

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

Bench

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr. Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services 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 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	Ex-servicemen Resettlement Society
Address	9A, Beparitola Lane, Kolkata-700072
GSTIN	19AAAAE1552E1Z4
Date of application	September 26, 2019
Case No	42 of 2019
ARN	AD190919002596J
Order number and date	35/WBAAR/2019-20 dated 29/11/2019
Applicant's representative	Major (Retd) Nirmal Kumar Dhaoa, President

1. Admissibility of the Application

1.1 The Applicant, stated to be a registered society providing security services and scavenging services to various hospitals under the State Government, seeks a ruling on whether it is liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the persons it deploys as security personnel.

1.2 Advance Ruling is admissible on the question under Section 97(2) (c) & (e) of the GST Act. The Applicant further submits that the question raised in the Application is neither decided by nor pending for decision before any authority under any provisions of the GST Act. The officer concerned raises no objection to admission of the Application. The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits that it supplies security and scavenging services to the Government hospitals, classifying the service under SAC 998525. A copy of the agreement with Dr R Ahmed Dental College & Hospital is provided as a prototype to understand the

nature of the contracts (hereinafter referred to as the Agreement). The Applicant also provides a few copies of the bills raised on the recipient of its service.

2.2. In its Memo No. 3790-F(Y) dated 21/07/2014, the Finance (Audit) Department of the State Government clarifies that the monthly charges payable to the private security agencies deployed in Government establishments has two parts – (i) service charge and (ii) security charge. The service charge is determined based on L1 bid and remains fixed for the period of the service contract. The security charge is the minimum wages for the security personnel, their entitlements to ESI, EPF and Bonus, as applicable. It is variable according to the minimum wages stipulated by the State Government from time to time.

2.3 The Applicant accordingly claims the minimum wages, employer's portion of EPF, ESI etc. on its bill for monthly charges and charges GST on the gross amount, including the security charges. In its Memo No. HF/O/MS/273/W-148/2015 dated 28/10/2016, Health & Family Welfare Department of the State Government directs that the contractual security personnel be paid Bonus @ 8.33% once in a year. The Applicant, therefore, makes separate bill for claiming the Bonus amount. No GST, however, is charged on such Bonus bills.

3. Observations & Findings of the Authority

3.1 The Applicant classifies its service under SAC 998525. It includes providing protective services through hired personnel to ensure the safety of people or property by guarding them against fire, theft, vandalism or illegal entry, such as security guard services. It appears from the Agreement that the Applicant provides a specific number of security personnel from among ex-servicemen for round the clock security job. The Applicant shall provide the recipient details of the personnel engaged, including names and home addresses and passport-size photographs. The recipient should be kept informed of any replacement etc. Deployment of the security personnel shall be the responsibility of the Applicant. Payment of consideration is subject to the recipient's satisfaction about the service rendered.

3.2 It is evident from the above discussion that the security personnel engaged are at no point employees of the State Government. The Applicant can recruit, deploy, withdraw or replace any security personnel, provided the recipient is kept informed. It is not a manpower recruitment agency. The State Government is not recruiting any security personnel through the Applicant. The latter is the employer of the security personnel deployed and is responsible for paying all statutory dues, including employer's contribution to EPF, ESI etc.

3.3 Employer's contribution to EPF, ESI etc. and payment of Bonus at the Government approved rate are, therefore, components of the Applicant's expenditure. It is entitled to pass this liability to the recipient, who, in terms of the Agreement, is apparently ready to bear that liability. Such an agreement, however, does not create a master and servant relationship between the recipient of the service and the security personnel [Security Agencies Association vs Union of India; (2013) 58 VST 295 (Kerala)]. Payment received from the recipient on account of the bonus paid or payable to the persons deployed as security personnel is not, therefore, guided by Para 1 of Schedule III.

3.4 The Applicant is, therefore, liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the persons it deploys as security personnel.

Based on the above discussion we rule as under.

RULING

The Applicant is liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the persons it deploys as security personnel.

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


(SUSMITA BHATTACHARYA)

Member
West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member
West Bengal Authority for Advance Ruling