

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

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 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 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	Sakshi Jhajharia
Address (correspondence)	1A, Sagar Awas, 168 Block-A, Bangur Avenue Kolkata - 700055
GSTIN	Unregistered
Case Number	48 of 2019
Date of application	December 18, 2019
Order number and date	41 of WBAAR/2020-2021
Applicant's representative heard	Mr. Manish Raj Dhandharia, FCA

1. Admissibility of the Application

1.1 The Applicant intends to supply to the State Government the service of crushing food grains. The Government will send to the Applicant the whole, unpolished food grain for processing. The Applicant will return the grain after crushing. The processed food grain will be used for distribution through the Public Distribution System (hereinafter PDS). The Applicant seeks a ruling whether the above activity is exempt under SI No. 3 or 3A of Notification No 12/2017 CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended (hereinafter collectively called the Exemption Notification). The question is admissible under section 97(2) (b) of the GST Act.

1.2 The Applicant is unregistered under the GST Act. Being unregistered, neither the Central nor the State tax administrations exercise ascertained administrative jurisdiction on the Applicant. Requirements under section 98(1) of the GST Act are, therefore, dispensed with.

2. Submission of the Applicant

2.1 The Applicant has not yet entered into a binding contract with the State Government. All that is available for examining the question are submissions of the Applicant. The Applicant submits that the State Government will retain ownership of the food grains. The Applicant is

supplying only the service of crushing the grains. Once the grains are crushed, they are packed and sent back to the State Government.

2.2 The Applicant submits that it is providing pure service to the recipient, namely the State Government. The food grains are meant for distribution through PDS, which is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. Crushing of the grain is, therefore, according to the Applicant, an activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution, and its supply should be exempt under SI No. 3 or 3A of the Exemption Notification.

3. Observations & Findings of the Authority

3.1 In its Circular No. 51/25/2018-GST dated 31/07/2018 the Central Government clarifies that the service tax exemption under SI 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. 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.”

3.2 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.

3.3 The Applicant’s eligibility under SI No. 3 or 3A of the Exemption Notification should, therefore, be examined 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, as clarified in the above paragraphs.

3.4 The Applicant intends to deliver the crushed food grains packed in the manner the recipient requires. The packing material is supplied by the Applicant. The Applicant is, therefore, making supply of a bundle consisting of the service of crushing the grains and supply of materials required to pack the crushed grains, where the former is the predominant supply. They are supplied in conjunction with each other in the ordinary course of business

as food grain cannot be transported without proper packing. It is, therefore, a composite supply of goods and services where service of crushing food grains is the principal supply and providing packing materials is ancillary to it. In the absence of any quantitative details the proportion of the packing materials in the bundle in value terms is unascertainable.

3.5 The Applicant intends to make the composite supply as above to the State Government. The recipient is, therefore, the State Government.

3.6 The Applicant intends to crush the food grains belonging to the recipient and deliver the crushed grains to the recipient after packing. If the terms of the agreement with the recipient is such that it binds both the supplier and the recipient in a way that neither can divert the food grains to any use other than distribution through PDS, the Applicant's supply can be related to distribution through PDS, which is covered under Entry No. 28 of the Eleventh Schedule of the Constitution. It will be an activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution, and its supply to the State Government should be exempt under SI No. 3A of the Exemption Notification, provided the proportion of the packing materials in the composite supply in value terms does not exceed 25%.

In light of the above discussion, we rule as under

RULING

If the Applicant's agreement with the State Government binds both the supplier and the recipient in such a way that neither can divert the food grains to any use other than distribution through PDS, the Applicant's composite supply of crushing the food grains belonging to the State Government and delivery of the crushed grains will be exempt under SI No. 3A of Notification No 12/2017 CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended, provided the proportion of the packing materials in the composite supply in value terms does not exceed 25%.

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


(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling