

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	ITD Cementation India Ltd
Address	8 th Floor, Plot No. 5, 803 Godrej Waterside, Tower I, Sector V, Salt Lake City, Kolkata – 700091
GSTIN	19AAACT1426A1ZW
Case Number	33 of 2018
Date of application	October 26, 2018
Order number and date	33/WBAAR/2018-19 dated 08/01/2019
Applicant's representative heard	Sri Tarun Chatterjee, Advocate

- The Applicant is stated to be supplying works contract service. He has entered into an agreement with Inland Waterways Authority of India (hereinafter the IWAI) for construction of a multi-modal IWT terminal at Haldia on EPC basis.
The Applicant seeks a ruling on applicability of Notification No. 24/2017-CT (Rate) dated 21/09/2017 and 31/2017 – CT (Rate) dated 13/10/2017. More specifically, he wants a ruling on what should be the rate at which GST should be charged on the works contract service to be supplied for construction of the above terminal.
The question is admissible under section 97(2)(b) of the CGST / WBGST Act, 2017 (hereinafter collectively referred to as “the GST Act”).
The concerned officer has raised no objection to admissibility of the Application.
The Application is admitted.
- Notification No. 24/2017 – CT (Rate) dated 21/09/2017 and 31/2017 – CT (Rate) dated 13/10/2017 have amended Notification No. 11/2017 – CT (Rate) dated 28/06/2017 (hereinafter the Rate Notification). As a result, Serial No. 3(vi) of the Rate Notification, post such amendments, stands as below.

Sl No	Heading	Description of the service	Rate	Condition
(1)	(2)	(3)	(4)	(5)
3	9954	(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Service Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of- (a) a civil structure or any other original work meant predominantly for use other than for commerce, industry, or any other business or profession: (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment: or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Service Tax Act, 2017.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

Notification No. 17/2018 – CT (Rate) dated 26/07/2018 appends an Explanation to the above entry. It clarifies that for purposes of the above entry, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. This Explanation does not include within its ambit a Governmental Authority or a Government Entity.

3. The Applicant submits that construction of the Multi-modal IWT Terminal amounts to composite supply of works contract service. The contractee is a Government Entity, being a statutory body established under the Inland Waterways Authority of India Act, 1985 (hereinafter the IWAI Act, 1985), and functions under the administrative control of the Ministry of Shipping, Government of India. The supply is, therefore taxable @ 12% under the GST Act in terms of Serial No. 3(vi) of the Rate Notification, as mentioned above. In support of his argument the Applicant refers to letter no. 198/Representation/MOF/GST Council/2017/2899 dated 14/03/2018 of the GST Council to the contractee. In the said letter the Council draws attention to Notification No. 31/2017 – CTR dated 13/10/2017, amending the Rate Notification, and says, “The status of IWAI vis-à-vis the definition of ‘Government Entity’ as explained at para 4(x) of Notification No. 31/2017 – CTR dated 13/10/2017 may be examined. It is to further add that consequent upon to this amendment, the composite supply of works contract to Government Entity by way of construction, erection, etc would attract GST @ 12%.”
4. Notification No. 31/2017 – CT (Rate) dated 13/10/2017 defines the terms ‘Governmental Authority’ and ‘Government Entity’ under para 4(ix) and (x) respectively. Both refer inter alia to an authority set up by an Act of Parliament or a State Legislature with 90% or more participation by way of equity or control. The Governmental Authority, however, is established to carry out functions entrusted to a Municipality or Panchayat under Art 243 W or 243 G of the Constitution respectively: whereas, a Government Entity is set up to carry out any function entrusted by the Central Government, State Government, Union Territory or local authority.
According to the objects and reasons of the IWAI Act, 1985, the IWAI is an Authority set up for “the regulation and development of inland waterways for the purpose of shipping and navigation and for matters connected therewith or incidental thereto.” The Central Government appoints and removes members of the IWAI, provides grants and loans, sanctions projects, gives directions, makes rules, and can supersede the Authority if required. The IWAI is thus a statutory authority under direct control of the Central Government. It is, therefore, a ‘Government Entity’ in terms of para 4(x) of Notification No. 31/2017 – CT (Rate) dated 13/10/2017. Letter of the GST Council highlights this status of the IWAI.
5. GST is payable @ 12% on supply of works contract service to a Government Entity, which is pointed out in the Council’s above-mentioned letter. However, it is subject to the terms and conditions of Serial No. 3 (vi) of the Rate Notification, as described above.

The concession under Serial No. 3 (vi) of the Rate Notification is contract specific. The recipient Government Entity should procure the works contract service in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be. If it is not covered under Serial No. 3(vi) (b) or 3(vi) (c), it should be a civil structure or an original work meant predominantly for use other than for commerce, industry, or any other business or profession [Serial No. 3(vi)(a)].

6. Section 14(1)(b) of the IWAI Act, 1985 empowers IWAI to set up infrastructural facilities for national waterways. No such projects, however, can be undertaken without approval from the Central Government unless the amount involved is below a threshold [2nd proviso to section 13 and section 14(4) of the IWAI Act, 1985]. Therefore, construction of multi-modal IWT Terminal, involving Rs 517.36 crore, if lawfully contracted, is a project undertaken within the functional authority entrusted to IWAI and with Govt sanction, satisfying the condition under column (5) of the Serial No. 3(vi) of the Rate Notification.
7. The scope of the work includes design and construction of berths and related fixtures, approach trestles, conveyor trestles, terminal administration building, workers' amenity building, electrical sub-station building, security office, weigh bridge building, compressor house, storage shed, internal roads and pathways, water supply works, storm water drainage works, sewerage system, gate house complex, emergency gates, culverts, diversion of existing roads, silos, conveyor system, fixed barge loaders, road weigh bridge, stockyard development, electrical works, communication and IT system etc. It is clearly an original work and involves construction of civil structures. However, it is amply clear from the very nature of the project that it creates infrastructure for commercial utilization of the national waterway. Predominant use of the infrastructure so created is, therefore, for facilitating commerce and business. IWAI may, as indicated in its letter to the GST Council referred to above, levy and collect fees and charges from the users of the infrastructural facilities being created. In its letter dated 12/02/2018 to the GST Council IWAI has made no reference to this specific contract, but admits to levying a user charge on the commercial operators for navigating through the waterway using facilities as being created. All such fees and charges received are, according to the above-mentioned letter of IWAI, credited to the Consolidated Fund of India. The Applicant argues that the very fact of such credit to the Consolidated Fund of India clearly establishes that the fees so collected are not proceeds from business. All revenues received by the Govt of India, all loans it raises by issue of treasury bills, or ways and means advances and all moneys received by it in repayment of that loans form, under Art 266(1) of the Constitution, the Consolidated Fund of India. The Applicant's argument, therefore, implies that the user fees collected by IWAI are not proceeds from business but revenues collected by the Government of India.
8. Section 10 of the IWAI Act, 1985 mandates it to act on business principles while discharging its functions. Section 14(1)(k) even allows IWAI to set up joint ventures with

equity participation for the purpose of inland shipping. Therefore, unless proceeds from such activities, including user fees and charges, are credited to the Consolidated Fund of India, they must be construed as proceeds from commerce and business.

Section 17(1) of the IWAI Act, 1985 empowers IWAI to collect user fees with previous approval of the Central Government. All such fees and charges are credited to the Inland Waterways Authority of India Fund, constituted under section 19(1) of the IWAI Act, 1985 and *not* to the Consolidated Fund of India.

The IWAI is clearly not the Government of India, but a Government Entity having no sovereign authority to collect Government revenue. Moreover, contrary to what the Applicant claims, the user fees that IWAI collects is not credited to the Consolidated Fund of India and is, therefore, not revenue but proceeds from business as defined under section 2(17) of the GST Act.

It is, therefore, evident that the Applicant is supplying works contract service for an original work that is meant for commerce and business. It does not, therefore, satisfy the conditions laid down under Serial No. 3(vi)(a) of the Rate Notification.

The Applicant's supply of works contract service for construction of the Multi-modal IWT Terminal at Haldia, therefore, attracts GST at 18% rate under Serial No. 3(xii) of the Rate Notification.

In view of the foregoing we rule as under

RULING

Amendments to Serial No. 3(vi) of Notification No. 11/2017-CT (Rate) dated 28/06/2017, brought about by Notification No. 24/2017-CT (Rate) dated 21/09/2017 and 31/2017 – CT (Rate) dated 13/10/2017, are not applicable to the Applicant's supply of works contract service for construction of the Multi-modal IWT Terminal at Haldia. It will attract GST at 18% rate under Serial No. 3(xii) of 11/2017-CT (Rate) dated 28/06/2017.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SYDNEY D'SILVA)

Member

West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling

