

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

Mr Brajesh Kumar Singh, 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	PRODIP NANDI
Address	Dr B.C.Roy Road, Dakshin Jagaddal, Sonarpur, 24 Paraganas (S), PIN-700151
GSTIN	19ADCPN0410G1Z1
Case Number	14 of 2021
ARN	AD190721004590C
Date of application	August 04, 2021
Order number and date	13/WBAAR/2021-22 dated 08.10.2021
Applicant's representative heard	Mr Parag Kothari, 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 engaged in supplying manpower services to his clients on daily/ monthly basis for different jobs as required by his clients.

1.3 It is submitted by the applicant that the clients also authorize him to make payment of salary/wages on monthly basis to the manpower provided by him.

1.4 The applicant submits that he raises periodical invoices to his clients indicating salary/wages payable against the manpower services supplied by him and also indicates the service charges payable to him at the agreed rates in the invoices in a separate manner.

1.5 The applicant submits further that upon receipt of payment from his clients, he disburses the salary/wages to the manpower provided by him.

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

- (i) *As per the Client Service Agreement, whether the applicant is acting as a pure agent as defined in Explanation to Rule 33 of the CGST Rules, 2017?*
- (ii) *Whether the payment of salary/wages by the supplier can be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017?*

1.7 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (c) 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 The authorised representative of the applicant has appeared for personal hearing proceedings and reiterated the submissions as narrated above.

2.2 The applicant submits that under the Client Service Agreement, he is acting as a pure agent for the purpose of payment of salary/ wages in the course of supply of manpower services to the client. The applicant neither intends to hold nor holds any title to the services supplied to his clients.

2.3 The applicant further submits that he does not use the services so procured for his interest and the manpower services are directly supplied to the client.

2.4 In course of personal hearing, the authorised representative of the applicant has furnished following documents in support of his argument:

- Copy of a 'Manpower Supply Agreement';
- Copies of 'Employment Agreement' for manpower supply in respect of a particular client;
- Copy of 'Leave Register' and 'Employee's Performance Register' for the month of July'21 in respect of the said client;
- Copy of invoice issued by the applicant to the said client for the month of July'21;

- Copy of Bank Statement;
- A print out of 'Register of Wages' in Form XVII under the Contract Labour (Regulation and Abolition) Central Rules, 1971 for the period July 2021 in respect of Principal Employer being the said client.
- Print out of 'electronic challan cum return (ECR) under Employee's Provident Fund.

2.5 Terms and conditions as per the 'Manpower Supply Agreement' is found to be as under:

- Whereas the client will employ the service provider on as and when basis whenever the company will have sufficient order in hand and in that event the Service Provider shall be required to supply manpower as required. The manpower will be provided at Premises Plot No. 1655, Zone-9, KLC, Bantala, South 24 Parganas, Pin-743502 and/or any other premises as and when mutually decided.
- The service Provider enters into this agreement on clear understanding that the number of employees to be supplied by him will vary frequently because of uncertain and varying quantum of jobs available.
- In addition to the services of manpower supply being rendered by the contractor, the principal hereby authorizes the Contractor to make payment of salary, wages and all allowances on behalf of the Principal, in the capacity of an agent of the Principal.
- The payment of salary, wages and allowances made by the Contractor on behalf of the Principal shall be clearly and separately identified in the invoice to be raised by the Contractor. The service charges payable to the contractor shall be separately indicated in the invoices to be raised by the Contractor.
- Consolidated salary of the manpower and its components and divisions will be fixed by Principal, the recruitment and retrenchment both will be at the decision of the Principal only.
- Service Provider will prepare the salary bill, based on the attendance and other necessary details, supplied by the client, for the personnel as per the agreed rate of by the 10th of every month and the payment shall be made by client at the earliest. Before the payment by the client, Service Provider will not pay the salary to the staff. However if any advance is paid to the employee it will be paid on a weekly or fortnightly basis as per decision of the client only.
- Client's monthly payment shall also include- Service Provider's service charges for manpower supply, at the agreed rate of 3% of the invoice. The additional cost, if any, like photo session, and identity cards and others, will be arranged by the Service Provider. TDS and Taxes will be deducted and levied, respectively, as applicable.
- Compliance to EPF, ESIC and any such statutory provisions Vis-à-vis the employee would be the responsibility of Service Provider and the Service Provider shall issue a certificate to the compliance thereof to the Client. That the Service Provider will furnish to the Client, proof of payment of comprehensive monthly PF, ESI, Profession Tax, in or in relation to the workmen supplied by the Service Provider to the Client. Further, the Service Provider will file with the respective authorities, all RETURNS (Monthly/Quarterly/Annually) on or before the due date and will furnish a copy of such returns to the Client. In the event of delay in complying with statutory obligations of contribution, filing returns etc, the penalty/ consequences for such delay will be on the Service Provider's account.

- If at any point of time during the tenure of the contract the number of personnel required by the Client gets decreased, the number of personnel engaged through Service Provider may be reduced accordingly as may deem fit by Client.
- If Client is not satisfied with any personnel on ground of competence, professionalism or discipline he/she would immediately be sent back to Service Provider.
- The personnel provided by Service Provider would be interviewed by the officials of Client before they are hired.
- The Service Provider shall not disclose to any one regarding the information, formulae of the company adversely affecting the interest of the Company.
- In the event of any dispute/grievance arising out of this contract of agreement between the two parties the same would be mutually discussed and settled failing which it shall be referred to arbitration of a mutually agreed Arbitrator under the provision of Conciliation and Arbitration Act. The venue of arbitration shall be at Kolkata and Arbitrator's decision shall be final and binding on the both the parties.
- The contract may be terminated fully or partially by either of the parties with a month notice.

2.6 The applicant, upon furnishing of the aforesaid documents, has contended that he qualifies as a pure agent as defined in Rule 33 of the CGST Rules, 2017. Accordingly, the amount of salary/ wages to be paid by the applicant on behalf of the client is eligible to be excluded from the value of supply. The applicant is liable to pay tax only on the value of service charge received by him from the client for supply of manpower services.

3. Submission of the Revenue

The concerned officer from the revenue has expressed his view in writing which is reproduced verbatim as under:

3.1 As per para 8 of the "Manpower Supply Agreement", the entire service benefits and obligations pertaining to the work-men hired by the service provider like PF, ESI, Profession Tax shall be borne by the service provider only. Client shall have nothing to do with all these except being informed by the service provider only. As the cost pertaining to these factors shall be borne by the service provider and as they too constitute the procurement value of the man-power service incurred by the service provider, it may be inferred that any value excluding those is not the 'actual amount incurred'. So the cost incurred by the Service Provider is different from the one received from the client which violates the provisions as mentioned in Para'd' of explanation to rule 33.

3.2 Again as per para 2, 9, 10, 11, it is the service provider who will supply the work-men as per requirements of the client. From these paragraphs it transpires that the service provider would hire work-men as per the satisfaction of the client and then supply those hired work-men to the client as per the rate fixed by the client with respect to cost against work-men and also against a fixed cost of service.

3.3 So the service provider in this case procures the service as per his client's specification regarding quantity, quality and value of the service and then he supplies the services to his client against a supply value. A part of the cost on procuring the service is shown separately and a portion is not indicated separately in the invoice as is required under rule 33(ii) of the WBGST Rules 2017.

3.4 Considering the points mentioned above, it is opined that the service provider is not a pure agent of the client. On the contrary he is just another supplier of service providing service upon procurement of the same as per specification of his client.

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. We have also considered the submission made by the officer concerned from the Revenue.

4.2 The applicant submits that he is engaged in supplying manpower services to his clients on daily/ monthly basis for different jobs as required by his clients. The issue involved in the instant case is to decide whether the applicant can be regarded as 'pure agent' of his client who receives such supply and whether value of supply of services in case of pure agent as prescribed in rule 33 of the CGST/ WBGST Rules, 2017 is applicable in the instant case.

4.3 With a view to appreciate the submissions urged before us, we find it apposite to go through rule 33 of the CGST/ WBGST Rules, 2017 first which reads as under:

"33. Value of supply of services in case of pure agent. - Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely :—

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who —

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B."

4.4 We now examine the fact of the instant case along with documents furnished by the applicant in support of his contention. The applicant supplies manpower services for which he enters into an agreement with the recipient of services. It is submitted that the recipient of services authorizes the applicant to make payment of salary, wages and all allowances on behalf of him thereby the applicant makes such payment in the capacity of an agent of the service recipient. Further, payment of salary, wages and allowances made by the applicant is clearly and separately shown in the invoice raised by the applicant.

4.5 We find that for the purpose of supplying manpower services as per requirement of his clients, the applicant also enters into 'Employment Agreement' with different work-men specifying the terms and conditions to be followed by the work-men and the wages/salary to be paid against services provided by them. We also find that the applicant maintains 'Register of Wages' in Form XVII under rule 78(1) (i) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 in respect of such supply of work-men.

4.6 Section 78 of The Contract Labour (Regulation and Abolition) Central Rules, 1971, as we find it relevant in this regard, thus reproduced herein under:

78. Muster Roll, Wages Registers, Deduction Register and Overtime Register. —

(1) (a) Every contractor shall in respect of each work on which he engages contract labour,—

(i) maintain a Muster Roll and a Register of Wages in Form XVI and Form XVII respectively:

Provided that a combined Register of Wage-cum-Muster Roll in Form XVIII shall be maintained by the contractor where the wage period is a Fortnight or less;

(ii) maintain a Register of Deduction for damage or loss, Register of Fines and Register of Advances in Form XX, Form XXI and Form XXII respectively;

(iii) maintain a Register of Overtime in Form XXIII recording therein the number of hours of, and wages paid for, overtime work, if any;

(b) Every contractor shall, where the wage period is one week or more, issue wage slips in Form XIX, to the workmen at least a day prior to the disbursement of wages;

(c) Every contractor shall obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of Wages or Muster Roll-cum-Wages Register, as the case may be, and the entries shall be authenticated by the initials of the contractor or his authorised representative and shall also be duly certified by the authorised representative of the principal employer in the manner provided in rule 73.

(d) In respect of establishments which are governed by the Payment of Wages Act, 1936 (4 of 1936) and the rules made thereunder, or Minimum Wages Act, 1948 (11 of 1948) or the rules made thereunder, the following registers and records required to be maintained by a contractor as employer under those Acts and the rules made thereunder shall be deemed to be register and records to be maintained by the contractor under these rules, namely: —

- (a) Muster Roll;*
- (b) Register of Wages;*
- (c) Register of Deductions;*
- (d) Register of Overtime;*
- (e) Register of Fines;*
- (f) Register of Advances;*
- (g) Wage slip;*

(2) Notwithstanding anything contained in these rules, where a combined or alternative form is sought to be used by the contractor to avoid duplication of work for compliance with the provisions of any other Act or the rules framed thereunder for any other laws or regulation or in cases where mechanised pay rolls are introduced for better administration, alternative suitable form or forms in lieu of any of the forms prescribed under these rules, may be used with the previous approval of the [Regional Labour Commissioner (Central)].

4.7 The applicant thus engages contract labour towards supply of manpower services as required by his clients (recipient of services). Rule 33 of the CGST/WBGST Rules, 2017 clearly speaks that one of the conditions that has to be satisfied for exclusion of expenditure or costs from the value of supply which has been incurred by a supplier as a pure agent if the services procured by the service provider, as a pure agent of the recipient of service, from the third party are in addition to the services which he provides on his own account. Admittedly, in the instant case, the applicant first enters into an agreement to his client for supplying of manpower services and subsequently engages different work-men (third party) at the place of business of his clients and thereby supplies manpower services only. We therefore find no other services other than manpower services are provided by the applicant to his client. We further find that by virtue of the "Employment Agreement" made between the applicant (service provider) and work-man (third party), the applicant, being the employer is liable to make payment to the third party (work-men/employee).

4.8 We are now going to analyse the activities involved in the instant case in the light of illustration given in rule 33 of the CGST/WBGST Rules, 2017. What is most significant in the said illustration that the service provider 'A', other than his service fee, recovers from the service recipient 'B' an amount towards registration fee and approval fee paid by him to the Registrar of Companies which he has paid for the name of the company i.e, 'B'. Such fees are compulsorily levied on 'B' and therefore also payable by 'B'. Here, 'A' is merely acting as a pure agent in the payment of those fees and for that reason, recovery of such expenses is a disbursement and shall not form a part of the value of supply.

4.9 In the instant case, undisputedly the applicant is the person who is liable to pay salary/wages to the work-men employed by him under 'Employment Agreement' to provide manpower services to his clients and just showing such amount in a separate manner in the invoice doesn't shift his liability on the recipient of services and makes him qualify as a 'pure agent' in terms of rule 33 of the CGST/WBGST Rules, 2017. The contention of the applicant that the recipient of services authorizes him to make payment of salary, wages and all allowances on behalf of him doesn't hold water on the same ground that such amount is actually payable by the applicant himself. We accordingly fail to accept the argument that the applicant makes payment of such amount "on behalf of" his client i.e., the service recipient.

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

RULING

Question: As per the Client Service Agreement, whether the applicant is acting as a pure agent as defined in Explanation to Rule 33 of the CGST Rules, 2017?

Question: Whether the payment of salary/wages by the supplier can be excluded from the value of supply for the purpose of section 15 of the CGST Act, 2017?

Answer: Both are answered in the negative.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling