

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 Joyjit Banik, Senior Joint 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 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	DAMODAR VALLEY CORPORATION
Address	DVC TOWERS, VIP ROAD, ULTADANGA, WEST BENGAL, PIN-700054
GSTIN	19AABCD0541M1ZO
Case Number	02 of 2021
ARN	AD1901210056985
Date of application	February 03, 2021
Order number and date	01/WBAAR/2021-22 dated 03.05.2021
Applicant's representative heard	Sri Harsh Gadodia, Authorised Representative Smt Nirja Jain, Authorised 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 is stated to be a statutory body set up under the Damodar Valley Corporation Act, 1948 and is engaged in following three major activities namely (i) generation, transmission and distribution of electricity, (ii) flood control and (iii) irrigation and some connected activities like soil conservation, afforestation etc.

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 question vide serial number 14 of the application in FORM GST ARA-01:

Whether “Damodar Valley Corporation” is covered under the definition of the term ‘Government Entity’ as per Notification No. 31/2017- Central Tax (Rate) dated 13.10.2017.

1.4 The term ‘Government entity’ has been defined in paragraph-4 of the Notification No.11/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.31/2017-Central Tax (Rate) dated 13.10.2017] and paragraph-2 of the Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.32/2017-Central Tax (Rate) dated 13.10.2017] as under:

“Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- i) set up by an Act of Parliament or State Legislature; or
- ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”

1.5 The authorised representative of the applicant has appeared and stated that the applicant desires to seek clarification whether the term “Government Entity’ is applicable to Damodar Valley Corporation or not and since the term has been defined in Notification No.31/2017-Central Tax (Rate) as well as Notification No.32/2017-Central Tax (Rate) both dated 13.10.2017, he will furnish a written submission in respect of applicability of Notification No. 32/2017- Central Tax (Rate) dated 13.10.2017 for the purpose of obtaining advance ruling.

1.6 Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017 has been amended from time to time and entry serial number 9C has been inserted vide Notification No.32/2017-Central Tax (Rate) dated 13.10.2017 which, for the sake of conveniences, is reproduced below:

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (per cent)	Condition
9C	Chapter 99	Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.	Nil	Nil

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

1.8 The applicant states 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.

1.9 The officer concerned from the Revenue has raised no objection to the admission of the Application.

1.10 The Application is, therefore, admitted.

2. Submission of the applicant

2.1 Damodar Valley Corporation is a statutory body set up under the Damodar Valley Corporation Act'1948 (the DVC Act, for short) which was passed by the Central Legislature and has come into force by notification in the official gazette on 27Th March, 1948. Further, the DVC Act has been amended and received the assent of President of India on 8th January, 2012 and published in the office gazette on 9Th January, 2012.

2.2 The DVC Act was passed by the Central Legislature, requiring the three Governments namely the Central Government and the State Government of West Bengal and Bihar (now Jharkhand) to participate jointly for the purpose of building a Damodar Valley Corporation with the aim of development of Damodar valley falling within the state of West Bengal and Jharkhand. "Participating Governments", according to clause (4) of section 2 of the DVC Act means the Central Government, the Provincial Government of Bihar and the Provincial Government of West Bengal.

2.3 According to section 30 of the DVC Act, liability to provide entire capital required by the corporation for completion of any project is vested on the participating Government. The said section reads as follows:

Liabilities of participating Governments to provide capital to the Corporation: The participating Governments shall, as hereinafter specified, provide the entire capital required by the Corporation for the completion of any project undertaken by it.

2.4 Further, section 31 of the DVC Act speaks of payment by participating Governments which reads as follows:

Payment by participating Government on specified date: Each participating Government shall provide its share of the capital on the dates specified by the Corporation and if any Government fails to provide such share on such dates the Corporation may raise loan to make up the deficit at the cost of the Government concerned.

2.5 With regard to finance, the applicant has referred to section 27 of the DVC Act which reads as follows:

Expenditure till the Corporation is established: All expenditure incurred by the Central Government for and in connection with the establishment of the Corporation up to the date of its establishment shall be treated as the capital provided by the Central Government to the Corporation and such capital shall be adjusted between the participating Governments in accordance with the provisions of sections 30 to 36.

2.6 The authorised representative of the applicant, in support of his argument, has referred to Page 95 of the Annual Financial Statement for the period 2019-20 wherefrom it is noticed that the total capital for the financial year 2019-20 stands shared between the three participating Governments.

2.7 With regard to function carried out by the applicant, it has been submitted that sub-section (3) of section 11 of the DVC Act envisages that *'the Central Government may, after consultation with the Provincial Governments by notification in the official Gazette, direct that the Corporation shall carry out such function and exercise such power in such other area as may be specified therein and the area so specified shall be called the "area of operation" of the Corporation'*.

2.8 Further, section 12 of the DVC Act elucidates the functions entrusted by the Central Government after consultation with the State Government of Bihar and West Bengal. The said functions are as follows:

- a) the promotion and operation of schemes for irrigation, water supply and drainage,
- b) the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydro-electric and thermal,
- c) the promotion and operation of schemes for flood control in the Damodar river and its tributaries and the channels, if any, excavated by the Corporation in connection with the scheme and for the improvement of flow conditions in the Hooghly river,
- d) the promotion and control of navigation in the Damodar river and its tributaries and channels, if any,
- e) the promotion of afforestation and control of soil erosion in the Damodar Valley, and
- f) the promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation.

2.9 Furthermore, section 48 and sub-section (6) of section 51 of the DVC Act, which reads as follows, reveal that the applicant discharges its functions on the direction of the Central Government and such functions are under control of the Central Government.

Section 48: Directions by the Central Government: (1) In discharge of its functions the Corporation shall be guided by such instructions on questions of policy as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Corporation as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

Section 51: Control of Central Government.—(1) The Central Government may remove from the Corporation any member who in its opinion—

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(6) If the Corporation fails to carry out its functions, or follow the directions issued by the Central Government under this Act, the Central Government shall have the power to remove the Chairman and the members of the Corporation and appoint a Chairman and members in their places.

2.10 It has been submitted by the applicant that a Memorandum of Agreement (MoA, for short) has been made on 04.11.2016 between the Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India and the Damodar Valley Corporation, an autonomous organisation of the Government of India under Ministry of power for the implementation of National Hydrology Project (NHP) from 2016-17 to 2023-24 as a Central sector scheme.

2.11 According to the said MoA, the Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India agrees to provide central assistance (Grants) under different activities for the completion of project targets subject to certain conditions.

2.12 The applicant has stated further that he has established the Soil Conservation Training Centre at Hazaribag under the assistance of Natural Resource Management Division, Department of Agriculture & Co-operation, Ministry of Agriculture, Government of India with the objective of imparting training in the field of Soil & Water Conservation to the Government personnel and allied organizations against which a grant is being sanctioned every year.

2.13 With reference to above, the applicant has concluded his submission with the contention that Damodar Valley Corporation being incorporated under the special act of Parliament, the DVC Act, 1948 with three participating Governments, i.e., the Central Government, State Government of West Bengal and State Government of Bihar (now Jharkhand) for carrying out the function entrusted by Central Government with consultation of State Governments satisfies all the limbs of the term 'Government Entity'.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any further view on the issue raised by the applicant.

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. The issue involved in this case pertains to applicability of Notification No.11/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.31/2017-Central Tax (Rate) dated 13.10.2017] and Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.32/2017-Central Tax (Rate) dated 13.10.2017] to determine whether the applicant shall be covered under the definition of 'Government Entity' or not.

4.2 The term 'Government entity' as it has been defined in the aforesaid notifications evidently denotes that in order to qualify for a Government Entity, the applicant must have been set up by an Act of Parliament or by an Act of State Legislature or it must have been established by any of the Governments i.e. either by the Union Government or by the State Government with 90 percent or more participation by way of equity or control. Further, the applicant is to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

4.3 From the documents and evidences placed before us, we observe the issue raised by the applicant as follows:

- .Damodar Valley Corporation has been set up under the Damodar Valley Corporation Act'1948 which was passed by the Central Legislature.
- Sub-section (1) and (1A) of section 4 of the DVC Act, as amended, states as under:

(1) The Corporation shall consist of—

- (a) a Chairman;
- (b) a member (technical) and a member (finance);
- (c) one representative from the Central Government;
- (d) two representatives one each from the State Government of Jharkhand and West Bengal;
- (e) three independent experts one each from the field of irrigation, water supply and generation or transmission or distribution of electricity; and
- (f) a Member-Secretary.

(1A) The Chairman and members under clauses (a), (b), (d) and (f) of sub-section (1) shall be appointed by the Central Government in consultation with the State Governments concerned while the members under clauses (c) and (e) shall be appointed by the Central Government, by notification in the Official Gazette.

- It has already been stated in Para 2.9 that section 51 of the DVC Act empowers the Central Government to remove any member from the corporation.

- It has also been observed in Para 2.6 that the participating Governments hold 100% of equity control of the applicant.
- Section 11 of the DVC Act envisages that the Corporation shall carry out such function and exercise such power which the Central Government may, after consultation with the Provincial Governments by notification in the official Gazette, directs the Corporation.

It, therefore, appears that Damodar Valley Corporation fulfils the criterion laid down for "Government entity" as per Notification No. 31/2017 –Central Tax (Rate)/32/2017- Central Tax (Rate) both dated 13.10.2017 since it has been set up by an Act of Parliament with 100% control to carry out the function entrusted by the Government.

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

RULING

Damodar Valley Corporation shall be covered under the definition of "Government Entity" in terms of Notification No.11/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.31/2017-Central Tax (Rate) dated 13.10.2017] / Notification No.12/2017- Central Tax (Rate), dated the 28th June, 2017 [as amended by Notification No.32/2017-Central Tax(Rate) dated 13.10.2017].

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

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling