

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

Mr Sydney D'Silva, Joint Commissioner, CGST & CX (Member)
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST (Member)

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	Dredging and Desiltation Company Private Limited
Address	6B, Dr Rajendra Prasad Sarani, Kolkata- 700001
GSTIN	19AABCD0790Q1Z5
Case Number	14 of 2019
ARN	AD190419002529U
Date of application	16/04/2019
Order number and date	12/WBAAR/2019-20 dated 27/06/2019
Applicant's representative heard	Sri Sumit Nishania, CA

1. Admissibility of the application

1.1 The Orissa Construction Corporation Limited (hereinafter the recipient) has awarded the Applicant a contract for sectioning of Makara River (Right Drainage) and Garanimunha branch of Makara River (Part A, Makara Right Drainage) in Orissa. The Applicant seeks a ruling on whether the recipient is a government entity in terms of clause 2 (zfa) of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017 (hereinafter the Exemption Notification). He further seeks a ruling on the taxability of his supply in terms of the Notification No. 08/2017 – Integrated Tax (Rate) dated 28/06/2017 (hereinafter the Rate Notification) and the Exemption Notification, as the case may be, and as amended from time to time.

1.2 The question is admissible under section 97(2)(b) of the GST Act read with clause (xviii) of section 20 of IGST Act, 2017. The concerned officer from the Revenue has not objected to the admission of the application and informs that the issue raised by the Applicant is not pending or decided in any forum.

1.3 The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits that the recipient is a government entity, as defined under clause 2 (zfa) of the Exemption Notification. In support of his argument, the Applicant submits a copy of the Balance Sheet of the recipient as on 31/03/2017, and print out of the annual return in MGT-7 to the RoC. The Applicant argues that it is ascertainable from the above

documents that the recipient is registered with the RoC as a State Government Company, and the State Government owns 99.98 % of the equity shares.

2.2 The Applicant submits a copy of the communication received from the Executive Engineer, Drainage Division, Puri, under his Memo No. 698 dated 16/05/2019, wherein it is stated that the work awarded to the Applicant is part of a project under the Department of Water Resources, Government of Odisha, for increasing the storage capacity of the channel to improve irrigation of the land.

2.3 The Applicant further submits a copy of the communication received from the Executive Engineer, Drainage Division, Puri, under his Memo No. 787 dated 04/06/2019, wherein it is stated cost of material transferred for completion of the dredging work is 5% of the total contract value.

2.4 The Applicant argues that the work undertaken is in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India.

3. Submission of the concerned officer from the Revenue

3.1 The concerned officer from the Revenue has refrained from offering any comment on the merit of the issue.

4. Observations and findings of the Bench

4.1 It appears from the contract that the Applicant is required to perform desiltation by dredging the river/nallah, including fixing of pipe lines, floaters and floating pipe lines for disposing water slurry consisting of silt, sand etc. The value of the contract includes cost of labour, materials, consumables, POL, and spare parts and accessories for maintenance of the dredgers. It also includes cost of building islands/dykes by providing geo tubes/geo fabrics and accessories or by tin sheets required for formation of bunds for dumping of the dredged materials. The contract also includes the cost of all pre and post dredging survey. The contract includes the cost of clearing thickly grown water hyacinth from canal and drainage channels. It is evident from the description of the work that it is a composite supply of works contract, improving and modifying the river-bed and embankments. It further appears from the work order that 98% of the work is related to dredging. Communication received from the Executive Engineer, Drainage Division, Puri, referred to in para no. 2.4, clarifies that the cost of material transferred for completion of the dredging work is 5% of the total contract value. Dredging of channels, which includes desiltation of the channels, dumping of dredged materials and building of dykes etc., therefore, appears to be predominantly earthwork, as understood in common parlance.

4.2 It appears from the documents mentioned in para 2.1 that the recipient is a government entity, as defined under clause 2 (zfa) of the Exemption Notification.

4.3 It, therefore, appears that the Applicant is executing a works contract, more than 75% of which is earthwork. The recipient is a government entity and the work being executed is part of an irrigation project under the Department of Water Resources, Government of Odisha. It is, therefore taxable @ 5% with effect from 13/10/2017 in terms of SI No. 3(vii) of the Rate Notification, as it stands post amendment under Notification No. 39/2017 – Integrated Tax (Rate) dated 13/10/2017.

4.4 The question of applicability of the Exemption Notification comes into play with effect from 25/01/2018, when it was amended adding SI 3A vide Notification No. 2/2018 Integrated

Tax (Rate) dated 25/01/2018. SI No. 3A of the Exemption Notification provides, "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 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."

4.5 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 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." 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. 3A of the Exemption Notification.

4.6 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 a pure service or a composite supply where supply of goods does not constitute more than 25% of the value.

4.7 The Applicant's eligibility under SI No. 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the supply being made is a composite supply, where supply of goods constitutes not more than 25% of the value of the composite supply, (2) whether the recipient is government, local authority, governmental authority or a government entity, and (3) whether the supply is in relation to any function entrusted to a Panchayat or a Municipality under the Constitution, as clarified in the above paragraphs.

4.8 Before deciding the applicability of SI No. 3A of the Exemption Notification, the functions of a Panchayat under the Constitution needs to be discussed. Article 243G of the Constitution discusses the powers, authority and responsibilities of Panchayats. It states, "Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government..... subject to such conditions as may be specified therein, with respect to.....the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the

matters listed in the Eleventh Schedule,” which contains the following twenty-nine functional items:

1	Agriculture including agricultural expansion
2	Land improvement, implementation of land reforms, land consolidation and soil conservation
3	Animal Husbandry, Dairying and poultry
4	Fisheries
5	Minor irrigation, water management and watershed development
6	Social forestry and farm forestry
7	Small scale industries in which food processing industry is involved
8	Minor forest produce
9	Safe water for drinking
10	Khadi, village and cottage industries
11	Rural housing
12	Fuel and fodder
13	Rural electrification, including distribution of electricity
14	Road, culverts, bridges, ferries, waterways and other means of communication
15	Education including primary and secondary schools
16	Non-conventional sources of energy
17	Technical training and vocational education
18	Adult and non-formal education
19	Public distribution system
20	Maintenance of community assets
21	Welfare of the weaker sections of the in particular of the schedule caste and schedule tribes
22	Social welfare, including welfare of the handicapped and mentally retarded
23	Family welfare
24	Women and child development
25	Markets and Fairs
26	Health and sanitation including hospitals, primary health centres and dispensaries
27	Cultural activities
28	Libraries
29	Poverty Alleviation Programmes

4.9 It appears from the description of the work that it improves the navigability of the river-bed and channels - an activity toward development of irrigation and waterways. It is, therefore, an activity in relation to the function listed under SI No. 5 of the Eleventh Schedule, as entrusted to a Panchayat under Article 243G of the Constitution of India.

4.10 Exemption under SI No. 3A of the Exemption Notification is, therefore, applicable to the Applicant's supply of the above works contract service.

Based on the above discussion, we rule as under.

RULING

The recipient, namely Orissa Construction Corporation Ltd, is a government entity in terms of clause 2 (zfa) of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017.

The Applicant's supply to Orissa Construction Corporation Ltd, as mentioned in para 4.1 above, was taxable @18% under SI No. 3(vii) of Notification No. 8/2017 – Integrated Tax (Rate) dated 28/06/2017 till 12/10/2017. The supply was taxable @ 5% under SI 3(vii) of Notification No. 8/2017 – Integrated Tax (Rate) dated 28/06/2017, as amended by Notification No. 39/2017 – Integrated Tax (Rate) dated 13/10/2017 with effect from 13/10/2017 till 24/01/2018. It has since been exempted under SI No. 3A of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017, as amended by Notification No. 2/2018 - Integrated Tax (Rate) dated 25/01/2018.

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