

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

Name of the applicant	Time Tech Waste Solutions Private Limited
Address	234/3A AJC Bose road, Kolkata- 700020
GSTIN	19AADCT4695C2Z3
Case Number	20 of 2019
ARN	AD190419005516Y
Date of application	06/05/2019
Order number and date	14/WBAAR/2019-20 dated 27/06/2019
Applicant's representative heard	Sri Jayesh Gupta, FCA Ms Kruti Soni, ACA

1. Admissibility of the Application

1.1 The Applicant is stated to be providing conservancy/solid waste management service to the Bally Municipal Corporation (hereinafter the BMC), which has been merged with the Howrah Municipal Corporation in terms of State Government Notification No. 428/MA/O/C-4/1M-36/2014 dated 26/06/2015 of the Municipal Affairs Department. The Applicant claims that their services to the BMC are exempt under SI No. 3 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 BMC, however, is deducting TDS while paying consideration for the above supply in terms of Notification No. 50/2018 – Central Tax dated 13/09/2018 (corresponding State Notification No. 1344 – FT dated 13/09/2018) and State Government Order No. 6284 – F(Y) dated 28/09/2018 (hereinafter collectively referred to as TDS Notifications) and insists that the Applicant needs to get himself registered under the GST Act. The Applicant seeks a ruling on whether the notifications regarding TDS are applicable in his case and whether he is required to obtain registration under the GST Act even if he is making exempt supplies only.

1.2 The questions raised are admissible under section 97(2) (a), (b) & (f) 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, being a municipal corporation, is a local authority. He submits a copy of the agreement with the BMC and KMDA for collection, segregation, storing, transport and disposal of municipal solid waste from the municipal area of the BMC. It is part of the Integrated Solid Waste Management Scheme sanctioned under the JnNURM and monitored by KMDA. The Applicant collects the solid waste from the households, slum area, business premises etc. and transport the waste in the vehicles provided by the BMC to the Landfill. The non-biodegradable waste is segregated and dumped in the Landfill. It is pure service to local authority and activity listed under Entry No. 6 (public health, sanitation, conservancy and solid waste management) of the Twelfth Schedule of the Constitution. The supply is, therefore, about an activity entrusted to a Municipality under Article 243W of the Constitution and exempted under SI No. 3 of the Exemption Notifications (Service).

2.3 The recyclable and bio-degradable waste is used to manufacture organic manure in the plant set up. The machines have been partly taken on lease from the BMC. The Applicant supplies the organic manure and solid waste scrap if any to customers. Both the goods are exempt under Notification No. 2/2017 – CT (Rate) dated 28/06/2017 (corresponding State Notification No. 1126 – FT dated 28/06/2017), as amended from time to time [hereinafter collectively called Exemption Notifications (Goods)]. The Applicant argues that their entire turnover being that of exempt supplies, they are not required to get registration under the GST Act.

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.

3.4 The recipient is a municipal corporation, which is a local authority as defined under section 2(69) of the GST Act.

3.5 In the agreement referred to in para 2.2 above the Applicant is made responsible for collection, segregation, storing, transport and disposal of municipal solid waste from the municipal area of the BMC. They will organize a house-to-house collection of municipal solid waste, collect waste from slums, hotels, slaughterhouses etc. They will segregate the non-bio-degradable and inert waste and dump it at the Landfill within the Project premise. The Applicant may build a suitable Processing and Composting Plant. The Applicant shall bear the expenditure for maintenance of the collection equipment and pay rental on the equipment taken on lease from the BMC. The consideration to be paid measures the work done in terms of the quantity of the garbage lifted and removed. Based on the above document, it may, therefore, be concluded that the Applicant's supply to BMC is pure service.

3.6 Furthermore, Article 243W of the Constitution that discusses the powers, authority and responsibilities of a Municipality, refers to the functions listed under the Twelfth Schedule as may be entrusted to the above authority. SI No. 6 of the Twelfth Schedule refers to public health, sanitation, conservancy and solid waste management. The Applicant's supply to HMC is a function mentioned under SI No. 6 of the Twelfth Schedule.

3.7 The Applicant's service to BMC, therefore, is exempt under SI No. 3 of the Exemption Notification.

3.8 The TDS Notifications have given effect to section 51 of the GST Act, specifying the persons under section 51(1)(d) of the Act and have mandated and laid down the mechanism for deduction of TDS. These notifications, therefore, are applicable only if TDS is deductible on the Applicant's supply under section 51 of the GST Act. Section 51(1) of the Act provides that the Government may mandate inter alia a local authority to deduct TDS while making payment to a supplier of *taxable* goods or services or both. As the Applicant is making an exempt supply to the BMC, the provisions of section 51 and, for that matter, the TDS Notifications do not apply to his supply.

3.9 Supply of unbranded organic manure, unless packed in containers, is classifiable under HSN 3101. Municipal waste is classifiable under HSN 3825. Supplies of both of them are

exempt under SI Nos. 108 and 110 of the Exemption Notifications (Goods), respectively. If the Applicant's turnover consists entirely of exempt supplies, he is not liable to registration in terms of section 23(1)(a) of the GST Act.

Based on the above discussion, we rule as under,

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The Applicant's supply to the Bally Municipal Corporation, as described in para 3.5, is exempt from the payment of GST under SI No. 3 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.

As the Applicant is making an exempt supply, the provisions of section 51 and, for that matter, Notification No. 50/2018 – Central Tax dated 13/09/2018 (corresponding State Notification No. 1344 – FT dated 13/09/2018) and State Government Order No. 6284 – F(Y) dated 28/09/2018, to the extent they mandate and deal with the mechanism of TDS, do not apply to his supply.

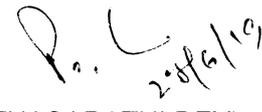
If the Applicant's turnover consists entirely of exempt supplies, he is not liable to registration in terms of section 23(1)(a) of the GST Act.

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