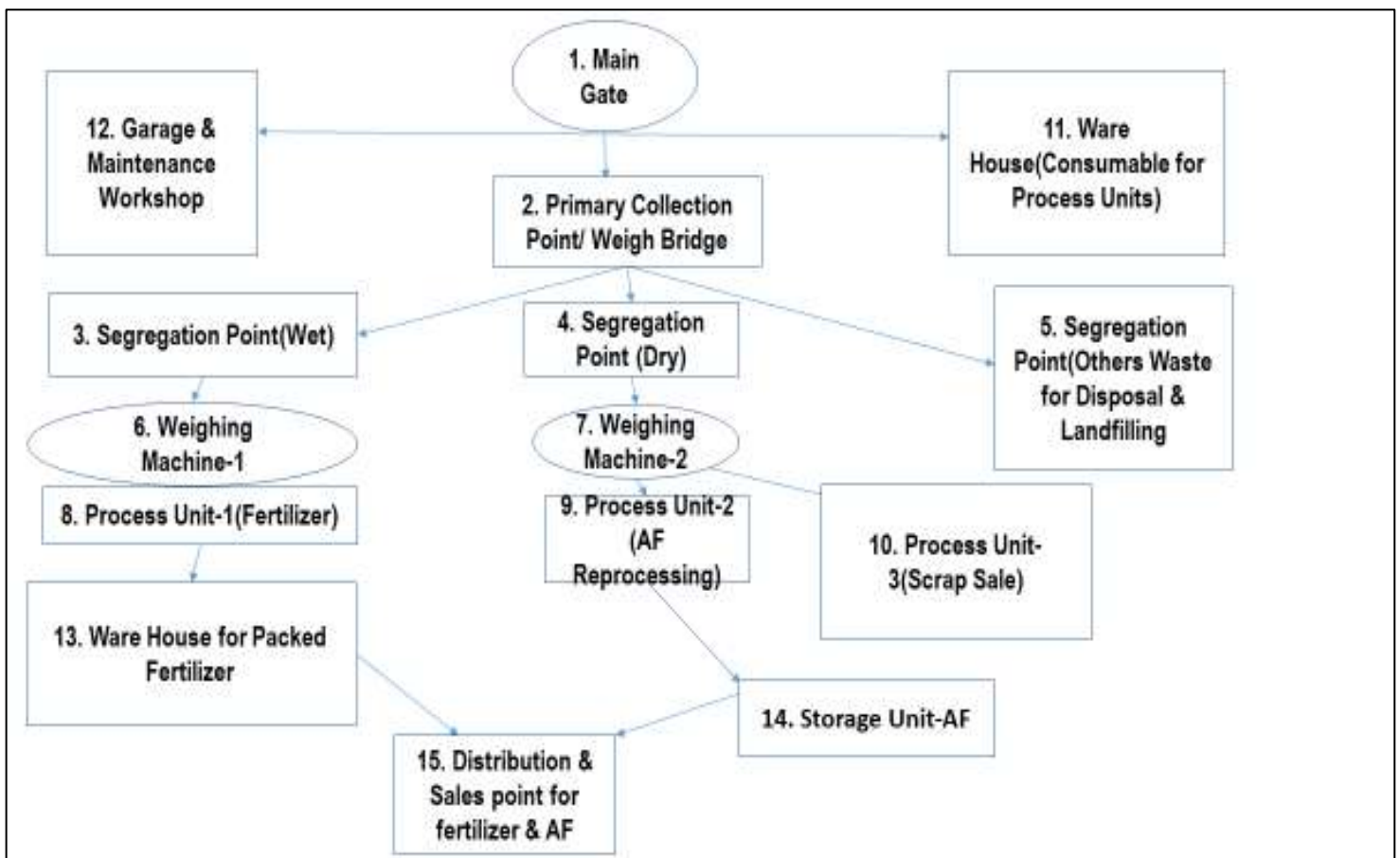
- Workers uniform (Shoes, Cap/Helmet, Reflectors, Hand Gloves, Mask etc)
- Waste handling equipment (trowel, poly packages, pow spade, spatula etc)
- Emergency maintenance equipment and electrical spares
- Organic &vermi-compost process chemical & molecule compounds
- Fertilizers packaging materials (30kg & 50 kg capacity LPP bags)
- Fuel for DG set
- Ignition fuel fir reprocessing unit
- Other raw materials for reprocessing unit(Catalyst material)
- Packaging Jar/Container for AF distribution to channel partners
- Sanitizing materials & equipment

(12)Workshop (for handling vehicles & equipment)

(13) Warehouse for packed fertilizers

(14) Storage Unit for alternative fuel (produced from reprocessing of waste plastic)

(15) Packaging, Distribution & sales point (for fertilizers & alternative fuel)



### 3. Submission of the Revenue

The submission of the officer concerned from the revenue is reproduced in verbatim:

3.1 It appears from the disclosure of the applicant in their application for advance ruling read with the work order issued by State Urban Development Agency, West Bengal that the applicant would design, build, finance, operate and transfer Municipal Wet Waste processing facility based on Composting and/ or Bio-methanation technology, setting up Semi-Automatic Material Recovery Facility for Dry Waste and construction of Sanitary Landfill (as per required size) along with operation and maintenance for ten years under Swachh Bharat Mission/ Nirmal Bangla for Kharagpur Municipality in West Bengal. The consideration for this work has been fixed at Rs. 367 per metric ton inclusive of all taxes and duties and GST. It was also mentioned in the work order that the work is to be done as mentioned in the NIT (copy not enclosed) and a formal tripartite agreement is also to be executed among the applicant, State Urban Development Agency and Kharagpur Municipality, copy of which has also not been enclosed.

In absence of relevant documents like NIT and the tripartite agreement it is very difficult to determine the classification of Goods/Services as mentioned in the work order. The applicant did not mention whether any notification is applicable in their case either. Hence, only a general commentary can be made on the basis of the work order and applicability of the same is to be adjudged in the light of other relevant documents like NIT and the tripartite agreement.

It appears that the applicant will have to design, build, finance, operate and finally transfer the whole setup for processing of municipal waste, of dry and wet both types, for Kharagpur Municipality. Hence, this entails a construction work involving supply of materials as well as supply of a service involving processing of municipal waste. It appears from the work order that the consideration for this work has been fixed at Rs. 367 per metric ton, apparently of municipal waste (though it is not mentioned anywhere in the work order). Obviously, the consideration is priced against the running operation only, and no mention is made about whether any other consideration is to be received or not at the time of the prospective supply of the setup as per the 'transfer' clause of the work order.

It appears from the above that the applicant is probably going to make a supply of a composite service as in Sec 2(30) of the CGST Act 2017 consisting of i) Construction services under Heading 9954 and ii) Sewage and waste collection, treatment and disposal and other environmental protection services under Heading 9994, the latter being the principal supply. Hence, as per Sec 8(a) *ibid*, the supply should attract tax as applicable on supply of Sewage and waste collection, treatment and disposal and other environmental protection services under Heading 9994. However, this opinion is based on certain assumptions as apparent from the work order only and is subject to revision if further details are made available by production of other relevant documents.

3.2: From the above response, the supply is classifiable as a composite supply attracting tax as applicable on Heading 9994, which is 9% CGST and 9% SGST.

The question of whether any exemptions are available in this case may also be examined here. It is seen that pure services (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 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 attract nil rate of duty under Sl.No.3 of the table in the notification no 12/2017-Central Tax (Rate), dated 28-6-2017. However, the present supply, being a composite supply, cannot avail the benefit of this notification.

#### 4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue.

4.2 The supply agreed to be provided by the applicant as it appears from the documents produced before us is in the nature of waste management services. We find that 'waste collection services' and 'waste treatment and disposal services' fall under SAC 9994 having Group 99942 and 99943 respectively. Further, 'sewage and waste collection, treatment and disposal and other environmental protection services' is taxable @ 18% vide serial number 32 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017). However, serial number 3 and 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, being amended vide Notification No. 16/2021-Central Tax (Rate) dated 18.11.2021 (corresponding West Bengal State Notification No. 1136 F.T. dated 28.06.2017 as amended vide Notification No. 38 F.T. dated 10.01.2022) exempts following services from payment of tax w.e.f. 01.01.2022:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (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 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.	Nil	Nil

3A	Chapter 99	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 provided to the Central Government, State Government or Union territory or local authority 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.	Nil	Nil
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4.3 To determine the taxability of supply of services involved in the instant case, we therefore proceed to analyze whether the services to be provided by the applicant can qualify for exemption under the aforesaid entries of the exempt notification or not and for that purpose, we begin with the applicability of serial number 3 of the notification which exempts pure services provided to the Central Government, State Government or Union territory or local authority 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. The term 'pure services' has not been defined under the GST Act. However, a bare reading of the description of services as specified in serial number 3 of the said notification denotes that supply of services which does not involve any supply of goods can be regarded as pure services. The scope of work requires the applicant, inter alia, to construct sanitary landfill which involves supply of goods. Further, the applicant requires to sell and dispose of bye-products, recyclable & reusable materials (fertilizers and alternative fuel) which also involve supply of packing materials. The applicant himself has declared that the work includes packaging, distribution & sales point (for fertilizers & alternative fuel. As a result, we are of the opinion that the instant supply of services fails to qualify as pure services.

4.4 We now come to serial number 3A which exempts composite supply of goods and services if the supply fulfils following criteria:

- i. The value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply;
- ii. The supply is provided to the Central Government, State Government or Union territory or local authority;
- iii. The supply is 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.

The tripartite agreement refers that the rate offered in the tender shall be applicable as tipping fee per ton of processing of waste (Project component includes) which includes all type of taxes & duties and GST (Fixed). The applicant, however, has not produced before us

any document in support of value of goods involved in the supply. We are, therefore, unable to determine whether the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply or not.

4.5 However, leaving this part unascertained, we proceed further to decide whether the supply by the applicant to SUDA can be treated as a supply provided to the Central Government, State Government or local authority and whether the same is in relation to any function entrusted to a Panchayat under article 243G or to a Municipality under article 243W of the Constitution. From the documents produced before us, we find that the applicant has received work order for a number of municipalities in West Bengal under Swachh Bharat Mission/Mission Nirmal Bangla. The functions entrusted to a municipality under the Twelfth Schedule to Article 243W inter alia contain Public health, sanitation conservancy and solid waste management. We, therefore, hold that the supply involved in the instant case is in relation to a function entrusted to a Municipality under article 243W of the Constitution.

4.6 The issue now remains with us is to decide whether the supply to be made by the applicant can be regarded as a supply to the Central Government, State Government or local authority. We are of the opinion that the instant supply to SUDA cannot be held as supply to the government since we find from the official website of State Urban Development Agency [www.sudawb.org](http://www.sudawb.org) that SUDA is a registered society which was formed in the year 1991 under the aegis of erstwhile Municipal Affairs Department, Govt of West Bengal with an objective to ensure effective implementation of different development programme in urban areas of the State.

4.7 The term 'local authority' has been defined in clause (69) of section 2 of the GST Act which reads as under:

*"local authority" means—*

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;*
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;*
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;*
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;*
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;*
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or*
- (g) a Regional Council constituted under article 371A of the Constitution;*

In this context, it may be mentioned here that SUDA, being a registered society, is responsible for implementing Central Government Programmes and Externally Aided Projects in the State on behalf of the UD&MA Department and also executes and monitors different State Government Schemes, Urban Reforms, e-governance and capacity building activities related to Urban Development & Municipal Affairs Department.

*[Source: Official website of SUDA: [www.sudawb.org](http://www.sudawb.org)]*

4.8 Undisputedly SUDA, being a registered society, is not a Panchayat or a Municipality or any Board or Cantonment as specified in the above-referred definition of local authority. Further, no documents have been produced before us wherefrom it can be established that



SUDA is an authority who is legally entitled to and entrusted by the Government with the control or management of a local fund. Therefore, SUDA cannot be held as a local authority as defined in clause (69) of section 2 of the GST Act and the supply involved in the instant case thus fails to qualify for exemption vide serial number 3 or 3A of the Exempt Notification.

In view of the above discussions, we rule as under:

### RULING

Supply of services to be provided by the applicant to State Urban Development Agency for design, build, finance, operate and transfer of Municipal Wet Waste processing facility based on Composting and/or Bio-methanation Technology, setting up Semi-Automatic Material Recovery Facility for Dry Waste and construction of Sanitary Landfill along with operation & maintenance under Swachh Bharat Mission/Mission Nirmal Bangla is classifiable under SAC 9994 as 'sewage and waste collection, treatment and disposal and other environmental protection services' and is taxable @ 18% vide serial number 32 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time (corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017).

(BRAJESH KUMAR SINGH)  
Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)  
Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 23.09.2022

To,

Simoco Telecommunications(South Asia) Limited

Block EP And GP, Godrej Genesis Building, 2<sup>nd</sup> floor, Sector-V, Saltlake, Bidhannagar, Kolkata-700091

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Sr. JCCT, Salt lake Charge, Jalasampad Bhavan, Block-DF, Sector-I, Salt Lake, Kolkata-700091
- (4) Office Folder