

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:
Mr Shrawan Kumar, Member
Mr Devi Prasad Karanam, Member

In the matter of

Appeal Case No. 02/WBAAAR/APPEAL/2024 dated 22.01.2024

- And -

In the matter of:

An Appeal filed under Section 100 (1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by Anmol Industries Ltd., Maity Para, Delhi Road, Hooghly, Pin - 712311 against the Ruling passed by the West Bengal Advance Ruling Authority vide Advance Ruling Order No - ZD1906230284583 (24/WBAAR/2023-24) dated 20.12.2023.

Present for the Appellant: Mr. Ankit Kanodia, Advocate

Present for the Respondent: Mr. Sayandeep Sen, DCST.

Matter heard on: 20.03.2024 & 02.04.2024

Date of Order: 18.04.2024

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'SGST Act, 2017') are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the SGST Act, 2017.

1. This Appeal has been filed by Anmol Industries Ltd. (hereinafter referred to as "the Appellant") on 22.01.2024 against Advance Ruling Order No. 24/WBAAR/2023-24 dated 20.12.2023, pronounced by the West Bengal Authority for Advance Ruling (hereinafter referred to as the 'WBAAR').
2. The appellant, is a company incorporated under the Companies Act, 1956 having its principal place of business at Maity Para, Delhi Road, Hooghly, West Bengal 712311. The appellant had entered into a leasing agreement with the Shyama Prasad Mukherjee Port, Kolkata (hereinafter referred to as SMPK) to lease a plot of land at Taratala Road for thirty (30) years for the purpose of setting up a commercial office complex. As per the allotment letter bearing no. Lnd.6063/22/2869 dated 21.09.2022, an

amount of Rs. 39,00,11,000/- would have to be paid by the appellant as upfront lease premium along with GST @ 18% on the aforesaid amount.

3. The appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as "the GST Act") on the following question:

- Whether the upfront premium payable by the applicant towards the services of leasing of the land for industrial purposes by SMPK is exempted under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017?

4. While rendering the Advance Ruling, WBAAR noted in its decision that it was not possible to infer that SMPK can be considered an entity with 20 percent or more ownership of the Central Government on the basis that the CAG audits its financial statements. Moreover, WBAAR deduced that it was also untenable to equate registration as a deductor of tax at source under section 51 of the GST Act with that of the service provider identified in entry number 41 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, i.e. an entity having 20 percent or more ownership of Central Government.

5. Accordingly, the following ruling was passed by the WBAAR vide Order No. 24/WBAAR/2023-24 dated 20.12.2023:

The services of leasing of the land for industrial purposes by SMPK to the applicant is found not to be covered under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and therefore cannot be treated as an exempt supply.

6. The appellant has filed the instant appeal against the above-mentioned Advance Ruling dated 20.12.2023 with a prayer to set aside/modify the said order; to grant personal hearing; and to pass such further order or other orders as may be deemed fit and proper in the facts and circumstances of the case.

7. The instant appeal has been filed by the appellant mainly on the grounds that:

i. The WBAAR has failed to consider that the status/ownership of SMPK is to be determined by control and that the control is vested under Central Government and the same is exercised by the Ministry of Ports, Shipping and Waterways, Govt. of India, thus making the appellant eligible for exemption under Entry No. 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, as amended.

ii. The Appellant was denied the opportunity to present a rebuttal to the reply that SMPK had filed with the WBAAR.

8. The appellant has also inter alia submitted in its appeal, the following points:
- i. The WBAAR in its ruling dated 20.12.2023 had only reiterated the written note provided by SMPK to the WBAAR.
 - ii. No opportunity was given by the WBAAR to the appellant to counter the submissions of SMPK, thus, the order has been passed solely relying on submissions of the SMPK which could not be stated to be the correct position of law.
 - iii. The appellant, in reference to SMPK's response to the WBAAR, cited various provisions of the Major Port Authorities Act, 2021, which govern the composition of SMPK's Board.
 - iv. The appellant further referred to the section headings of the Major Port Authorities Act, 2021 and, in particular, highlighted Section 51 of Chapter V, which pertains to the Supervision of the Central Government specially mentioning Section 51 of the Act, which prohibits the "Board from selling, alienating, or divesting its assets, properties, rights, powers, and authorizations without the sanction of the Central Government."
 - v. The appellant stated that from the scheme of the Act supra, it was clear that the said Act is formed for the purposes of regulation, operation and planning of Major Ports in India and to vest the administration, control and the management of such ports upon the Boards of Major Port Authorities and for matters connected therewith or incidental thereto.
 - vi. Additionally, in regard to the establishment of the Board of Major Port Authority, Section 3 of the Major Port Authorities Act, 2021 was referenced by the appellant.
 - vii. The appellant stated that for exemption under SI. No. 41 of Notification No. 12/2017-CT (R) dated 28.06.2017, as amended from time to time, the exemption is provided to an entity having 20 per cent or more ownership of Central Government, State Government, Union territory.
 - viii. While emphasising on the importance of the word 'ownership' in relation to the instant case, the appellant quoted the meaning of 'ownership' as per the Advanced Law Lexicon 6th Edition by P Ramanatha Aiyar Vol 3, which describes ownership as - "*The collection of rights allowing one to use and enjoy property, including the right to convey it to others. Ownership implies the right to*

possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and inheritable.”

- ix. The Appellant stated that as per the audited financial statement of SMPK it is clear that the audit of the SMPK is done by the C&AG under Section 19(2) of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 read with Section 44 (2) of the Major Port Authority Act, 2021 and everywhere in the audit report the regulations of The Ministry of Ports, Shipping and Waterways (MPSW), Government of India has been referred to.
- x. The Appellant further stated that from the provisions of the Major Port Authorities Act, 2021, it could be seen that the said act has been promulgated for the purposes of administration of the Major Ports “in such manner as provided, concluding that the control of the said Major Ports rests with the Central Government as there is no share capital in such organisations to determine the ownership in terms of percentage of share capital.
- xi. The appellant also referred to the website of the SMPK drawing attention to the heading which says that SMPK is an autonomous body under the Ministry of Ports, Shipping and Waterways, Govt of India. The appellant further mentioned the website of the Ministry of Ports, Shipping and Waterways, Govt of India which also denotes SMPK as an Autonomous Body under its administrative control.
- xii. It was finally submitted by the appellant that SMPK is under the administrative control of Ministry of Ports, Shipping and Waterways, Govt of India, which is a ministry run and controlled by the Central Government, thus SMPK is owned and controlled by the Central Government and the Board of SMPK is formed for the purposes of administrative activities of SMPK.
- xiii. The applicant thus concluded that the ruling of the WBAAR suffers from infirmity and was liable to be set aside in totality.

9. Personal Hearing:

- 9.1 During the course of hearing held on 20.03.2024, the appellant's authorised representative reiterated the points as stated in their Appeal. The appellant's authorised representative requested a short adjournment to provide additional submissions in support of their case in response to a specific query raised by this Authority regarding the applicability of other conditions to qualify for exemption under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. The prayer was approved by this Authority, and the next hearing was scheduled on 02.04.2024 at 11:00 hrs.

9.2 The representative of the Revenue provided a written submission to this Authority which was reiterated in their oral presentation. The submission made by the Revenue included the following points:

- i. The relevant portion of the entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 was referred by the Revenue, stating that the appellant is not eligible for the exemption benefit as SMPK does not meet the criteria of being a State Government Industrial Development Corporation or Undertaking, or any other entity with 20% or more ownership by the Central Government, State Government, or Union Territory.
- ii. While referring to the formation of the Board of the Major Port Authority under Section 3 of the Major Port Authorities Act, 2021, the Revenue drew attention to the Section 43 of the act *ibid*, highlighting that the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other monies due to (i) the Members of the Board except Members appointed under clauses (d), (e) and (f) of sub-section (1) of the section 3 are debited from the General Account of the Board, and not from the Central Government Account.
- iii. The Revenue also made reference to the Sub-section (2) of Section 3 of the Major Port Authorities Act, 2021 which states that the Board of each Major Port Authority constituted under this Act shall be a permanent body having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. The Revenue thus concluded that the Board of SMPK is empowered to acquire, hold or dispose of property.
- iv. The Revenue further pointed out that the Board of SMPK is the successor of the Board of Trustees constituted under the Major Port Trust Act, 1963 and all the assets and liabilities of the Board of Trustees were transferred to the Board u/s 21 of the Act, thus SMPK is holding their properties inherited from the Board of Trustees.
- v. The Revenue also referenced Section 23 of the Major Port Authorities Act, 2021 emphasising that it clearly distinguishes the authority of the Board and the Central Government, in the matter that, where any immovable property is required for the purposes of the Board, the Central Government, or as the case may be, the State Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Right to Fair Compensation and Transparency in Rehabilitation and, Resettlement Act, 2013.
- vi. The Revenue alluded to Section 27 and Section 33 of the Major Port Authorities Act, 2021 to emphasise that the Board has the authority

to determine the rate for assets and services offered at SMPK, as well as make financial decisions.

- vii. The Revenue in addition also referenced Section 48 of the Major Port Authorities Act, 2021 concluding that in normal course of time, the Central Government does not have any control in the management of the Board, and it operates as an autonomous body. It was also mentioned by the Revenue that the Central Government only plays a supervisory role and should not be considered to have ownership, by way of control, in SMPK.
- viii. Article 149 of the Constitution of India was cited by the Revenue to argue that the audit of SMPK is conducted by the CA&G, but this does not establish that the Central Government owns SMPK.
- ix. The Revenue relied on the judgement passed by the Hon'ble Supreme Court of India in the case of Commissioner of Customs (Import), Mumbai Vs. M/s. Dilip Kumar & Co. (Civil Appeal No. 3327 of 2007, where the Hon'ble Apex Court has held that:
 - “(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
 - “(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue”.*

9.3 During the hearing on 02.04.2024, the appellant's authorised representative submitted further written arguments mentioning the pertinent provisions of the CGST/WBGST Act, 2017 which govern the scope and procedure for filing an appeal against the Order of WBAAR concluding that in terms of such provisions this appellate authority is vested with the rights of confirming or modifying the ruling appealed against and also deciding the matter as it deemed fit. The matter was argued on other conditions relevant to the availment of notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. It was also submitted that this authority may remand the case back to the WBAAR for deciding the eligibility or otherwise on all the relevant conditions. Authorised representative further submitted that there have been several orders of remand by different Appellate Authorities and he would submit copies of a few such orders in couple of days. He reiterated the submission made before the WBAAR on other eligibility conditions of the entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, and contended that they fulfil such conditions.

9.4 Subsequently, vide mail dated 03.04.2024, the Authorised Representative of the appellant forwarded copies of the following three orders where the matter has been remanded by the Appellate Authority to

the Advance Ruling Authority for reconsideration and passing of fresh orders:

- i) A.M. Abdul Rahman Rowther & Co. – Tamil Nadu AAAR - vide Order dated 21.10.2019;
- ii) Hilti Manufacturing India Pvt. Ltd. – AAAR Gujarat – vide Order dated 27.09.2022
- iii) Mannarari Common Effluent Treatment Plant Pvt. Ltd. – AAAR Tamil Nadu – vide Order dated 20.12.2023.

10. **Discussion and Findings:**

10.1 We have carefully gone through and considered the appeal, the submissions made by the appellant and the revenue, the documents placed before us by both the parties and the Advance Ruling given by the WBAAR in the instant case. We are of the opinion that prior to deliberating on the merits of the present appeal, it is necessary to assess and resolve some important issues in the interest of justice.

10.2 The entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 (with amendments) is reproduced below:

Sl. No	Chapter, Section, Heading, Group or service Code (Tariff)	Description of Services	Rate (Per Cent)	Condition
41	Heading 9972	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 percent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.	NIL	<p>Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:</p> <p>Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:</p>

		<p>Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20 per cent or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.</p>	<p>Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:</p> <p>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the</p>
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				fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.
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10.3 Careful examination of the WBAAR's Order dated 20.12.2023 issued in response to the appellant's application for advance ruling, reveal that the WBAAR order mentioned the appellant's submission concerning the criterion that must be fulfilled in order to qualify for the exemption as specified in entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. The WBAAR has summarised the same as under:

“ The applicant submits that to qualify for exemption under the aforesaid entry, following conditions need to be satisfied-

I. Firstly, lease period should be of thirty years or more.

II. Secondly, the property leased should be an Industrial plot or plots for development of infrastructure for financial business.

III. Thirdly, service provider must be a state Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory).

IV. Lastly, Service Recipient must be an Industrial Unit.”

10.4 The various justifications submitted by the appellant in their application for Advance Ruling to demonstrate that they meet all the above conditions of the exemption notification were also mentioned by the WBAAR in their above-mentioned Order.

10.5 We also find that the counter arguments put forth by the Revenue in respect of all the above conditions were also mentioned by the WBAAR in their Order for Advance Ruling.

10.6 However, it is found that observation and findings of the WBAAR were essentially limited to a single condition, that is, whether SMPK can be regarded as an entity having 20 percent or more ownership of the Central Government and the WBAAR has rendered its Ruling on the basis of their observation and finding on that particular point, only.

10.7 We feel that the WBAAR would have adopted a more comprehensive approach in rendering its ruling in the present case if it had documented its observations and findings regarding satisfaction of all the conditions required for deciding the eligibility for the exemption under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

10.8 We therefore find that the WBAAR order requires modification as while pronouncing the Advance Ruling in the instant case ruling/order issued is restricted to a single condition of the pertinent notification.

10.9 In this regard, we also rely on the order of the Principal Bench of CESTAT. New Delhi in the case of Commissioner of Central Excise, Meerut-II Vs. Honda Seil Power Products Ltd. [2013(287) ELT 353 (Tri.-Del.)], where the Hon'ble Tribunal has held that;

"There may be circumstances where only just and proper order could be remand of the matter for fresh adjudication. For example, if the order-in-original is passed without giving opportunity of being heard to the assessee or without permitting him to adduce evidence in support of his case then only order-in-appeal by the Commissioner (Appeals) could be to set aside the impugned order on the ground of failure of justice. This would create an anomaly and cause prejudice to the Revenue as it would bring an end to the litigation without adjudicating on the demand raised by the show cause notice. Therefore, only just and proper order in such a case would be the order of remand to adjudicate the matter de novo after giving due hearing to the assessee. Thus, we are of the view that power to remand the matter back in appropriate cases is inbuilt in Section 35 A (3) of the Central Excise Act, 1944."

10.10 It is also observed that the direction for remand has also been resorted to by other AAARs in a number of cases, like:

iv) A.M. Abdul Rahman Rowther & Co. – Tamil Nadu AAAR - vide Order dated 21.10.2019;

v) Hilti Manufacturing India Pvt. Ltd. – AAAR Gujarat – vide Order dated 27.09.2022

vi) Mannarari Common Effluent Treatment Plant Pvt. Ltd. – AAAR Tamil Nadu – vide Order dated 20.12.2023.

10.11 In light of the preceding discussion, we deem it appropriate to remand the case to the Authority for Advance Ruling, i.e. the WBAAR for fresh decision. The WBAAR will take into consideration all aspects of the matter and decide the case afresh.

11. In view of the foregoing, we pronounce our ruling as under:

Ruling:

Without delving into the merit of the case, we set aside the Advance Ruling Order No. 24/WBAAR/2023-24 dated 20.12.2023 issued by the WBAAR in the case of the appellant and remand the case to the WBAAR for fresh decision after considering all aspects of the matter.

Send a copy of this order to the Appellant and the Respondent for information.

Sd/-
(Devi Prasad Karanam)
Member, West Bengal Appellate
Authority for Advance Ruling

Sd/-
(Shrawan Kumar)
Member, West Bengal Appellate
Authority for Advance Ruling