

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 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 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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Novel Engineering & Technical Works Private Limited
Address	2 nd Floor, Room No-219, 155 Lenin Sarani, Kolkata- 700013
GSTIN	19AACCN6236E1ZI
Case Number	26 of 2019
ARN	AD1905190021662
Date of application	10/06/2019
Order number and date	16/WBAAR/2019-20 dated 19/08/2019
Applicant's representative heard	Mr Lachman Samtani, ACMA

1. Admissibility of the Application

1.1 The West Bengal Power development Corporation Limited (hereinafter WBPDCCL) has awarded to Purba Medinipur Zilla Parishad (hereinafter PMZP) the work of evacuation and disposal of settled ash from the ash ponds/decantation ponds of Kolaghat Thermal Power Station (hereinafter KTPS). PMZP is in the process of engaging agencies for execution of the aforesaid work. The Applicant intends to execute the work.

1.2 The Applicant wants to know the classification of the supply and whether it is exempt under SI No. 3 or 3A of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time [hereinafter collectively referred to as Exemption Notifications (Service)]. The Applicant further wants to know whether it has any liability to pay GST when WBPDCCL is paying tax on reverse charge basis in terms of SI No. 5 of Notification No. 13/2017 – CT (Rate) dated 28/06/2017.

1.3 The questions raised are admissible under section 97(2) (a), (b) & (e) of the GST Act. The Applicant declares that the questions are not pending before or have not been decided by any authority under any proceedings of the GST Act. The concerned officer from the Revenue has not objected to the admission of the application. The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 SI No. 3 of the Exemption Notifications (Service) exempts from payment 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 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. SI No. 3A of the Exemption 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 is a local authority. It submits that the work involves preparing access to the pond including laying of pathways for facilitating movement of excavating machineries like hydraulic excavators and accessories, dumpers etc, excavation of the ash pond bed under supervision of the Engineer-in-charge, ensuring safety and stability of the existing embankments, dewatering to prevent seepage, and transportation of the evacuated ash to the designated disposal area. It is pure service to local authority and an activity in relation to functions entrusted to a Panchayat under Article 243G of the Constitution and exempted under SI No. 3 of the Exemption Notifications (Service).

3. Observations and findings of the Bench

3.1 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 the ST Notification) has been *substantially*, although not in the same form, continued under GST vide SI No. 3 and 3A of the Exemption Notifications (Service). 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 Art 243W of the Constitution, and, therefore, eligible for exemption under SI No. 3 or 3A of the Exemption Notifications (Service).

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 Notifications (Service). 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 Notifications (Service), 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 Notifications (Service) 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 under the Constitution, as clarified in the above paragraphs.

3.5 Scrutiny of the work as described in para 2.2 reveals that the work involves earthwork, excavation, sloping and earthmoving services involving making of embankments or cuttings for laying down pathways to access the ash ponds, and other excavating and earthmoving work services. Transportation of the excavated earth and ash is ancillary to the principal supply of excavation and earthmoving service (SAC 995433). Evacuation and disposal of settled ash by mechanical means from the ash ponds is, therefore, a composite supply of services. Supply of goods, if any, is incidental to the main supply, and does not constitute any significant percentage.

3.6 Art 243(d) of the Constitution defines a Panchayat as an institution of self-government constituted under Art 243B. Such a Panchayat, according to section 2(15b) of the West Bengal Panchayat Act, 1973 (hereinafter the 1973 Act), includes a Zilla Parishad. PMZP is, therefore, a Panchayat and local authority, as defined under section 2(69) of the GST Act.

3.7 The recipient, being a Panchayat, is entrusted under section 153 of the 1973 Act with such powers and responsibilities as provided under Art 243G of the Constitution. Art 243G of the Constitution empowers the State Government to enact laws enabling the Panchayat to act as an institution of local self-government for implementing schemes for economic development and social justice as may be entrusted, including those in relation to matters listed in the Eleventh Schedule of the Constitution.

3.8 Unless an activity is directly concerned with a matter listed in the Eleventh Schedule, the State Government entrusts the Panchayat by specific order a work that advances the cause of economic development and social justice. In the discharge of its functions, the Zilla Parishad shall, therefore, be guided by such instructions or directions as the State Government may give from time to time under section 212 of the 1973 Act. The State Government issued one such order (No. 2071/PN/O/1/2M-3/2000 dated 27/05/2005), allowing PMZP to undertake evacuation and disposal of the settled ash from the ash ponds of KTPS to ensure uninterrupted power generation, protection of environment and augmentation of the local fund. Having been issued under section 212 of the 1973 Act, execution of the above work is an activity in relation to the functions entrusted to a Panchayat under Art 243G of the Constitution.

3.9 The Applicant's service to PMZP, therefore, is exempt under SI No. 3A of the Exemption Notifications (Service). The question of liability to pay tax on the Applicant's supply of service to PMZP being thus answered, further probing with respect to tax KTPS is paying on reverse charge basis is not necessary.

Based on the above discussion, we rule as under,

RULING

The Applicant's supply to Purba Medinipur Zilla Parishad, as described in para 2.2, is a composite supply classifiable under SAC 995433. It is exempt under SI No. 3A of Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended from time to time.

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