

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)

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 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	C M S ENGINEERING CONCERN
Address	68/D, DR. S.P.MUKHERJEE STREET, KONNAGAR, HOOGHLY-712235
GSTIN	19AAFFC5636H1ZC
Case Number	06 of 2021
ARN	AD190421001548A
Date of application	April 12, 2021
Order number and date	05/WBAAR/2021-22 dated 30.07.2021
Applicant's representative heard	Mr Somnath Roy Chowdhury, Authorised Representative Mr Ranjan Banerjee, 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 C M S Engineering Concern (hereinafter referred to as, the applicant) is stated to be engaged in operation of water pump and safeguarding pumping machinery at various Pump Houses in different districts like South 24 Parganas, North 24 Parganas, Howrah, Nadia etc. for supply of drinking water to the public and hospitals upon receipt of work order from

Directorate of Public Health Engineering, Government of West Bengal (herein after referred to as, the PHE Directorate).

1.3 The applicant is of the opinion that he provides services to local authority, i.e., Panchayat and Municipality whose power and duties are described in Article 243G and Article 243W of the Constitution of India. The services are described in Eleventh and Twelfth Schedule of the Constitution of India attached to Article 243G (Panchayat) and Article 243W (Municipality). Both of the said Schedules contain 'Drinking Water' and 'Water supply for domestic, industrial and commercial purposes'.

1.4 According to the applicant, the services provided by him is a pure service which does not involve any supply of goods. Further, such services is provided to local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of Constitution of India and therefore the services is exempt from taxation vide entry serial number 3 of the Notification No. 1136 F.T. dated 28.06.2017, [corresponding central Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017], as amended from time to time.

1.5 Based on the aforesaid nature of supply, the applicant has sought advance ruling on issue as to whether the services provided by him is exempt from GST or not. In other words, whether the aforesaid supply of services shall get covered under entry serial number 3 of the Notification No. 1136 F.T. dated 28.06.2017.

1.6 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.

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

1.9 The application is, therefore, admitted.

## 2. Submission of the applicant

2.1 The authorised representative of the applicant has appeared for personal hearing proceedings and reiterated the submissions as narrated above.

2.2 The applicant has placed his reliance further on an advance ruling pronounced by the West Bengal Authority for Advance Ruling in the matter of *Mahendra Roy (Case No. 35 of 2019)* where the applicant is stated to be providing conservancy/solid waste management service to the Conservancy Department of the Howrah Municipal Corporation. The AAR held that the supply is exempt from the payment of GST under SI No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 - FT dated 28/06/2017), as amended from time to time.

### 3. Submission of the Revenue

3.1 The concerned officer from the revenue has expressed his view as under:

The services rendered by the applicant for supervision of electrical installation and operating and guarding of pumping machinery is a supply of services in the form of works contract or job work. These supplies in no ways are sovereign service of the government. Therefore the stated services could not be considered as services fall under the purview of article 243G and 243W of the constitution.

### 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 representatives 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 question of the applicant pertains to entry serial No. 3 of the Notification No. 1136 F.T. dated 28.06.2017 which reads as follows:—

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
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 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	NIL	NIL

4.2 So, to decide whether the services provided by the applicant are eligible for exemption under the aforesaid entry serial number or not, we need to ascertain following factors:

- (i) whether the instant supply of services can be treated as pure services;
- (ii) whether the applicant provides services to the Central Government, State Government or Union Territory or local authority or a Governmental authority; and

(iii) whether the said services are in relation to any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution of India.

4.3 The term 'pure services' has not been defined under the Act. However, a bare reading of the description of services as specified in entry serial number 3 of the Notification No. 1136 F.T. dated 28.06.2017 denotes supply of services which does not involve any supply of goods can be regarded as pure services. The said entry serial, therefore, specifically excludes works contract services or other composite supplies involving supply of any goods since 'works contract' as defined in clause (119) of section 2 of the GST Act necessarily involves transfer of property in goods (whether as goods or in some other form).

4.4 The applicant has submitted that the scope of work as executed by him towards operation and guarding of the pumping stationery at pump house doesn't involve any supply of goods. In support of his submission, the applicant has submitted only one copy of work order issued by the Directorate of Public Health Engineering, Government of West Bengal wherein it has been mentioned in the work schedule that the operation and guarding of the installation will be guided by the enclosed terms and conditions. However, no such enclosures have been submitted by the applicant. We therefore may hold the supply of services as pure services subject to the condition that the supply doesn't involve any supply of goods.

If that be so, the view expressed by the concerned officer from the Revenue that the services rendered by the applicant for supervision of electrical installation and operating and guarding of pumping machinery is a supply of services in the form of works contract or job work cannot be accepted since supply of services without any supply of goods doesn't fall under the category of 'works contract' as defined under clause (119) of section 2 of the GST Act. Further, the supply of services as undertaken by the applicant cannot be considered as any treatment or process on goods belonging to another registered person so as to qualify as 'job work' as defined under clause (68) of section 2 of the Act *ibid*.

4.5 It is noticed that the work order against which the applicant has provided services has been issued by the Directorate of Public Health Engineering, Government of West Bengal meaning thereby the applicant has provided services to the State Government departments.

4.6 Now we are going to ascertain whether the said services are in relation to any functions entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution of India.

The functions entrusted to a Panchayat and to a municipality under article 243G and 243W of the Constitution along with eleventh and twelfth schedule are reproduced herein under :

- **243G: Powers, authority and responsibilities of Panchayats.**-Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

- **Eleventh Schedule** [Article 243G of the Constitution (Seventy-Third Amendment) Act, 1992]:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
- 11. Drinking water.**
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets."

- **243W. Powers, authority and responsibilities of Municipalities, etc.**-Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow
  - (a) the Municipalities with such powers and authority as maybe necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as maybe specified therein, with respect to
    - (i) the preparation of plans for economic development and social justice;
    - (ii) the performance of functions and the implementation of schemes as maybe entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
  - (b) the Committees with such powers and authority as maybe necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.
- **Twelfth Schedule** [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992]:
  1. Urban planning including town planning.
  2. Planning of land-use and construction of buildings.

3. Planning for economic and social development.
4. Roads and bridges.
- 5. Water supply for domestic, industrial and commercial purposes.**
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

4.7 It transpires from above that the functions entrusted to a Panchayat or to a municipality as listed in the Eleventh and/or Twelfth Schedule includes the functions like drinking water or water supply for domestic, industrial and commercial purposes.

4.8 Thus, the services as provided by the applicant for operation of water pump and safeguarding pumping machinery at various Pump Houses in different districts for supply of drinking water is found to be a matter as listed in the Eleventh and/or Twelfth Schedule in relation to functions entrusted to a Panchayat under article 243G and/or to a municipality under article 243W of the Constitution of India.

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

#### RULING

Pure services (without involvement of any supply of goods) provided by the applicant to Directorate of Public Health Engineering, Government of West Bengal, as enumerated in the application, is exempt from GST vide entry serial number 3 of the Notification No. 1136 F.T. dated 28.06.2017 [corresponding central Notification No. 12/2017 - Central 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

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling