

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 Parthasarathi Dey, Additional 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	M/s Lokenath Builders
Address	Station Bazar, Alipurduar Junction, Alipurduar - 736123 West Bengal
GSTIN	19AADFL1588R1ZH
Case Number	12 of 2020
ARN	AD190820000216I
Date of application	25/08/2020
Order number and date	12/WBAAR/2020-21 dated 13/11/2020
Applicant's representative heard	Mr.Sandip Choraria, Advocate

1. Admissibility of the Application

1.1 The Applicant is stated to be providing conservancy service to the (i) Station Commander, Bagrakot Military Station, (ii) Office of Chief Medical Superintendent N.F. Railway, Alipurduar Junction and (iii) Sukna Military Station. The applicant seeks a ruling on whether the above supply is exempted in terms of SI No. 3 or 3A 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 (hereinafter collectively referred to as Exemption Notification).

1.2 The question is admissible under section 97(2)(b) of the GST Act. The concerned officer from the revenue has not objected to the admission of the application.

1.3 The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 SI No. 3 of the Exemption Notification exempts from payment of GST any "pure service" (excluding works contract service or other composite supplies involving the supply of any goods) provided to the Central Government, State Government, Union territory, local authority or governmental authority or a government entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution. SI No. 3A of the Exemption Notification

extends it to a “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.

2.2 The Applicant submits that the recipient is the Central Government as the work orders were issued by the Ministry of Defence or the Ministry of Railway, as the case may be. He submits copies of the work orders issued, specification and terms and conditions of the work etc. to establish that he supplies pure service and, therefore, the exemption under SI No. 3 of the Exemption Notification applies to his supplies.

2.3 The applicant seeks a ruling for recipients mentioned in para 1.1 [Point no (ii)], but submits contract agreements only for Sukna Military Station and Bagrakot Military Station. During final hearing dated 28/09/2020, the applicant places three contract agreements (i) Work Order of Binnaguri Military Station (ii) Pedong Military Station (iii) Narang Military Station. Though in the application in GST ARA 01[ Point no 14] applicant don't seek ruling for Binnaguri, Pedong and Narang Military Station.

#### Observations and findings of the Bench

3.1 In its Circular No. 51/25/2018-GST dated 31/07/2018 the Central Government clarifies that the service tax exemption at serial No. 25(a) of Notification No. 25/2012 dated 20/06/2012 (hereinafter the ST Notification) has been *substantially*, although not in the same form, continued under GST vide SI No. 3 and 3A of the Exemption Notification. SI No. 25(a) of the ST notification under the service tax exempts “services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and up-gradation.” The Circular further explains in relation to the specific issue of ambulance service to the government by a private service provider (PSP) that such service is a function of ‘public health’ entrusted to Municipalities under Art 243W of the Constitution, and, therefore, eligible for exemption under SI No. 3 or 3A of the Exemption Notification.

3.2 The above Circular leaves no doubt that the phrase ‘in relation to any function’, as applied to SI No. 3 or 3A above, makes no substantial difference between SI No. 25(a) of the ST Notification and SI No. 3 or 3A of the Exemption Notification. Under the previous service tax regime, the exemption was limited to certain functions specified in SI No. 25(a) of the ST Notification, whereas, under the GST the ambit has been broadened to include any such functions that are performed by a panchayat or a municipality under specific provisions of the Constitution. These functions are in the nature of public welfare service that the governments on their own, and sometimes through governmental authorities/entities, do provide to the citizens. When the activity is in relation to any such function, the supply to the governments or governmental authorities/entities or local authorities is exempt from paying GST under SI No. 3 or 3A of the Exemption Notification, provided it is either a pure service or a composite supply, where the supply of goods does not constitute more than 25% of the value.

3.3 The Applicant’s eligibility under SI No. 3 or 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the supply being made is pure service or a composite supply, where the supply of goods does not exceed more than 25% of the value of the supply, (2) whether the recipient is government, local authority, governmental authority or a government entity, and (3) whether the supply is being made in relation to any function entrusted to a panchayat or a municipality under the Constitution, as clarified in the above paragraphs.

3.4 In the work orders of Bagrakote Military Station and Sukna Military Station, it is found that all the agreements were between the Central Government and applicant. The applicant has not furnished any copy of the contract with the Railways.

3.5 In the work orders issued to the applicant, the recipient describes the nature of the work as removal, collection and disposal of garbage, rubbish, filth etc., sweeping and clearing of roads, drains and open areas, cutting and pruning of tree including removal of undergrowth and foliage on drain and roads, and lifting of dead animals. The applicant performs waste disposal activities by engaging garbage lifting vehicles and other cleaning equipment. There is, however, no reference to any supply of goods in the course of executing the work. The vehicles used and the fuel consumed and the machinery used do not result in any transfer of property in goods to the recipient. Based on the above documents, it may, therefore, be concluded that the applicant's supply to the recipient is a pure service.

3.6 Furthermore, Article 243W of the Constitution that discusses the powers, authority and responsibilities of a municipality, refers to the functions listed under the Twelfth Schedule as may be entrusted to the above authority. SI No. 6 of the Twelfth Schedule refers to public health, sanitation, conservancy and solid waste management. The applicant's supply, as discussed above, is a function mentioned under SI No. 6 of the Twelfth Schedule.

3.7 The Applicant's supply to Bagrakote and Sukna Military Stations, therefore, is exempt under SI No. 3 of the Exemption Notification. As no agreement is available regarding supplies to the Railways, this authority offers no comment thereon.

Based on the above discussion, we rule as under,

### **RULING**

The applicant's supply to Bagrakot Military Station and Sukna Military Station, as described in para 3.5, 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.

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

(PARTHASARATHI DEY)  
Member  
West Bengal Authority for Advance Ruling