

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING  
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

**Before:  
Mr. A.P.S Suri, Member  
Ms. Smaraki Mahapatra, Member**

In the matter of

Appeal Case No. 03/WBAAAR/APPEAL/2019 dated 14.02.2019

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/ Central Goods and Services Tax Act, 2017, by M/s ITD Cementation India Ltd, 8<sup>th</sup> Floor, Plot No. 5, 803 Godrej Waterside, Tower I, Sector V, Salt Lake City, Kolkata-700091.

Present for the Appellant: Sri Ravi Raghavan, Advocate, Sri Rahul Tangri, Advocate,  
Sri Ashish Singhanian, CA, Sri Shreyash Agarwal, CA,

Present for the Respondent: Smt. Jhumpa Paul, Joint Commissioner of State Tax, Large  
Tax Payer Unit

Matter heard on: 11.04.2019

Date of Order: 15.05.2019

1. This Appeal has been filed by the ITD Cementation India Ltd (hereinafter referred to as “the Appellant”) on 14.02.2019 against Advance Ruling No. 33/WBAAAR/2018-19 dated 08.01.2019, pronounced by the West Bengal Authority for Advance Ruling in the matter of M/s ITD Cementation India Ltd
2. ITD Cementation India Ltd., is a supplier of works contract service and has entered into an agreement with Inland Waterways Authority of India (hereinafter the IWAI), a statutory body established under the Inland Waterways Authority of India Act, 1985, for

construction of a multi-modal IWT terminal at Haldia, West Bengal on EPC (Engineering, Procurement, Construction) basis.

3. The Appellant sought an advance ruling under section 97 of the West Bengal Goods and Services Tax Act, 2017/ the Central Goods and Services Tax Act, 2017, (hereinafter collectively referred to as “the GST Act”) on the following question:
  - (a) Applicability of Notification No. 24/2017-CT (Rate) dated 21/09/2017 and 31/2017-CT (Rate) dated 13/10/2017.
  - (b) What rate at which GST should be charged on the works contract service supplied for construction of the a multi-modal terminal at Haldia, West Bengal.
4. The West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) pronounced its advance ruling by an order dated 08.01.2019, that amendments to Serial No. 3(vi) of Notification no. 11/2017-CT (Rate) dated 28/06/2017 (hereinafter referred to as the “Rate Notification”), 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.
5. The Appellant has filed the instant Appeal against the above Advance Ruling with the prayer to set aside the impugned Advance Ruling passed by the WBAAR on the following grounds:
  - (i) The contractee, that is IWAI is a statutory body established under the Act of Parliament (Inland Waterways Authority of India Act, 1985) and under the administrative control of the Ministry of Shipping, Government of India. The IWAI was established for regulation and development of inland waterways for purpose of shipping and navigation. The WBAAR failed to appreciate such fact and erred in holding that the construction of Multi-modal IWT Terminal at Haldia, West Bengal by IWAI was for the purpose of commerce and business.
  - (ii) The Appellant submits that the primary objective of the project is to create an environment friendly and cost effective alternative mode of transport, infrastructure development, employment generation. Thus the infrastructural

- facility being developed under the contract is not predominantly for use for commerce, industry or any other business or profession but for the development of waterways and propagating an environment friendly and cost effective mode of water transport. The WBAAR erroneously interpreted the objective of the project.
- (iii) The WBAAR erred in its findings that the “statutory fee” collected by IWAI 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. In this regard, the Appellant submits that the Ministry of Shipping vide its letter No. G-20017/7/2013-IWT dated 06.12.2013 gave direction that all the internal resources generated by IWAI by way of interest on deposit, protocol fees, cargo income etc., shall be deposited in separate account created exclusively for this purpose and this money at the end of the financial year shall be remitted as revenue receipt to the Ministry of Shipping, Government of India and shall not be used by IWAI. The Appellant further submits confirmation letter No. PAO/Control/Misc./2018-19/199 dated 15.02.2019 from the Senior Accounts (Control), Ministry of Shipping that remittance of Internal Receipts of IWAI of Rs.24,72,50,021/= through Bharatkosh vide transaction reference no.2410180004477 dated 25.10.2018 had been credited into the Consolidated Fund of India.
- (iv) The WBAAR failed to appreciate that the IWAI is only an Implementing Agency of the project and has no business motive behind the construction of Multi-modal IWT Terminal at Haldia, West Bengal. However it is required to run as per prudent business principles in discharge of its functions to avoid wasteful expenditure.
- (v) IWAI, is a Government Entity and hence the supply of service by the Appellant is taxable @12% under the GST Act in terms of Serial No 3(vi) of the Rate Notification as amended. In support of argument the Appellant refers to letter dated 14/03/2018 of the GST Council where it says that consequent upon the amendment, the composite supply of works contract to Government Entity by way of construction, erection, etc would attract GST @12%.

6. During the course of the hearing the Appellant reiterated the points as stated in Grounds of Appeal. The Respondent stated that the activities of the IWAI are for commercial purposes.
7. The matter is examined and written and oral submissions made before us are considered.
8. It has already been established by the WBAAR in its ruling that IWAI, is a Government Entity. So the moot question is whether or not the civil structures created by the Appellant are meant for commerce, industry, or any other business or profession.
9. It is clear from the very nature of the project that it creates infrastructure for commercial utilization of the national waterway. Though the Multi-modal IWT Terminal will facilitate commerce and business in and around Haldia, West Bengal, its creation is not for propagating any business or commercial interests of IWAI. IWAI is facilitating the vision of Government of India's "Jal Marg Vikas Project" for creating infrastructure for economic development of the country.
10. The Inland Waterways Authority of India Act, 1985 empowers IWAI to levy and collect fees and charges from the users of the infrastructural facilities. It is clear from the certificate issued by the Senior Accounts (Control), Ministry of Shipping vide letter No. PAO/Control/Misc./2018-19/199 dated 15.02.2019 that remittances from IWAI are being credited to the Consolidated Fund of India. So the remittances by IWAI to the Ministry of Shipping are part of government revenue and not part of business proceeds. So it is evident that the Appellant is supplying works contract services to IWAI, a government entity, for an original work that is meant for infrastructural development of waterways of India and is not meant for commerce and business. It therefore satisfies the conditions laid down under Serial No. 3 (vi) (a) of the Rate Notification.

In view of above discussion, we rule that amendment 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 applicable to the Appellant's supply of 'Works Contract Service' towards IWAI for construction of the Multi-modal IWT Terminal at Haldia, West Bengal.

The Advance Ruling No. 33/WBAAR/2018-19 dated 08.01.2019 is modified to this effect and the Appeal stands disposed of accordingly.

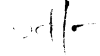
Send a copy of this order to the Appellant and the Respondent for information.



(Smaraki Mahapatra)

Member

West Bengal Appellate Authority  
for Advance Ruling



(A.P.S Suri)

Member

West Bengal Appellate Authority  
for Advance Ruling