

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	167, 2 nd floor, old China Bazar Street, Kolkata- 700001
GSTIN	19AABCD0790Q1Z5
Case Number	13 of 2019
ARN	AD1904190025228
Date of application	16/04/2019
Order number and date	03/WBAAR/2019-20 dated 10/06/2019
Applicant's representative heard	Sumit Nishania, CA

1. Admissibility of the application

1.1 The West Bengal Fisheries Corporation limited (hereinafter the recipient) has awarded the Applicant a contract for up-gradation of Jalda Kutli Landing Centre by protection to Mandarmani River and up-gradation of navigability by dredging of Mandarmani River in Purba Medinipur. The Applicant seeks a ruling on whether an exemption under SI No. 3A of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017 (hereinafter the Exemption Notification), as amended by Notification No. 2/2018 dated 25/01/2018 Integrated Tax (Rate) dated 25/01/2018, applies to the above supply.

1.2 The question is admissible under section 97(2)(b) of CGST Act 2017/WBGST Act, 2017 (hereinafter collectively called GST Act 2017) 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 issued 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 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.”

2.2 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 92.5% of the equity shares.

2.3 The Applicant submits a copy of the price schedule to the works contract (Contract No. WBFCL/MD/NIT-04(e)/2017-18/04) and argues on its basis that dredging, involving earthwork, constitutes 89% of the work.

2.4 The Applicant submits excerpts from the report prepared by the recipient on studies for improving navigational conditions at Mandarmani tidal inlet, Purba Medinipur. He also submits a copy of the report by the recipient on Jalda Khoti Landing Center. Based on these two reports, 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 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.

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

4.3 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.

4.4 The contract is meant for up-gradation of the Jalda Khoti Landing Centre at the confluence of Mandarmoni River and Bay of Bengal. Heavy siltation at the area has eroded the navigability of the river, affecting the livelihood of a large number of fishermen, as they are facing problems in negotiating the channel with their fishing boats. At the same time, the landing centre needs to be protected from land erosion, as the river swings back to the bank at the Jalda Khoti area. The Applicant's supply involves the construction of spurs for providing protection against land erosion and improving navigability by dredging the channel. It is a works contract, intended to construct, improve/alter the immovable property, and involves the supply of goods such as granite stone, boulders, polypropylene gabions, nylon crates and filaments. It further involves supply of services like dredging, loading/unloading and transportation of the excavated material etc. It is, therefore, a composite supply of goods and service. It is also apparent from the price schedule mentioned in para 2.3 that supply of goods constitutes about 11% of the value of the composite supply.

4.5 It appears from the documents mentioned in para 2.2 that the recipient is a government entity, as defined under clause 2 (zfa) of the Exemption Notification.

4.6 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

4.7 The recipient is engaged in the development of fisheries. The term 'fisheries' is typically defined in terms of the people involved, species or type of fish, area of water or seabed, method of fishing, class of boats, the purpose of the activities or a combination of the preceding features. The occupation of fishing and fishermen are included in the ambit. The up-gradation of Jaldapa Kothi Landing Centre and the related work that has been awarded to the Applicant has a direct nexus with fisheries development, as evident from a reference in the reports mentioned in para 2.4 to the mass petition of the fishermen. It is, therefore, activity in relation to the development of fisheries - a function listed under SI No. 4 of the Eleventh Schedule, and, therefore, entrusted to a panchayat under Article 243G of the Constitution of India.

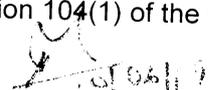
4.8 Exemption under SI No. 3A of the Exemption Notification is, therefore, applicable to the Applicant's supply of the above works contract service.

Based on the above discussion, we rule as under.

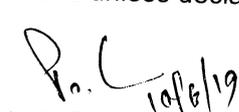
RULING

Exemption under SI No. 3A of Notification No 9/2017 – Integrated Tax (Rate) dated 28/06/2017, as amended by Notification No. 2/2018 dated 25/01/2018 Integrated Tax (Rate) dated 25/01/2018, applies to the Applicant's supply, as mentioned in para 1.1, to the West Bengal Fisheries Corporation Ltd.

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