

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:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX

Joyjit Banik, Additional 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	REACH DREDGING LIMITED
Address	1, Orbit House, 3 rd floor, Garstin Place, Esplanade, West Bengal, Kolkata-700001
GSTIN	19AAECR9181L1ZN
Case Number	WBAAR 07 of 2024
ARN	AD190324032801B
Date of application	April 23, 2024
Jurisdictional authority (State)	Esplanade Charge
Jurisdictional authority (Centre)	BBD Bag I division, Kolkata North Commissionerate
Order number and date	13/WBAAR/2024-25 dated 01.10.2024
Applicant's representative heard	Mr.Sumit Nishania, CA

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 herein provides works contract services to various State Governments, Central Government and Union Territories. The applicant has been rewarded work order by the Government of Manipur (Water Resources Department) (hereinafter referred to as “Govt.”) for Development of Water Body/ Reservoir at Lamphelpat, Imphal West, Manipur, India. The applicant entered into contract with the State Government of Manipur (Water Resources Department) vide agreement no. “SE/IC-I/2-37/WB-AGR/2023-24/2 Dated 12/09/2023” for the execution of above-mentioned Works Contract.

The purpose of the contract order is to dredge Lamphelpat Waterbody for enhancing the sustainable water potential for supply of water in the Imphal city, creates opportunities for development of new amenities, promote eco-tourism and recreational facilities.

The works contract constitutes mainly of dredging and earthwork excavation which is purely construction and service work. Further, the cost of construction material transferred or consumed for execution & completion of the work contract will be less than 5 (Five) percent of the total work order value as per the original contract agreement.

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 seeking an advance ruling in respect of following questions:

(i) Will the supply be covered under Sl. No. 3A Notification No.9/2017 dated 28- 06-2017 Integrated Tax (Rate) or Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time?

(ii) What will be the effective GST tax rate applicable to the supply?

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

1.5 The applicant states that the questions raised in the application have neither been decided by nor are pending before any authority under any provision of the GST Act.

1.6 The concerned officer has raised no objection in respect to the admissibility of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant has been rewarded work order by Government of Manipur (Water Resources Department) (hereinafter referred to as "Govt.") to dredge Lamphelpat Waterbody for enhancing the sustainable water potential for supply of water in the Imphal city, creates opportunities for development of new amenities, promote eco-tourism and recreational facilities. The applicant has entered into a contract with the State Government of Manipur (Water Resources Department) vide agreement no. "SE/IC-I/2-37/WB-AGR/2023-24/2 Dated 12/09/2023" for the execution of above-mentioned Works Contract.

2.2 The said work includes excavation by using Cutter suction dredger, 500CSD with cutter power 250 ICU and Soil remediation of excavated earth and Re-sectioning of Nambul stream from Hump bridge to Samushang Nalla.

2.3 The applicant submits that works contract, as defined in clause (119) of section 2 of the GST Act, is treated to be a supply of services under GST vide Para 6(a) Schedule II of the GST Act. The general rate of works contract services is 18%. However, in terms of entry no. 3A of Notification no. 9/2017 Integrated Tax (Rate) dated 28-06-2017, "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 provided to the Central Government, State Government or Union territory or local 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" is exempted from payment of tax.

2.4 The applicant submits that the scope of the work requires the reservoir at Lamphelpat to be maintained primarily to protect the city of Imphal for enhancing the sustainable water potential for supply of water in the Imphal city. As per Cambridge Dictionary, the expression "reservoir" means a place for storing liquid, especially a natural or artificial lake providing water for a city or other area. According to the applicant, a reservoir is a public asset which is used, maintained, cleaned and preserved for the benefit of the society as a whole. It's upkeep is of vital importance for all members of the society since it is closely related to Water Supply and Flood Control for the people of the city. The applicant submits that maintenance of a reservoir also constitutes maintenance of community assets. Therefore, such activities are covered under Eleventh Schedule of Article 243G and Twelfth Schedule of Article 243W of the Constitution of India respectively as under:

- Matters listed in Eleventh Schedule includes 'Maintenance of community assets'
- Matters listed in Twelfth Schedule includes 'Water supply for domestic, industrial and commercial purposes.'

2.5 As per Section 65(36a) of the Finance Act, 1994 “Dredging includes removal of material including silt, sediments, rocks, sand, refuse, debris, plants and animal matter in any excavating, cleaning, deepening, widening or lengthening either permanently or temporarily, of any river, port, harbour, backwater and estuary”. The applicant submits that the cost of construction material transferred or consumed for execution & completion of the work contract will be less than 5 (Five) percent of the total work order value as per the original contract agreement. Therefore, such supply would be exempted vide entry no. 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 which exempts composite supplies where the “value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply”. The applicant draws attention in this regard to the letter received from the Water Resources Department, Government of Manipur.

2.6 The applicant in support of his contention towards exemption of tax has placed his reliance on the following advance rulings:

(I) *Arihant Dredging Developers Pvt. Ltd.; Order No. 04/WBAAR/2019-20 dated 10/06/2019*: In this case, the Irrigation and Waterways Directorate, Govt of West Bengal has awarded the applicant a contract for resectioning of river Jamuna from the upstream of Chorghat Bridge to the downstream of Ghonja Haspur Bridge.

The Authority for Advance Ruling (AAR) made reference to Circular No. 51/25/2018-GST dated 31/07/2018 wherein 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. It was held that 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.

The AAR examined the applicant's eligibility to the exemption from three aspects: (1) whether the supply being made is pure service or a composite supply, where 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.

It was held that the recipient being the Irrigation and Waterways Department, Government of West Bengal is engaged in the development of irrigation and waterways, which includes activities in relation to the function listed under SI No. 5 of the Eleventh Schedule, and, therefore, entrusted to a panchayat under Article 243G of the constitution of India. The recipient certifies that the work awarded to the applicant, involving drainage of channels and riverbeds, is an activity undertaken in relation to the function referred to above.

Thus, the service provided was exempt under Sl. No. 3A of the Exemption Notification.

(II) *Neo Built Corporation: Order No. 05/WBAAR/2019-20 dated 10/06/2019*: In this case, the Irrigation and Waterways Directorate, Govt of West Bengal has awarded the applicant a contract for the resuscitation by re-excavation of river Palaspai from Banskhal to Mahisghata, along with raising and strengthening of embankment on both sides of the river in Block Daspur -1 & 2 and Paschim Medinipur.

The contract is meant for resuscitation of Palaspai River. It involves pumping out the water from the clogged channels, excavation of the drainage channels, lifting and deposit of the excavated materials to specified locations, and compacting earthwork for strengthening the embankment. Cost of supplying materials is included in the compacting cost. The supply of goods, however, does not constitute any significant portion in terms of value. As such, compacting, in the course of which goods are to be supplied, constitutes only 2% of the value of the contract.

It was held that the applicant's supply to the Irrigation and Waterways Directorate, Govt of West Bengal is exempt from the payment of GST under Sl. No. 3A of Notification No 9/2017 - Integrated Tax (Rate) dated 28/06/2017, as amended from time to time.

(III) *Dredging and Desiltation Company Private Limited; Order No. 03/WBAAR/2019-20 dated 10/06/2019*: In the given case, the West Bengal Fisheries Corporation limited has awarded the applicant a contract for up-gradation of Jalda Kuti Landing Centre by protection to Mandarmani River and up-gradation of navigability by dredging of Mandarmani River in Purba Medinipur.

The applicant submitted that the recipient is a government entity, and that dredging, involving earthwork, constitutes 89% of the work and argued that the work undertaken is in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India.

It was held by the AAR that exemption under Sl. No. 3A of Notification No. 9/2017- Integrated Tax (Rate) dated 28/06/2017 as amended by Notification No. 2/2018 Integrated Tax (Rate) dated 25/01/2018 would apply to the applicant's supply.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any 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 authorized representative of the applicant during personal hearing.

4.2 We find from the documents produced before us that the applicant has received a letter of acceptance from the Office of the Executive Engineer, Electrical and Mechanical Division, Water Resource Department, Government of Manipur in respect of a contract for execution of project of development of water body/reservoir at Lamphelpat, Imphat West, Manipur, India under the project name "Rejuvenation of Lamphelpat water body to alleviate urban flooding, providing sustainable water source for Imphal city and promoting eco tourism".

4.3 The applicant thereafter has entered into an agreement with the Superintending Engineer, Irrigation Circle-I, Water Resources Department, Imphal to undertake earthwork in surface excavation by using suction dredger, 500 CSD with cutter power 250 ICU and soil remediation of excavated earth. According to the schedules of work (Contract No. ACE-II/WR/F-62/2022/26, apart from the work mention above, the applicant performs re-sectioning of Nambul stream from Hump Bridge to Samushang Nalla.

4.4 The applicant contends that the aforesaid supply of services get covered under serial no. 3A of Notification No.9/2017 dated 28-06-2017 Integrated Tax (Rate) or entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. We therefore proceed to examine whether the applicant fulfils the following criteria in order to claim exemption as specified in the aforesaid entry:

- (i) whether the instant supply of services can be regarded as composite supply of goods and services;
- (ii) whether the applicant provides services to the Central Government, State Government or Union Territory or local 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.

4.5 The records submitted by the applicant includes certificate issued by the Superintendent Engineer, Irrigation Circle I, Water Resource Department, Manipur wherein it is certified that "*scope of work comprises of "Earthwork in surface excavation by using cutter suction dredger and soil remediation of excavated earth. The works contract constitutes mainly of dredging and excavation which is purely construction and service work. Further, the cost of construction material transferred or consumed for execution & completion of the work contract will be less than 5 (Five) per cent of the total work order value as per the original contract agreement."*

It transpires from above that the applicant provides the aforesaid services to Government of Manipur. We therefore find that the first and second criteria i.e., the supply of services can be regarded as composite supply of goods and services and having been provided to the State Government get satisfied.

4.6 Now the issue left with us is to decide 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 for ease of reference:

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 is thus imperative to examine the nature of the work being undertaken by the applicant in order to determine whether the supply made by the applicant is in relation to any of the functions as enumerated above. In this context, we like to reproduce the 'Project Summary for Public Disclosure' in respect of 'Lamphelpat Waterbody Rejuvenation Project' available in the website of New Development Bank [www.nbd.int] as follows:

- Project Context: The Lamphelpat area, in the west part of Imphal – the capital city of Manipur, faces the problem of urban floods during the rainy season due to reduction in detention capacity of the Lamphelpat water body. Coping measures undertaken in the form of pumping to drain water during rainy days are not adequate and the area remains waterlogged for many days every year. The annual floods result in loss of property, infrastructure, and damage to human health while negatively impacting the biodiversity in the area. Thus, there is an urgent need to enhance the water detention capacity of Lamphelpat water body and restore the storm water drainage system and channels / streams in the catchment area to prevent flooding.
- Project Description: storm water drainage system and channels / streams in the catchment area, improve water security in Imphal by utilization of stored water in Lamphelpat water body as additional source of drinking water, and construct green spaces, Arc Bridge, biodiversity zone and tourism facilities around Lamphelpat water body to develop tourism potential of the area. The Project will also enhance environmental and flood management capacity in Imphal through operationalization of real time flood management system with a command center.
- Project Objective: The Project will contribute to improved quality of life and urban sustainability in Imphal city through prevention of floods, improvement of water security, enhancement of environmental situation, and promotion of eco-tourism. The Project is expected to contribute primarily to United Nations Sustainable Development Goal (SDG) 13 Climate Action, specifically target 13.1 (Strengthen resilience and adaptive capacity to

climate related hazards and natural disasters in all countries). It could also directly contribute to the achievement of SDG 11 Sustainable cities and Communities, and SDG 6 Clean Water and Sanitation.

4.8 The contract document, as submitted by the applicant, also reveals that the project aims to alleviate urban flooding, providing sustainable water source for Imphal city and promoting eco-tourism. In this regard, we like to mention that we have come across different articles, reports on the internet in respect of instant project wherefrom it is learnt that Lamphalet, which is in the foothills of the Langol hill range, was a natural water reservoir and in the past it served as a reservoir, storing excess water of the Luwangli and Nambul rivers during monsoon. It was used to release water to the rivers during the lean season. The planned water body would store excess water from Nambul River and water collected from various sources and catchment areas would be further treated for use in water supply schemes. The waterbody at Lamphelpat that has a huge storage capacity of 124 million cubic metres, is poised to become the lifeline of over 4 lakh residents of Imphal for providing drinking water. The project focuses on the integrated issues relating to flood risk management to ensure safety and security in the Imphal Valley. Additionally, the rejuvenation effort focuses on preserving the ecological integrity of the Nambul River, enhancing aesthetic values, and promoting eco-tourism potential in Imphal city.

4.9 The applicant has argued that 'eco tourism' as mentioned in its agreement as well as acceptance letter, is dredging of Lamphelpat water body which in long run creates different beneficial provisions. Eco tourism, as per definition borrowed from ecoindia.com, means *"Tourism involving travel to areas of natural or ecological interest, typically under the guidance of a naturalist, for the purpose of observing wildlife and learning about the environment and at the same time focus on wildlife and promotion of understanding and conservation of the environment"*. Dredging of Lamphelpat water body would impart benefits like increasing volume and depth of the water body by eradicating debris, improves water quality which in turn would create a sustainable ecosystem for aquatic flora and fauna.

4.10 The applicant also contends that maintenance of this natural water body can be regarded as maintenance of community assets. He submits that reservoir is a public asset which plays a pivotal role for supplying water to every household. The applicant performs the earthwork to keep the reservoir clean and preserved for better livelihood of that city. In order to examine the aforesaid argument of the applicant, we may refer to the "Model Citizen Charter for Panchayats, June 2021" prepared by Ministry of Panchayati Raj (MoPR) in collaboration with National Institute of Rural

Development & Panchayati Raj (NIRDPR) for delivery of the services across the 29 sectors, aligning actions with localised Sustainable Development Goals (SDGs). The said document represents services in regard to 'community assets' as follows:

- Maintenance & Improvements in burial/ cremation grounds
- Maintenance/ Improvements in Playground/ Public Parks
- Maintenance & Improvements in Yoga Centre
- Removal of Encroachment on Public Properties

We find that the expression 'public property' has been defined in the Prevention of Damage to the Public Property Act, 1984 which inter alia includes any property, whether immovable or movable which is owned by, or in the possession of, or under the control of (i) the Central Government; (ii) any State Government; or (iii) any local authority. Lamphelat Lake, which is a natural water body, therefore comes under the purview of 'public property'. However, dredging of a natural water body cannot be considered as services in regard to 'Removal of Encroachment on Public Properties'. We are therefore unable to accept the contention of the applicant that maintenance of the natural water body can be regarded as maintenance of community assets as specified in the Eleventh Schedule [Article 243G of the Constitution (Seventy-Third Amendment) Act, 1992].

4.11 We find that the work to alleviate urban flooding is not listed in the Eleventh and/or Twelfth Schedule supra. However, the functions entrusted to a Panchayat or to a municipality as listed in the Twelfth Schedule include the functions viz. (i) drinking water or water supply for domestic, industrial and commercial purposes and (ii) protection of the environment and promotion of ecological aspects. In the instant case, the objective of the project inter alia includes improvement of water security and enhancement of environmental situation which, according to us, is a subject matter of Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992]. We, therefore, hold that the supply made by the applicant to the Government of Manipur is in relation to a function entrusted to a Municipality under article 243W of the Constitution.

In view of the foregoing, we rule as under:

RULING

Supplies made by the applicant for rejuvenating Lamphelat waterbody to alleviate urban flooding, providing sustainable water source for Imphal City and promoting eco tourism to the State Government of Manipur are exempted from payment of tax vide serial number 3A of the

Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 [corresponding State Notification No. 1136 F.T. dated 28.06.2017], as amended or Sl. No. 3A Notification No.9/2017 dated 28- 06- 2017 Integrated Tax (Rate).

(Dr. TANISHA DUTTA)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 01st October, 2024

To,
Reach Dredging limited
1, Orbit House, 3rd floor, Garstin Place, Esplanade, West Bengal, Kolkata-700001

Copy to,

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Commissioner, Kolkata North Commissionerate, 180, Shantipally, R.B.Connector, Kolkata-700107
- (4) The Charge Officer, Esplanade Charge, 14, Beliaghata Road, Kolkata-700015
- (5) Office Copy