

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	VINAYAK SINGH
Address	4/1, GROUND FLOOR, DR. ABANI DUTTA ROAD, SALKIA, HOWRAH, PIN-711106
GSTIN	19AJQPS0893N3Z1
Case Number	15 of 2021
ARN	AD190821001353F
Date of application	August 16, 2021
Order number and date	14/WBAAR/2021-22 dated 08.10.2021
Applicant's representative heard	Mr. Aditya Singhania, 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' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be engaged in providing conservancy/solid waste management services as well as garbage collection and dumping services to the Conservancy Department of the Howrah Municipal Corporation (HMC, for short).

1.3 It is submitted by the applicant that the HMC is deducting TDS in terms of Notification No. 50/2018 - Central Tax dated 13/09/2018 (corresponding West Bengal State Notification No. 1344 – F.T. dated 13/09/2018) and State Government Order No. 6284 -F(Y) dated 28/09/2018 (hereinafter collectively referred to as TDS Notifications) while paying consideration for the above supply. The applicant seeks advance ruling on whether the above supply is exempted in terms of Sl No. 3 or 3A of Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 (corresponding West Bengal State Notification No. 1136 – F.T. dated 28/06/2017), as amended from time to time (hereinafter collectively referred to as Exemption Notification), and if so, whether the notifications regarding TDS are applicable in his case.

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

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

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant draws attention to entry serial number 3 of the Exemption Notification by virtue of which, 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 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 in relation to any function entrusted to a Municipality under article 243W of the Constitution, is exempted from payment of tax. Further, entry serial number 3A of the said 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, being a municipal corporation, is a local authority. The applicant has furnished copy of work order issued in support of his contention that he is engaged in supplying pure services and such supply of pure services, therefore, gets covered under entry serial number 3 of the Exemption Notification.

2.3 The applicant contends further that the TDS Notifications mandate and laid down the mechanism for deduction of TDS. These Notifications are applicable only in respect of taxable supply of goods and services. As the applicant is making an exempt supply to the HMC, the provision of section 51 shall not be applicable in his case.

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 SI. No. 3 of the Exemption Notification exempts from payments of GST any “pure service” (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 Government 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.

3.2 SI. No. 3A of the Exemption Notification further extends it as Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Government 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

3.3 It is opined that the applicant’s eligibility under SI No 3 or 3A of the Exemption Notification can be considered- (1) whether the supply being made is a pure service or a composite supply, where the value of supply does not exceed beyond 25% of the value of the said supply, (2) the recipient should be Central Government, State Government or Union territory or local authority or a Government authority or a Government entity and (3) the supply in relation to any function entrusted to a Panchayat or to a Municipality under the Constitution.

3.4 Therefore, the applicant’s supply made to HMC is an exempt service under SI No 3 of the Exemption Notification.

3.5 The TDS Notification No 50/2018 Central Tax dated 13.09.2018 specifies the persons or category of persons for deduction of tax at source under Section 51(1)(d) of CGST Act, 2017. Therefore, this notification is solely applicable if the supply made by the applicant is in conformity with Section 51 of the said Act. Thus, if the applicant is making an exempt supply to the HMC, the provisions of Section 51 of the said Act do not apply.

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, in support of his argument, has placed reliance on an advance ruling pronounce by the WBAAR in the matter of Indrajit Singh carrying on business under the trade name of M/s Maruti Enterprise (Order No 07/WBAAR/2019-20 dated 10.06.2019). On going through the said advance ruling, we find that fact of the instant case and the questions raised thereon for advance ruling are identical with the case on which the applicant has relied upon. In the said ruling, the WBAAR has observed as follows:

- *“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 referred to as, 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 Article 243W of the Constitution, and, therefore, eligible for exemption under SI No. 3 or 3A of the Exemption Notification.*
- *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 supply of goods does not constitute more than 25% of the value.”*

4.3 In the instant case, the work order issued to the applicant describes the nature of the work as lifting and removing of daily garbage etc. accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area. Further, from the copies of invoices and 'Payment Ledger' as furnished by the authorized representative in course of personal hearing, it is found that the applicant has received payment against 'removing of garbage, road bumps, drain slits, rubbish by dumper with labour, fuel & payloader'.

4.4 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 Exemption Notification denotes supply of services which does not involve any supply of goods can be regarded as pure services. It appears that in the instant case, the supplies do not involve any supply of goods. The applicant receives consideration only in respect of the quantity of the garbage lifted and removed. So, it may be inferred that the applicant's supply to HMC, which is a local authority as defined under section 2(69) of the GST Act, is a pure service.

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

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

- **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.

4.6 It transpires from above that the functions entrusted to a municipality as listed in the Twelfth Schedule include the functions like sanitation conservancy and solid waste management. We are therefore of the view that the applicant's services to HMC is exempt under entry serial number 3 of the Exemption Notification.

4.7 We also find that Section 51(1) of the GST Act provides that the Government may mandate inter alia a local authority to deduct TDS while making payment to a supplier of *taxable* goods or services or both. As the applicant is making an exempt supply to the HMC, the provisions of section 51 and, for that matter, the TDS Notifications do not apply to his supply.

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

RULING

The applicant's supply to the Howrah Municipal Corporation for lifting and removing of daily garbage etc. accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area is exempt from payment of tax vide entry serial number 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding West Bengal State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time.

As the applicant is making an exempt supply, the provisions of section 51 in respect of tax deduction at source do not apply in the instant case.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling