

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:

Sarthak Saxena, Joint Commissioner,
CGST & CX

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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	KSB Limited
Address	30, 2 nd , Circus Avenue, Kolkata, Pincode-700017
Correspondence address	M/s. KSB Limited, Corporate office Mumbai-Pune Road, Pimpri, Pune Maharashtra, Pincode-411018
GSTIN	19AAACK5918J1Z9
Case Number	28 of 2022
ARN	AD190922007918N
Date of application	September 28, 2022
Order number and date	02/WBAAR/2023-24 dated 19/05/2023
Applicant's representative heard	Mr.Tushar Bhartia, 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' or 'GST Act, 2017' would mean the CGST Act, 2017 and the WBGST Act, 2017 both.

1.2 The applicant is engaged in the business of manufacturing and selling pumps for various applications. The applicant also provides services in relation to installation, commissioning, repairs and maintenance of such pumps. The applicant has informed that their manufacturing units are located in Maharashtra and Tamil Nadu, and the goods manufactured at these locations are transferred to their warehouses in other states and sold locally from such warehouses.

1.3 This advance ruling application has been submitted with respect to the supply made to the Kolkata Municipal Corporation (KMC), for replacing the old, poor performing pump with a new pump.

1.4 The applicant has made this application under sub-section 2(a) & 2(b) 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 supply for construction of a sewerage treatment plant which involves supply of pumps as well as installation and commissioning work attracts GST rate of 12% in terms of Notification No. 11/2017-CT (Rate) dated 28/06/2017 read with of Notification No. 20/2017-CT (Rate) dated 22/08/2017.

1.5 The officer concerned from the revenue submits that the query raised by the applicant doesn't qualify the conditions laid down in section 97 and the instant application therefore should not be admitted.

1.6 However, we find that the question on which the advance ruling is sought for is covered under clause (b) of sub-section (2) of section 97 of the GST Act i.e., in respect of applicability of a notification issued under the provisions of this Act.

1.7 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.

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant M/s KSB Limited, is engaged in the business of manufacturing & selling pumps for various applications. They also provide services in relation to installation, commissioning, repair & maintenance of such pumps. Their manufacturing facility is located in Maharashtra & Tamil Nadu, and they have warehouses at different states, including West Bengal, from where they make the supply to their customers.

2.2 This instant case arises out of the supply being made to Kolkata Municipal Corporation (KMC), on the basis of their tender submitted on 9th December 2019, which mentions the work as:

'...

Manufacture, supply and installation of two nos. 240 cusec (480 m³/min) at 3 m head axial flow column type submersible pump motor units in place of poor performing old pump at Palmer Bridge Drainage Pumping station and at Ballygunge Drainage Pumping station under KMC.

...'

The applicant has submitted copies of the tender document and the tender notice. The said tender document was accepted by KMC on 26th December 2019, pursuant to which the work order number DR/PBPS/M/32/18-19 dated 19th February 2021 was issued by KMC to the applicant, the copy of which was also submitted by the applicant.

2.3 The applicant has submitted that this supply is a composite supply of works contract to a local body, i.e., Kolkata Municipal Corporation (KMC) intended to be used in a sewerage treatment plant. Further, the applicant has stated that in this case, '*... the contract executed with KMC is a turnkey contract for repairs of existing sewerage treatment plant that includes manufacturing of pumps and carrying out civil works in the form of construction of appropriate foundation for its erection and installation along with mechanical works in the form of earthing and bonding. A pump that is unsupported to the earth will not serve its purpose. Thus pumps are required to be fastened to a foundation for the sake of permanency and its effective operation...*'.

2.4 The applicant thus contends that the instant supply is a composite supply comprising supply of goods and services both and such supply is related to immovable property thereby qualifies as 'works contract' as defined in section 2(119) of the GST Act. The instant supply, therefore, would attract tax @ 12% in terms of entry-3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 read with Notification No. 20/2017-Central Tax (Rate) dated 22nd August 2017.

2.5 The applicant has also submitted copies of two invoices issued with respect to this supply:

Invoice No.	Invoice Date	Invoice Value (in Rs.)
WB2201000693	17 th May 2022	3,48,41,823
WB2201000694	17 th May 2022	3,48,41,823

2.6 Further, the applicant has relied on the following judgements in support of their claim:

- a. Triveni Engineering & Industries Ltd. Vs. Commr. of Central Excise (2002-TIOL-14-SC-CX-CB)
- b. Synergy Global Steel Pvt. Ltd. (Advance Ruling No. 03/2019-20 dated 23/04/2019 passed by the Haryana Authority for Advance Ruling)
- c. Tarun Realtors Pvt. Ltd. (Order No. KAR/AAAR-14/2019-20 dated 06/02/2020 passed by the Karnataka Appellate Authority for Advance Ruling)
- d. Arvind Envisol Ltd. (Advance Ruling No. KAR ADRG 17/2021 dated 25/03/2021 passed by the Karnataka Authority for Advance Ruling)

3.Submission of the Revenue

The officer concerned from the revenue has not expressed any view in this regard.

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 applicant has filed this application seeking an advance ruling in respect of applicability of serial number 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 read with Notification No. 20/2017-Central Tax (Rate) dated 22nd August 2017. For the sake of convenience, the said entry, as amended from time to time, is reproduced below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	(iii) Composite supply of works contract as defined in clause (119) of section 2 of the West Bengal Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,— (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit	6	

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
		or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.		
After amendment made vide Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017				
		<p>(iii) Composite supply of works contract as defined in clause (119) of section 2 of the West Bengal Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
After amendment made vide Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021				
		<p>(iii) Composite supply of works contract as defined in clause (119) of section 2 of the West Bengal Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works; pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	6	
The entry has been omitted from 18.07.2022 vide Notification No. 03/2022- Central Tax (Rate) dated 13.07.2022				

4.2 In this case, the essential questions to be examined are:

- i. whether the transaction is in the nature of a '*works contract*'; and
- ii. whether the supply is being made to a '*local authority*' as defined under Section 2(69) of the GST Act, 2017; and
- iii. whether the supply is for the purpose of '*sewerage treatment or disposal*'; and

- iv. Applicability of the entry 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 read with Notification No. 20/2017-Central Tax (Rate) dated 22th August 2017 in this case.

Works contract service:

4.3.1 Section 2(119) of the GST Act defines 'works contract' as:

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

As per the aforesaid definition, the essential feature for a service to be a 'works contract' service is that whether the service is in relation to an immovable property or not. Consequently, it needs to be examined whether the supply in this case could be considered as pertaining to 'immovable property'. Section 3(26) of the General Clauses Act, 1897 gives the following definition to 'immovable property' :

"immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

4.3.2 The pump in question could not be classified as land or benefits to arise out of land. On examining further, it could be observed that even though the term "attached to the earth" has not been defined in the General Clauses Act, 1897, Section 3 of the Transfer of Property Act, 1882 gives the following definition:

"attached to the earth" means —

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

4.3.3 The pump in this case could not be classified into the clauses (a) and (b) mentioned above. The applicability of clause (c), however, requires further examination. As per clause (c) reproduced above, if something is attached for the 'permanent beneficial enjoyment' of what it is attached to, it would fall within the definition of 'attached to the earth' and thus within the definition of 'immovable property'. In this regard, we find that the Hon'ble Supreme Court of India has stated in the case of CCE v.s. Solid & Correct Engg. Works that:

Paras.- 28 & 29 (relevant extract) :

28. The English law attaches greater importance to the object of annexation which is determined by the circumstances of each case. One of the important considerations is founded on the interest in the land wherein the person who caused the annexation possesses articles that may be removed without structural damage and even articles merely resting on their own weight are fixtures only if they are attached with the intention of permanently improving the premises.

29. The Indian law has developed on similar lines and the mode of annexation and object of annexation have been applied as relevant tests in this country also.

Para.-30 (relevant extract) :

30. *The courts in this country have applied the test whether the annexation is with the object of permanent beneficial enjoyment of the land or building.*

4.3.4 What is evident from the observations mentioned in paras. 29 & 30 that the object or intention of annexation is the pertinent test to determine whether something is for 'permanent beneficial enjoyment'. Further, para. 28 also implies that this would be determined on the basis of the 'circumstances of each case'. In view of the same, the facts of this case have to be examined to determine that whether the installation of pump could be classified as immovable property and consequential actions would follow.

4.3.5 This description shows that the tender is floated for the purpose of replacing the earlier pump on account of performance issues and installation of a new submersible pump by the applicant. The pump would be fastened to the civil structure by way of nuts, bolts and fastenings. The civil structure in this case is a sewerage pumping station under KMC, the very purpose of which is pumping of sewerage for further treatment & disposal. The pump is essential to this activity and is thus expected to be installed and fastened at its place of installation throughout its operational life, and is thus installed for the permanent beneficial enjoyment of the civil structure to which it is attached to. Thus, in light of the facts of the case, the pump on installation would be an immovable property, and thus the installation, repair and maintenance of pump at the sewerage pumping station would qualify to be 'works contact service' as per Section 2(119) of GST Act.

4.3.6 The applicant has submitted a copy of the Notice inviting e-tender No.-DR/PBPS/M/32/18-19/2 (*Tender Notice*) issued by the Kolkata Municipal Corporation, having the work description as:

'Manufacture, supply and installation of two nos. 240 cusec (480 m³/min) at 3 m head axial flow column type submersible pump motor units in place of poor performing old pump at Palmer Bridge Drainage Pumping station and at Ballygunge Drainage Pumping station under KMC'

Further, the Tender Document is also submitted by the applicant, which mentions the conditions, responsibilities and technical specifications of the scope of work of the applicant on being awarded the tender. On perusal of the same, it is observed that as per the scope of work, the applicant has, *inter-alia*, following responsibilities:

- Design and manufacture of the submersible pump motor set,
- Carriage and delivery of the submersible pump motor set to the site of installation,
- Erection and installation of the submersible pump motor set,
- Testing and maintenance of the submersible pump motor set after installation,
- Erection of foundation, as per requirement.

4.3.7 From the above, it could be seen that the scope of work includes transfer of property in goods. It also includes erection, installation and maintenance of the pumping set, including its foundation as per requirement. In light of these facts, the applicability of the Notification has to be examined.

Supply to Local authority:

4.4.1 The Notification would be applicable to supplies made to a local authority. In this case, the applicant is making supply to Kolkata Municipal Corporation, hereinafter also referred to as KMC. In this regard, it may be noted that Section 2(69) of the GST Act, 2017 *inter-alia* defines a local authority as:-

"local authority" means-

(a)

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

Article 243P of the Constitution states that:-

243P. *In this Part, unless the context otherwise requires,—*

.....
(e) "Municipality" means an institution of self-government constituted under article 243Q;

Article 243Q of the Constitution states that:-
243Q. (1) There shall be constituted in every State,—

.....
(c) a Municipal Corporation for a larger urban area,

Further, Section 4 of the Kolkata Municipal Corporation Act, 1980 states that:-

4 (1) With effect from such date as the State Government may, by notification, appoint, there shall be a Corporation charged with the municipal government of Kolkata, to be known as the Kolkata Municipal Corporation.

4.4.2 Thus, we find that Kolkata Municipal Corporation (KMC) is a 'Municipality' constituted under Article 243P of the Constitution; KMC is a local authority, as defined under Section 2(69) of the GST Act. The Notification would thus apply to this case, subject to other conditions being fulfilled.

Purpose of sewerage disposal:

4.5.1 The tender is issued by the Sewerage and Drainage (S&D) department of the KMC. The tender document itself states that the supply is in the nature of replacing the poor performing old pumps at the Palmer Bridge Drainage Pumping station and at the Ballygunge Drainage Pumping station. The applicant has also submitted the copy of the tender document issued by KMC, the catalogue of the submersible pump which is to be installed, pictures of the old and new pumps from the site of installation, for better understanding of the nature of supply.

4.5.2 The purpose of the pump in this case is pumping the sewerage from one location to other, which is an integral part of the process of sewerage disposal. Further, the applicant has also submitted a document issued by the Executive Engineer (Mech.) and Asst. Engineer (Mech.) from the S&D department of KMC which states that: 'it is to confirm that the above mentioned contract is for disposal of drainage/sewage generated at the KMC area under the Kolkata Municipal Corporation and is in the nature of Composite supply of Works Contract'.

4.5.3 On the basis of the above, we find that the contract is for the purpose of sewage disposal, and the Notification would apply to this case, subject to fulfilling other conditions.

Applicability of serial no. 3(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended

4.6.1 In light of the facts of the case, we find that this case is a composite supply of works contract services as defined under section 2(119) of the GST Act, 2017 and the supply is made to the 'local authority' KMC for the purpose of sewerage disposal. Thus, the supply would be covered under entry 3(iii) of the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 read with Notification No. 20/2017-Central Tax (Rate) dated 22th August 2017, which prescribes a rate of 12% (6% CGST and 6% SGST) for such supplies.

4.6.2 This entry however, has been omitted vide Notification No. 03/2022-Central Tax (Rate) dated 13th July 2022, which has come into force with effect from the 18th July 2022. Consequent to this Notification, such supplies would attract tax rate of 18% (9% CGST and 9% SGST) on and from 18.07.2022.

4.6.3 The applicant has submitted copies of two invoices, as mentioned in para 2.5 above. Both the invoices are found to have been issued before the relevant entry is omitted. Further, the applicant has made this application on the common portal on 28.09.2022 when the serial number 3(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 is found to have been omitted. In this context, we may refer to section 14 of the GST Act which deals with the time of supply in cases of change in the rate of tax in respect of supply of goods or services. While sub-clause (a) deals with cases where the supply has been made **before** the change in rate of tax, sub-clause (b) deals with cases where the supply has been made **after** the change in rate of tax. The determination of time of supply would be on the basis of supply of service, issuance of invoice and receipt of payment.

4.6.4 The applicant has not submitted any particulars regarding the extent of payment made by KMC against these two invoices, as submitted. No details have also been submitted regarding the extent of supply which has been made by the applicant to KMC under this works contract and nor have any details been made available regarding the mutual agreement between the applicant and KMC to the extent of supply which has been completed till 17th July 2022 after which the rate of tax has been changed. We are therefore unable to ascertain the time of supply as per the facts of the case.

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

RULING

The instant supply qualifies as a composite supply of works contract as defined in clause (119) of section 2 of the GST Act made to a local authority by way of erection, installation, and maintenance of a sewerage treatment plant and would be taxable at the rate specified in serial number 3(iii) of Notification No. 11/2017-CT (Rate) dated 28/06/2017 read with Notification No. 20/2017-Central Tax (Rate) dated 22/08/2017, as amended from time to time, subject to the provisions of section 14 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.

(SARTHAK SAXENA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date:

To,

M/s. KSB Limited

30, 2nd, Circus Avenue, Kolkata, West Bengal, Pincode-700017

Copy to:

(1) Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector,
Kolkata-7000107

(2) Commissioner of State Tax, West Bengal, 14, Beliaghata Main Road, Kolkata-
700015

(3) Sr. Joint/ Joint Commissioner, Ballygunj Charge, 14, Beliaghata Main Road, Kolkata-
700015

(4) Office Folder