

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
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	Ashis Ghosh
Address	Old 1042, Pratima Corner, Ward – 8, Chakdah, Nadia - 741222
GSTIN	19AHRPG7984M1Z7
Case Number	WBAAR 11 of 2019
ARN	AD190319001193A
Date of application	03/04/2019
Order number and date	09/WBAAR/2019-20 dated 25/06/2019
Applicant's representative heard	Shobhantanu Bhattacharya, Advocate

1. Admissibility of the Application

1.1 The Applicant has procured two contracts from M/s Mackintosh Burn Ltd (hereinafter MBL) for filling in the compound, tank, low land etc. with silver sand and earthwork in layers, including spreading and compacting the same at the district Correction Home, Baruiapur. He seeks a ruling on whether it is classifiable as a supply of sand (HSN 2505).

1.2 The question is admissible under section 97(2)(a) of the GST Act. The Applicant declares that the issue raised in the application is not pending nor decided in any proceedings under any provisions of the GST Act.

1.3 The matter came up for hearing under section 98(2) of the GST Act on 08/05/2019. In his written submission dated 23/04/2019, the officer concerned from the Revenue did not object to the admissibility of the Application. The Application was, therefore, admitted on 08/05/2019. However, while the application was being heard on merit under section 98(4) of the GST Act, the concerned officer from the Revenue, in his submission dated 07/05/2019, objected to its admission on the ground that the supply had already been completed in terms of the time frame mentioned in the copies of the contracts. In his

opinion, the scope of an advance ruling should be limited to the question admissible under section 97(2) of the Act and raised before the commencement of the particular activity.

1.4 An advance ruling, as defined under section 95(a) of the GST Act, means a decision provided by the Authority for Advance Ruling or the Appellate Authority for Advance Ruling to an applicant on matters or on questions specified under section 97(2) or 100(1) of the GST Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. The scope of an advance ruling, therefore, is wide enough to include not only the activities that are yet to take place but also the ones that have been undertaken. It is an advance ruling in the sense that the decision is provided before the question is taken up in any proceedings under the GST Act. In any case, the objection raised by the concerned officer could not be entertained, as the relevant proceedings under section 98(2) had already been completed and the officer concerned had not objected to the admission of the application at that stage.

2. Submissions of the Applicant

2.1 The Applicant refers to Order No. JHR/AAR/2018-19/01 dated 03/11/2018 of the Authority for Advance Ruling, Jharkhand (hereinafter the AAR) in the matter of M/s P K Agarwala. The AAR observes that in the said case, the supplier is providing works contract service to a government entity. More than 75% of the value of the supply constitutes earthwork. The supply is, therefore, taxable under SI No. 3 (vii) of Notification No. 39/2017-IGST dated 13/10/2017. The Applicant argues the ratio of the above case applies to his supply.

2.2 At the same time, the Applicant insists that his supply is classifiable under HSN 2505, being a supply of sand. In support of his argument, he submits copies of the contracts, which provide information as below:

Work Order No.	The total value of the contract	Value of filling in with sand	Value of earthwork	Supply of sand as a percentage of the value of the contract	Value of earthwork as a percentage of the value of the contract
522149	13,95,59,356	12,63,39,756	1,32,19,600	90.52	9.48
514733	12,26,45,874	9,61,59,424	2,64,86,250	78.40	21.60

The above information, the Applicant argues, establishes beyond doubt that his supply is that of goods and predominantly of sand, which is classifiable under HSN 2505.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue submits that the work undertaken involves excavation of earth, the supply of sand, loading and unloading of the same, filling the site with silver sand and good earth, spreading and compacting and saturation with water ramming etc. All the above activities carried out by the Applicant are to make a particular land fit for subsequent construction work. Therefore, the service can be termed as site formation/site preparation and clearance service, including preparation service to make the

site ready for subsequent construction work, which merits classification under HSN 9954 and taxable @ 18% in terms of the GST Tariff (Service) Act, 2017.

4. Observations and findings of this Authority

4.1 In terms of the description of the work, contained in the work orders, the Applicant is required to fill in the foundation or plinth by silver sand in layers and consolidating the same by saturation with water ramming. The work also involves earth work for filling in the compound, tank, low land, ditches etc. with good earth spread in layers, including breaking clods and consolidating the same by ramming and dressing. It is, therefore, not a contract for the supply of goods, but the transfer of property in such goods in the course of preparing the site for construction of the New Central Correctional Home at Baruipur. It, therefore, amounts to improving and modifying land – an immovable property and is works contract, as defined under section 2(119) of the GST Act.

4.2 The Applicant's reference to the order of the AAR is not relevant. SI No. 3 (vii) of Notification No. 39/2017-IGST dated 13/10/2017 applies to works contracts, where the earthwork constitutes more than 75% of the value of the contract. As evident from the table in para no. 2.2, the earthwork constitutes less than 25% of the value of the Applicant's contracts with MBL. Moreover, the State Government holds only 51.01% of the shares of MBL, which qualifies it as a State Government Company for the purpose of the Companies Act, 2013, but does not make it a government authority or a government entity, as defined in Explanation 4(ix) and 4(x) respectively.

4.3 The Applicant's supply is, therefore, classifiable as site preparation service (SAC Group 99543) and taxable @ 18% under SI No. 3(xii) of Notification No. 11/2017-CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time. In this respect, this Authority agrees with the views of the concerned officer from the Revenue.

Based on the above discussion, we rule as under

RULING

The Applicant's supply to M/s Mackintosh Burn Ltd, as described in para no. 4.1, is works contract service, classifiable as site preparation service (SAC Group 99543) and taxable @ 18% under SI No. 3(xii) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT dated 28/06/2017), as amended from time to time. Being a service, the Applicant's supply is not classifiable under HSN 2505.


(SYDNEY D'SILVA)
Member


(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling

West Bengal Authority for Advance Ruling