

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:

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	WEST BENGAL AGRO INDUSTRIES CORPORATION LIMITED
Address	3 <sup>rd</sup> floor, 23B, SECURITY HOUSE, FAIRLEY PLACE, NETAJI SUBHAS ROAD, Kolkata-700001
GSTIN	19AAACW3323M1Z4
Case Number	WBAAR 15 of 2022
ARN	AD190622001266C
Date of application	June 16, 2022
Jurisdictional Authority (State)	Fairley Place Charge
Jurisdictional Authority (Central)	BBD Bag 1 Division, Kolkata North Commissionerate
Order number and date	15/WBAAR/2022-23 dated 22.12.2022
Applicant's representative heard	Mr. Subhasish Chowdhury, Authorized Representative Mr Somnath Biswas, 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 a Government Undertaking under the administrative control of Water Resources Investigation & Development Department, Government of West Bengal. The commercial operations carried out by the applicant are mainly entrusted with three operating divisions namely (i) Project Division, (ii) Agronomy Division and (iii) Agri Engineering Division.

1.3 It is submitted by the applicant that the Agri Engineering Division undertakes civil works as "Executive Agency or Project Implementing Agency" entrusted by various Administrative Departments of Government of West Bengal in the development of rural infrastructure like road, bridge, building etc. under the scheme of MPLAD, BADP, BEUP, RKVY, BCW, RIDF etc and the applicant accordingly gets the work done by different suppliers/contractors.

1.4 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:

(a) Whether the applicant is required to issue tax invoice to State Government Department/ Directorate on the contract value as determined by the department where the applicant is working as a "Project Implementing Agency"?

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

1.6 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.

1.7 The officer concerned from the Revenue, in his reply through e-mail, has submitted that a show cause notice has been issued against the applicant by the Additional Director, DGGI, Kolkata Zonal Unit. However, it is not clear whether issues related to the question for which advance ruling is sought for is included in the said SCN or not.

1.8 On going through the aforesaid show cause notice, copy of which has been attached by the officer concerned, we also do not find any specific ground wherefrom reference can be drawn that the question raised in the application is already pending in any proceedings under any of the provisions of the GST Act.

1.9 The application is, therefore, admitted.

## 2. Submission of the Applicant

2.1 The applicant submits that upon selection by various departments of Government of West Bengal as an 'executing agency', it undertakes various works following the Standard Operating Procedure given as under:

- The applicant receives request for submission of estimate from any Administrative Department of State Government Department for execution of a work.
- The applicant prepares the estimate and gets it vetted by the competent authority, which in turn is submitted to the concerned department for administrative and financial approval.
- After getting administrative and financial approval for the project from the concerned department, the applicant enters into a contract with the concerned department/ Ordering Authority and invites tender observing the existing rules and procedure of the State Government and selects the L1 bidder (contractor) to award the project.
- The applicant thereafter enters into agreement with selected contractor for detailed execution of work and terms of payment.
- The applicant monitors and supervises the work in order to ensure that the work conforms to the specifications and drawings.
- The contractor issues tax Invoice to the applicant along with Running Account (RA) Bill and the applicant, upon verification of the same, intimates the concerned Department/ Ordering authority about the completion of the work and places the requisition of fund to pay to the Contractor.
- When the concerned Department/Ordering authority issues completion certificate for the said works and releases the fund to the applicant, payment is released to the contractor after deducting statutory deductions & security deposits.
- The applicant submits the Utilization Certificate against the released fund to the concerned Department/ Ordering authority and refund the balance amount, if any.

2.2 According to the applicant, the aforesaid work being undertaken by him as an 'executing agency' is in line with the notification number 5400-F(Y) dated 25.06.2012 issued by the Audit Branch of Finance Department, Government of West Bengal. The applicant further refers Memo No. 8183-F(Y) dated 26.09.2012 which is issued on the subject matter of "Clarification regarding engagement of "Agency" under Rule 47D of Finance Department's Notification No. 5400-F(Y) dt. 25.06.2012" wherein issues

regarding the appointment of Government Agency for execution of work in terms of rule 47D has been clarified, inter alia, as follows:

- The Administrative Department, other than Works Department, can engage an Agency for assisting it in the execution of works only when the Departmental Secretary is satisfied that the Works Department of the State Government is not in position to execute the job within the required time-frame.
- The Government agency shall perform the job like Works Department at the fees prescribed in the above mentioned Notification.
- The Agency so engaged by the Administrative Department shall not execute the work on its own and has to get the work executed by a contractor to be selected through a transparent tendering process.
- The Administrative Department shall make a primary verification of the claim with reference to work done and scrutinize the Bills for Agency fee and charges for work done. After satisfaction about the claim, the Administrative Department shall process the bill of the Agency for payment through Treasury/Pay & Accounts Office.
- On the basis of the completion certificate the Administrative Department shall make necessary entry of such fixed asset of the State Government in the Fixed Asset Register of the Department.

2.3 The applicant submits that the aforesaid clarification along with the procedure to be followed clearly indicates that his work is to facilitate in execution of the entrusted works of the Government Department by calling tender, awarding the work to L1 bidder, monitoring the execution and finally release the payment to agency, on behalf of the concerned Administrative Department and the applicant acts an 'executing agency' only when the concerned Departmental Secretary is satisfied that the Works Department of the State Government is not in a position to execute the job within the time-frame. The applicant has no choice to execute the work on its own and has to get the work done by a contractor, being selected through transparent tendering process. The applicant, for all practical purposes, thus performs the functions as equivalent to works department of the State Government.

2.4 The applicant further submits that while submitting utilisation certificate to the concerned Administrative Department to the extent of the value of the bill of contractor, no monetary value is being added by him and accordingly, no further GST liability accrued on him except the value of work executed by the contractor who issues tax invoice to the applicant.

2.5 The applicant contends that he cannot exercise any free choice in executing the work. Hence, the role of the applicant is similar to an 'agent' where the concerned Administrative Department acts as a 'principal'. Further, details of contractors, who execute the work, are being uploaded in FORM GSTR-7 along with the details of GST-TDS, Tax Invoice Number and GSTIN etc.

2.6 The applicant submits that for the purpose of implementing any work assigned to him as an 'executing agency', he enters into two separate contracts with the Department concerned and the contractor respectively. The contractor, being the L1 bidder, procures materials, engages labour as and when required on which the applicant has no control.

2.7 The applicant contends further that the property in goods used in the execution of works is directly transferred from contractor to concerned Department through principle of accretion, accession or blending and the applicant neither holds, nor in a position to transfer the property in goods used thereon. Hence, the contract between the concerned Department and the applicant should not be treated as 'works contract' as defined in clause (119) of section 2 of the GST Act. Furthermore, the contractor is bound to issue tax invoice in terms of section 31(2) of the GST Act for the works contract services, whereas, concerned Administrative Department had never asked for tax invoice from the applicant for the works entrusted to him as a project implementing agency.

2.8 The applicant thus submits that he is of the view that he is not required to submit tax invoice to concerned department for the works done by him as a project implementing agency and he is required to issue tax invoice only for Agency Fees along with the summary bill of the works done with the required certificate.

### 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 authorised representatives of the applicant during the course of personal hearing.

4.2 We find that West Bengal Agro Industries Corporation Limited, the applicant, is a Government Undertaking who undertakes the job as a project implementing agency entrusted to him by different administrative department of Government of West Bengal. As an implementing agency, the applicant requires to invite tender, to select the

successful bidder and issue work order accordingly, to enter into agreement with the successful bidder for execution of the work, to make payment to the contractor. As the applicant issues work order to the contractor, admittedly the contractor makes supply to the applicant and issues tax invoices for such supply. Clause (93) of section 2 of the GST Act speaks that “recipient” of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In the instant case, the applicant enters into an agreement with the contractor and so is liable to pay the consideration to the contractor. Further, the applicant himself has admitted that as a project implementing agency engaged by the administrative department of Government of West Bengal, he merely acts as an ‘agent’ of the said administrative department to execute the work. In this context, we find that an agent shall also be treated as recipient of supply of goods or services or both since the aforesaid definition has made it abundantly clear that ‘any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied’. Thus, the applicant undisputedly is the recipient of supply provided by the contractor meaning thereby the contractor doesn’t make any supply to the department concerned.

4.3 We therefore find that in the instant case, two separate supplies take place. The first one is made by the contractor to the applicant and thereafter another supply is made by the applicant to the department concerned in spite of the fact as stated by the applicant that there is no value addition in respect of the second supply.

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

## RULING

The applicant while working as a "Project Implementing Agency" is making supplies to State Government Department/ Directorate and therefore is required to issue tax invoice on the contract value as determined by the department.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 22.12.2022

To,

WEST BENGAL AGRO INDUSTRIES CORPORATION LIMITED

3<sup>rd</sup> floor, 23B, SECURITY HOUSE, FAIRLE PLACE, NETAJI SUBHAS ROAD, Kolkata-700001

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Sr. JCCT, Princep Street Charge, 14, Beliaghata Road, Kolkata-700015
- (4) Office Folder