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 Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax 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 Tax 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	SNG Envirosolutions Pvt Ltd
Address	29A Ballygunge Circular Road Block – B, Flat 1A, Aishwarya Apartment, Kolkata-700019
GSTIN	19AAPCS3397C1ZW
Case Number	20 of 2021
ARN	AD190921006530C
Date of application	October 04, 2021
Order number and date	21/WBAAR/2021-22 dated 29.03.2022
Applicant's representative heard	Mr. Sujit Ghosh, Authorized Advocate Mr. Rajarshi Dasgupta, Authorized Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that he has entered into an agreement dated 29.11.2019 with Department of Health Services, Department of Health & Family Welfare, Government of West Bengal for collection and disposal of bio-medical waste from various clinical

establishments. In order to fulfil its obligations under the aforesaid agreement, the applicant entered into an agreement with Medicare Environmental Management Private Limited ("Medicare") on 20.11.2019 where under Medicare was appointed as a sub-contractor for collection and disposal of bio-medical waste from 05(five) zones.

1.3 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

(i) Whether the provisions of Entry Number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 and Entry No 3 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017 are applicable to the applicant or not.

(ii) Whether the provisions of Entry Number 3 of Notification No. 12/2017 Central Tax(Rate) dated 28/06/2017 and Entry No 3 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017 are applicable to the sub-contractor of the applicant or not.

(iii) Whether the provisions of Entry Number 75 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 and Entry No 75 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017 are applicable to the sub-contractor of the applicant or not.

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (b) of sub-section (2) of section 97 of the GST Act.

1.5The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

Fact of the case as submitted by the applicant along with interpretation of law made by him is reproduced verbatim herein under:

2.1 The Department of Health & Family Welfare, Government of West Bengal floated a Request for Proposal (RfP) NIT No: 093/HFW-40043/13/2018-HA dated 11.02.2019 for selection of Common Bio Medical Waste Treatment Facility ('CBMWTF') Operators for Public Health Facilities in West Bengal.

2.2 A consortium comprising of M/s Spectrum Waste Solutions Pvt Ltd and M/s SNG Mercantile Pvt Ltd participated in the bidding process and submitted its proposal online vide letter dated 29.03.2019. Subsequently, the Govt of West Bengal, vide Letter of Intent No 167(2)-HS(MS)/HF/O/HS(MS)/BMW-01/2019 dated 27.05.2019 ('LOI') selected the aforementioned consortium as an operator of CBMWTF.

2.3 Thereafter, in the light of the RfP and LOI, an agreement dated 29.11.2019 ('Master Service Agreement') was entered into between the Department of Health Services, Department of Health & Family Welfare, Government of West Bengal and the applicant

(representing the aforesaid consortium) for collection and disposal of bio-medical waste from various clinical establishments. It is pertinent to state that all such clinical establishments are under the administration of the State Government of West Bengal.

2.4 The applicant submits that pursuant to its selection as an operator of CBMWTF, the applicant entered into various agreements with hospitals for providing facilities in relation to collection and disposal of biomedical waste. One such agreement was entered into with Bauria (Fort Gloster) State General Hospital dated 16.12.2019 wherein it was stated that the agreement concerned was for availing services in accordance with the Master Service Agreement. Thus, on a conjoint reading of both the agreements, it is clear that the applicant is serving the State Government of West Bengal.

2.5 In order to fulfil its obligations under the Master Service Agreement, the applicant entered into sub-contract agreements with Medicare from time to time on 20.11.2019, 01.06.2020 and 01.06.2021 ("Sub-Contract Agreement") where under Medicare was appointed as sub-contractor for collection and disposal of bio- medical waste from 5 zones namely, Rezinagar (zone 4), Howrah (Zone 6), Katwa (Zone 8), Bankura (Zone 10) & Duttapukur (Zone 12).

2.6 In a nutshell, it is submitted that it is the applicant that is contractually responsible for collecting bio-medical waste from the clinical establishments that are under the administration of the State Government of West Bengal. In order to carry out its contractual responsibilities, the applicant appointed Medicare as a sub-contractor and tasked Medicare with the work of collection and disposal of bio-medical waste for the zones concerned. While the applicant raises the invoices on the clinical establishments which are effectively cleared by the State Government (in terms of Master Service Agreement), Medicare raises invoices on the applicant for the work done by it as a sub-contractor.

2.7 Given the nature of the scope of works to be undertaken by the applicant under the Master Services Agreement and the activities performed by Medicare under the Sub - Contractor Agreement, the applicant is of the view that services provided by the applicant and its sub-contractor "Medicare" are squarely covered under entry Sl. No. 3 of Notification No. 12/2017 Central Tax dated 28/06/2017 and Sl. No 3 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017. Moreover, without prejudice, the service provided by Medicare are also covered under Sl. No. 75 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 and Sl. No 75 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017.

2.8 The applicant has extracted the relevant portions of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 for ease of reference hereunder.

Serial No	Chapter, Section, Heading, Group or service Code (Tariff)	Description of Services	Rate(percent)	Condition

3	Chapter 99	Pure services (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.	Nil	Nil
75	Heading 9994	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.	Nil	Nil

2.9 It is submitted that the following elements needs to be satisfied in order to be eligible for an exemption under entry 3 of the aforesaid notification namely:-

(i) The service provider must provide pure services (i.e. excluding works contract service or other composite supplies involving supply of any goods).

(ii) The services in question must be provided to the Central Governments, State Government or Union Territory or Local authority or a Government Authority or a Governmental Entity.

(iii) As far as 'Governmental Authorities' or 'Government Entities' are concerned, the service in question must be 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.

2.10 It is submitted that the applicant satisfies all the requirement of the aforementioned entry for the reasons that follow:

(i) The applicant provides pure services and does not supply any goods.

(ii) The service recipient in the present case is the Department of Health Services, Department of Health & Family Welfare, Govt of West Bengal, i.e. the State Government.

(iii) It is the applicant who is contractually responsible to provide the services of bio- medical waste disposal in terms of the Master Service Agreement.

(iv) Furthermore, it is submitted that the aforesaid entry provides for an activity- based exemption. The capacity or status of the service provider (in terms of whether the service provider is a 'main contractor' or a 'subcontractor') is immaterial.

2.11 Eligibility of Medicare (i.e. the sub – contractor) under Entry 3

It is submitted that Medicare (i.e. the applicant's sub-contractor) qualifies for exemption under entry of the aforesaid Notification for the reasons that follow:

(i) Medicare performs the activity of collecting bio- medical waste from the premises of the clinical establishments and disposing of the same. Medicare does not supply any goods to the clinical establishments.

(ii) On a harmonious reading of Master service agreement (between the applicant and the State Government), agreement with the clinical establishment (between the applicant and State General Hospital) and the Sub Contract Agreement (between the applicant and Medicare), it is clear that for all purposes, Medicare provides the services in question to the State Government of West Bengal.

2.12 Eligibility of Medicare (i.e., the sub – contractor) under Entry 75:

Without prejudice to the above submissions, it is submitted that Medicare also qualifies for exemption under Entry 75 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017. The following elements needs to be satisfied in order to be eligible for an exemption under the aforesaid entry namely:-

(i) The services in question have to be provided by an operator of a Common Bio- Medical Waste Treatment Facility.

- (ii) The services in question have to be provided to a clinical establishment.
- The service should be of treatment or disposal of bio- medical waste or any process incidental thereto.

2.13 As is clear from the language of the entry concerned, the same provides for an activity-based exemption. The capacity or status of the service provider (in terms of whether the service provider is a 'main contractor' or a 'subcontractor') is immaterial. In the present case, Medicare meets all the three requirements posted by the said entry for the reasons elaborated in the paragraphs that follow.

2.14 Medicare is an operator of a Common Bio-Medical Waste Treatment Facility and satisfies the first requirement of the aforesaid entry. The expression "operator of a common bio-medical waste treatment facility" is not defined either in the aforesaid notification or in the CGST Act. It is thus apposite to refer to the definition of the said expression in the Environment (Protection) Act and the Rules issue where the said expression has been specifically defined.

2.15 In exercise of the powers conferred by Sections 6, 8 and 25 of the Environment (Protection) Act, 1986 the Central Government has notified the Rules for the management and handling of bio-medical waste, namely Bio-Medical Waste (Management And Handling) Rules, 1998. These rules have been amended from time to time and on 28.03.2016, these

rules were notified as Bio-Medical Waste Management Rules, 2016. The expressions “bio-medical waste treatment and disposal facility” and “operator of a common bio-medical waste treatment facility” are defined under Rule 3(g) and 3(n) of the Bio-Medical Waste Management Rules, 2016, respectively. These definitions have been extracted below:-

Rule 3- Definitions

In these rules unless the context otherwise requires:-

(g) “ bio-medical waste treatment and disposal facility” means any facility wherein treatment, disposal of bio-medical waste or processes incidental to such treatment and disposal is carried out, and includes common bio-medical waste treatment facilities;

(n) “ operator of a common bio-medical waste treatment facility” means a person who owns or controls a common Bio-medical Waste Treatment Facility(CBMWTF) for the collection, reception, storage, transport, treatment, disposal or any other form of handling of bio-medical waste;

2.16 It is submitted that Medicare owns Common Bio Medical Waste Treatment Facilities located at Howrah (Beliaghata), Nadia (Kalyani), and Burdwan (Raniganj).

2.17 The expression “clinical establishments” is defined under clause 2(s) of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 and reads as under:

2. Definitions- For the purpose of this notification, unless the context otherwise requires-

.....

(s) “clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

2.18 From a perusal of the Master Service Agreement and the contracts entered between the applicant and the Hospitals, it is evident that the hospitals squarely fall within the definition of the term “clinical establishment”.

2.19 It is further submitted that for the zones allocated to it, it is Medicare that has a direct interaction with the clinical establishments, in as much as, it is Medical waste from the premises of the establishments concerned. The waste so collected is then disposed of by Medicare at its facilities located at Howrah (Belgachia), Nadia (Kalyani) and Burdwan (Raniganj).

2.20 In view of the above submissions, it is seen that all requirements of S. No 75 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017 stand satisfied and consequently, Medicare’s activities are exempt therein.

2.21 In the case of Saritha Infra & Geo Structures vs Pr. Commr. Of C.T, Visakhapatnam, 2019 (27) G.S.T.L 211(Tri- Hyd.), the Hon’ble Tribunal held that the exemption available does not depend on whether such services are provided directly by the main contractor or by

the main contractor using the services of a sub-contractor. Relevant excerpts from the aforesaid decision are as under:

".....

The exemption available to the services provided to IIT, Kharagpur does not depend on whether such services are provided directly by the main contractor or by the main contractor using the services of a sub contractor. In view of the above, I find that on merits, the services rendered by the appellant through the main contractor to IIT, Kharagpur are exempted under Section 102 of the Finance Act, 1994. The application for refund has been filed within the time stipulated in the section. I do not agree with the contention of the first appellate authority that merely because the services were rendered through main contractor and the bills were raised in the name of the main contractor the nature of the service would automatically become one of the services to the main contractor and not to IIT, Kharagpur."

2.22 Further, In re: S.P. Singla Constructions Pvt Ltd, 2019(29) G.S.T.L. 141 (A.A.R- GST), the Authority for Advance Ruling, Punjab allowed abated rate of GST @12% (CGST6%+SGST 6%) in a case where services were provided by the subcontractor to the main contractor under Serial No. 3(iv) of Notification No 11/2017 Central Tax (Rate) dated 28-06-2017 an entry not making any distinction vis-a-vis the contractor or subcontractor. Relevant excerpts from the aforesaid decision are as under:

"....

In the present case, the Applicant has sought advance ruling only in respect of a situation where the main contractor is providing works contract services in respect of construction/widening of roads for NHAI, which are not covered by entry at Serial No. 3(iv). Moreover, before amendment vide notification dated 25-01-2018 introducing specific entry on rate of services provided by the sub contractor to main contractor, the activity of the Applicant was covered under the scope of Serial No. 3(iv) of the Notification No 11/2017 (as amended), which provided the rate of GST on the services supplies by way of construction of road/bridges. Thus, the services provided by the Applicant as sub contractor to principal rate Notification No. 11/2017 which was inserted vide Notification No. 20/2017 Central Tax (Rate) dated 22-08-2017."

2.23 In re. Sevk Ram Sahu, 2020 (33) G.S.T.L 437 (A.A.R.-GST-Raj), the Authority for Advance Ruling Rajasthan allowed benefit of exemption where the entry did not speak of services by a contractor or sub contractor but was only in the nature of specific services to be provided. Relevant excerpt from the order is as under:

"......

M/s Sunrise Construction Company (hereinafter Party 'A') entered into an agreement with Government of Rajasthan for construction of 270 flats under affordable housing scheme under Pradhan Mantri Awas Yojana (including materials and labour). Party 'A' further sublets the work to M/s Banna Ram Choudhary (hereinafter party 'B') to construct above 270 flats under a separate work contract (including material and labour).

Party 'B' further entered in a sub contract with the applicant for "Pure Labour Service" in said project.

.....

In view of the above, we find that scope of above said entry is not person-centric but project-centric. The entry does not speak of contractor or sub contractor but sharply of pure services by way of construction under certain projects. It clearly stipulates that whosoever is supplying the pure labour contract services for the construction of a civil structure or any other original works under PMAY is exempted from GST."

2.24 In re: ST Engineering Electronics Ltd. 2020 (42) G.S.T.L. 575 (A.A.R.-GST-TN), the Authority for Advance Ruling Tamil Nadu while deciding whether the benefit is restricted merely to the contractor or to the subcontractor as well noted as under:

".... To summarize, we find that the entry at 3(v) do not specify the class of service provider to whom it applies. The entry is specific to the composite supply of works contract pertaining to railways including monorail and metro. This view is fortified by the justification of the recommendation of the Fitment Committee to the 25 th GST Council meeting (available in Volumn 2 of the Agenda) after which the downward revision of the rate was effected...."

2.25 In re: Shree Constructions, 2018(17) G.S.T.L 504(A.A.R.-GST), the Authority for Advance Ruling Maharastra allowed the benefit of abated rate to the sub contractor as well and held as under:

"....

Here we may mention that the applicant has submitted that they have been sub-contracted by the main contractor to supply WCS and in turn the main contractor is supplying WCS to the Railways. From the submissions made by the applicant it appears that the WCS provided by them is the same or a part of the main contract entered into between the main contractor service is civil works performed by the subcontractor for the Railways and the property in goods (materials used in the supply of Works Contract Service) also gets transferred to the Railways directly. In such a case as per the above mentioned clause (v) of Notification No. 20/2017 Central Tax (Rate), dated 22-10-2017, the works contract service provided by the sub contractor to the main contractor would be supply of Works Contract pertaining to Railways and therefore chargeable to tax @ 12% (6% of CGST and SGST each)

2.26 Furthermore, the Applicant places reliance on the decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh and Ors. vs. Larsen and Tourbo Ltd. and Ors.,(2008) 9 SCC 191, where in the court held as under:

".....

By virtue of Article 366 (29A)(b) of the Constitution once the work is assigned by the contractor (L&T), the only transfer of property in goods is by the sub-contractors(s) who is a registered dealer in this case and who claims to have paid taxes under the Act on the goods involved in the execution of the works. Once the work is assigned by L&T to its sub-contractor(s), L&T ceases to execute the works contract in the sense contemplated by

Article 366(29A)(b) because property passes by accretion and there is no property in goods with the contractor which is capable of a retransfer, whether as goods or in some other form.

....."

Applying the aforementioned principle to the facts of the present case, the applicant submits that once it assigns the work to Medicare, the Applicant ceases to execute the contract for the zones concerned and it is Medicare which wholly and solely performs the service.

2.27 The applicant submits that the aforementioned decisions of the Advance Ruling Authorities have a persuasive value. In this regard, the applicant places reliance on the decision of the Hon'ble Supreme Court in the case of Columbia Sportswear Company vs Director of Income Tax, Bangalore, AIR 2012 sc 3038 wherein it was held that the determination of the Authority for Advance Ruling is not just advisory but binding in respect of the transaction in relation to which the ruling had been sought and on the Commissioner and the income tax authorities subordinate to him and has persuasive value in respect of other parties. However, it has also been rightly held by the Authority itself that this does not mean that a principle of law laid down in a case will not be followed in future.

Submission by the applicant in the matter of scope of issuing a ruling in respect of issues that arise on the transaction between the applicant and its sub-contractor

During the course of the hearing, the AAR observed that no ruling can be pronounced in respect of question number (ii) and (iii) made by the applicant under serial number 14 of the application in FORM GST ARA-01 since an application for advance ruling can be filed by the supplier in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. But, in respect of supply in involved in the aforesaid questions, the applicant is the recipient of services.

The applicant has furnished a written submission in this regard which is as under:

2.28 Scope of Advance Ruling under Section 97:

(a) On a perusal of Section 97(2) of the CGST Act it is clear that the scope of advance ruling has been clearly laid out in the statute. In specific terms the applicant has sought a ruling under Section 97(2)(b) of the CGST Act which deals with applicability of a notification issued under the provision of the Act. Since it is the contention of the applicant that its sub-contractor falls within the ken of Entry-3 as also Entry-75 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, the present application seeking ruling of this aspect is clearly covered within the ambit of Section 97(2)(b) of the CGST Act.

(b) Further, nowhere in the said Section 97(2)(b) of the CGST Act is it provided that the question on which a ruling can be sought is restricted to applicability of a notification on the applicant. As such therefore, an application under Section 97(2)(b) of the CGST Act can be sought on the applicability of a notification regardless of whether the sweep of such notification operates on the applicant or any other person. This submission is buttressed by the fact that wherever the Legislature wanted the questions on which ruling should be sought having an effect only on an applicant, they have specifically provided so and therefore, a conscious non-use of the word "applicant in Section 97(2)(b) of the CGST Act clearly shows

that the Legislature did not want to restrict the sweep of Section 97(2)(b) of the CGST Act to only such cases where a notification applies on an applicant. To illustrate Section 97(2)(f) and (g) of the CGST Act clearly restricts the question on which ruling can be sought qua aspects that directly pertain to an applicant, since in both the situations, the word “applicant” has been consciously used by the Legislature. Whereas in none of the situations covered under Section 97(2)(a) to (e) of the CGST Act, the Legislature has used the word “applicant” in body of these clauses and is therefore a conscious omission.

(c) If the word “applicant” had to be read into every situation in respect of which an advance ruling can be delivered then nothing stopped the Legislature from using the word “applicant” in all the situations covered by Section 97(2), which it has not done. A situation that has been missed out or consciously excluded by the Legislation, ie a “causes omissus”, cannot be supplied or read into a provision of law by any quasi-judicial authority by applying principles of construction, unless it leads to an absurdity. The Applicant relies on this cardinal principle of law as held by the Supreme Court in the case of Padma Sundara Rao v State of Tamil Nadu 2002) 3 SCC 533 (Constitution Bench)

(d) Accordingly, it is the humble submission of the applicant that so long as question of law regarding applicability of a notification has been made out, this AAR has appropriate jurisdiction to pronounce a ruling on the same regardless of whether the impact of the notification falls directly on the applicant or whether the impact of the notification is on the sub-contractor of the applicant. As long as there is necessary nexus between the sub-contractor impact and that of the applicant, this AAR would be well within its power to pronounce necessary ruling. This is on the fundamental basis that GST is a transaction tax through seamless flow of credits and tax implication on a given end of the supply chain would always have a ripple effect on subsequent supplier in that very chain. Since the very object of Advance Ruling is to achieve certainty of tax, which would include certainty of claiming credit of taxes on inputs purchases (refer Section 97 (2) (d), a fortiori, the scope of the ruling would necessarily operate both on the revenue side as also cost side of the applicant.

(e) Further, the fact that the above view of the matter would not be construed to be an absurdity can be discerned from the submission made in the following paragraph.

2.29 Definition of the term Advance Ruling also lends credence to the above submission:

(a) On a perusal of definition of the term Advance Ruling set out in Section 95(a) of the CGST Act, it is evident that the same has been defined to mean a decision on questions specified under Section 97(2) of the CGST Act and those questions are in relation to the suppliers of goods and services both being undertaken or proposed to be undertaken by the applicant.

(b) As such therefore, there are two conditions that needs to be satisfied to fall within the meaning of the term “Advance Ruling”, namely

(i) The question must be those falling under Section 97(2), and

(ii) These questions must be in relation to the supplies of goods or services or both being undertaken or proposed to be undertaken by the applicant.

(c) In so far as condition (i) above is concerned the applicant has already submitted that the issue as raised for consideration of this Hon'ble Tribunal is covered by the sweep of Section 97(2)(b) of the CGST Act and accordingly this precondition according to the Application stands satisfied in the present case.

(d) In so far as condition (ii) is concerned, it is submitted that impact of notification on supplies made by the sub-contractor is essentially an impact in relation to the supplies made by the applicant. This is so because the scope of work of the subcontractor has a direct effect on the deliverables committed by the applicant to its customers. Any deficiency in the sub-contractor's work as also any increment in the sub-contractor's costs including taxes leviable thereupon will have a direct bearing on the quality as also, ability to claim credit, ultimate pricing etc of the applicant. This aspect is further accentuated by the fact that the present sub-contractor M/s. Medicare is a sole sub-contractor of the applicant and as can be discerned from Clause (c) of the sub-contract agreement dated 1st June, 2020 (referred at Page 68 of the Application), Medicare's scope of work was to provide complete services.

(e) Further, the choice of usage of the phrase "in relation to supply of goods …. being undertaken by the applicant" contained in the definition of the term Advance Ruling, is also instructive and relevant to the present issue.

(f) The term "in relation to" is a critical and vital pointer which according to the applicant throws appropriate light on how the entire scheme of Advance Ruling must be interpreted. The Applicant relies on the decision of the Hon'ble Supreme Court in the case of Doypack Systems Pvt. Ltd. –Versus- Union of India (1988) 2 SCC 299 where at Para 50 the Hon'ble Supreme Court had interpreted the meaning of the expression "in relation to" and observed as follows:

"The expression "in relation to" (so also "pertaining to"), is very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Aziz, A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10, following and approving Nitai Charan Bagchi v. Suresh Chandra Paul, 66 C.W.N. 767, Shyam Lal v. M. Shayamlal, A.I.R. 1933 All 649 and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

(g) Clearly, therefore, once the word "in relation to" has been held to be an expression of expansion, it would bring within its sweep not only aspects that effect the applicant directly but also those that effect the applicant indirectly in making its supplies. Since the applicant has submitted that the sub-contractor performs a substantial part of the scope of work of the applicant, which has an inevitable impact on the applicant's quality of supply, pricing, credits etc, there can be no manner of doubt that the issue posed for a ruling under this application

vis-à-vis applicability of notification on the sub-contractor is a question which is in relation to applicant's supply.

2.30 In view of the above the applicant humbly submits that this AAR has appropriate jurisdiction to rule on the eligibility of exemption on the applicant's sub-contractor in so far as Notification no. 12/2017-Central Tax (Rate) is concerned which has accordingly been prayed for in question (ii) and (iii) in the Application.

3. Submission of the Revenue

The officer concerned from the revenue has furnished a written submission which is reproduced herein under:

3.1 Whether the provisions of Entry Number 3 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 and Entry No 3 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017 are applicable to the applicant or not.

As per Entry Number 3 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017, the applicant must provide pure services (excluding work contract services or other composite supplies involving supply of any goods) and the service recipient must be Central Government or State Government or Union Territory or a Governmental Authority or Govt Entity. As per the registration details the applicant provides pure services and doesn't supply any goods and in the instant case service recipient is the department of Health & Family Welfare, Govt of West Bengal. So, in this case, service provided appears to be exempted.

3.2 Whether the provisions of Entry Number 3 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 and Entry No 3 of Notification No. 12/2017 State Tax (Rate) dated 28/06/2017 are applicable to the sub-contractor of the applicant or not.

As per Entry Number 3 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017, the applicant must provide pure services (excluding work contract services or other composite supplies involving supply of any goods) and the service recipient must be Central Government or State Government or Union Territory or a Governmental Authority or Govt Entity. As per the registration details the applicant provides pure services and doesn't supply any goods and in the instant case service recipient is the department of Health & Family welfare, Govt of West Bengal. They are also carrying their responsibilities by providing services of Bio medical waste disposal through their sub-contractor in terms of service agreement. In this case no specific guideline is found in GST Rules and Acts.

3.3 Whether the provisions of Entry Number 75 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 and Entry No 75 of Notification No. 12/2017 State Tax(Rate) dated 28/06/2017 are applicable to the sub-contractor of the applicant or not.

As per Entry Number 75 of Notification No 12/2017 Central Tax (Rate) dated 28/06/2017, services provided by operators of common bio-medical waste treatment facility to clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto are exempted. Here Medicare is an operator of a common bio medical waste

treatment facility and satisfies the requirement of the entry. So, in this case services provided appears to be exempted.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the Revenue. The applicant has sought advance ruling in respect of three questions. In terms of clause (a) of section 95 of the GST Act, an advance ruling means a decision provided by this Authority or the Appellate Authority, as the case may be, on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 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. We find that question number (i) is in relation to the supply being undertaken by the applicant but in respect of question number (ii) and (iii), the applicant is found to be recipient of supply. This issue has been brought to the notice of the authorised advocate of the applicant during the course of hearing. The applicant has furnished a written submission in this regard. We, therefore, for the sake of convenience, take the issue involved in question number (i) first and on the later part, we will express our view related to question number (ii) and (iii) respectively.

Observation in respect of supply involved in question number (i):

4.2 The applicant has entered into an agreement, termed as Master Service Agreement, with Department of Health Services, Department of Health & Family Welfare, Government of West Bengal for the collection and disposal of bio medical waste from various clinical establishments located at different zones in the state of West Bengal. In order to carry out the said work, the applicant has appointed Medicare as a sub-contractor and tasked Medicare with the work of collection and disposal of bio-medical waste for the zones concerned. The applicant raises invoices on the clinical establishments which are effectively cleared by the State Government (in terms of Master Service Agreement). On the other hand, Medicare raises invoices on the applicant for the work done by it as a sub- contractor.

4.3 The applicant contends that the above-referred services doesn't involve any supply of goods and since the services is provided to State Government, it shall be covered under entry serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 thereby shall be exempted from payment of tax under the GST Act. Further, in favour of applicability of the said entry, the applicant submits that as far as 'Governmental Authorities' or 'Government Entities' are concerned, the service in question must be 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. In other words, the contention of the applicant is that any type of pure services (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 shall be exempted vide entry serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 irrespective of the fact that such services are provided 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.

4.4 In this context, we like to refer the case of M/s Star Creative (Advance Ruling No. KAR ADRG 58/2021 dated 29.10.2021) where the applicant claims exemption under entry serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 on supply of services by way of producing documentary videos, picture of testimony to various State Government Departments, Local Authorities, Governmental Authorities and Government Entities. The Advance Ruling Authority, Karnataka has observed as follows:

"From the above said entry of the notification it is observed that, in order to claim exemption on supply of service of producing documentary videos, two conditions should be satisfied:

1. *Pure services (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;*
2. *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 We are also of the same view that in order to get covered under entry serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, following conditions have to be fulfilled:

(i) It shall be pure service ((excluding works contract service or other composite supplies involving supply of any goods) only;

(ii) Services recipient shall be the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity; ['Governmental authority or a Government Entity' has been omitted w.e.f. 01.01.2022 vide Notification No. 16/2021-Central Tax (Rate) dated 18.11.2021]

(iii) Services have to be provided 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.

4.6 We, therefore, cannot accept the interpretation of the applicant that condition as referred to in point number (iii) in the preceding para 4.5 is applicable in respect of supplies provided to 'Governmental Authorities' or 'Government Entities' only.

4.7 We would like to further express our view with regard to the submission made by the applicant that that the aforesaid entry provides for an activity- based exemption and the capacity or status of the service provider (in terms of whether the service provider is a 'main contractor' or a 'subcontractor') is immaterial. [Refer to point number (iv) in Para 2.11]

Admittedly the activity as specified in the aforesaid entry is not a supplier-centric supply. However, the supplies covered under the said entry has three specific limbs which have already been discussed i.e., (i) It must be pure service, (ii) it is recipient specific and (iii) it must be in relation to certain functions. Similarly, entry serial number 75 of the said notification is also recipient specific i.e., the supply is to be provided to a clinical establishment only.

The applicant has submitted that he raises invoices on the clinical establishments which are effectively cleared by the State Government (in terms of Master Service Agreement) and

Medicare raises invoices on the applicant for the work done by it as a sub-contractor (Refer to Para 2.6).

Clause (93) of section 2 of the GST Act speaks that "recipient" of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In the instant case, the applicant has entered into the agreement with State Government for the collection and disposal of bio- medical waste from various clinical establishments and for which, State Government is liable to pay the consideration to the applicant. So, there can be no dispute that the applicant is supplying the services to State Government. In fact, the applicant himself has admitted the same. [refer to Para 2.4]

Following the same principle, since Medicare raises invoices on the applicant for the work done by it as a sub- contractor and the applicant is liable to pay the consideration to Medicare, admittedly it is a supply by the sub-contractor to main contractor i.e., supply of services by Medicare to the applicant.

4.8 It is submitted by the applicant that he provides pure services and does not supply any goods. The applicant also claims that such supply is provided to State Government. We accept both the aforesaid submissions and now proceed to decide whether the supply is provided 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.

4.9 The functions entrusted to a Panchayat and to a municipality under article 243G and 243W of the Constitution along with eleventh and twelfth schedule are reproduced herein under:

- 243G: Powers, authority and responsibilities of Panchayats. -Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) 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

- Eleventh Schedule [Article 243G of the Constitution (Seventy-Third Amendment) Act, 1992]:

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

- 243W. Powers, authority and responsibilities of Municipalities, etc.-Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

- (*a*) the Municipalities with such powers and authority as maybe necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as maybe specified therein, with respect to

    (i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as maybe entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(*b*) the Committees with such powers and authority as maybe necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

- Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992]:

1. Urban planning including town planning.
2. Planning of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattie pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

4.10 We find that the functions entrusted to a Panchayat as listed in the Eleventh Schedule include the functions like ‘Health and sanitation, including hospitals, primary health centres and dispensaries’. Further, the functions entrusted to a municipality as listed in the Twelfth Schedule includes ‘Public health, sanitation conservancy and solid waste management’. According to Cambridge Dictionary, ‘sanitation’ means “the systems for taking dirty water and other waste products away from buildings in order to protect people’s health”. Further, ‘sanitation and similar services’ (Group: 99945) falls under Heading 9994: Sewage and waste collection, treatment and disposal and other environmental protection services. Furthermore, Government of West Bengal floated the Request for proposal (RfP) for selection of Common Bio Medical Waste Treatment Facility (‘CBMWTF’) Operators for Public Health Facilities in West Bengal.

4.11 We are therefore of the view that the services provided by the applicant for the collection and disposal of bio- medical waste from various clinical establishments is found to be a matter as listed in the Eleventh and/or Twelfth Schedule in relation to functions entrusted to a Panchayat under article 243G and/or to a municipality under article 243W of the Constitution of India.

Observation in respect of scope of advance ruling on issues that arise on the transaction between the applicant and its sub-contractor involved in question number (ii) and (iii):

4.12 it is reiterated that during the course of the hearing, the AAR observed that no ruling can be pronounced in respect of question number (ii) and (iii) made by the applicant under serial number 14 of the application in FORM GST ARA-01 since an application for advance ruling can be filed by the supplier in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. But, in respect of supply in involved in the aforesaid questions, the applicant is the recipient of services.

4.13 The applicant has furnished a written submission to counter the aforesaid observation and the authorised advocate of the applicant has also put forth argument in the same line in course of personal hearing. The applicant contends that he has sought a ruling under Section 97(2) (b) of the GST Act which deals with applicability of a notification issued under the provision of the Act and the said sub-section nowhere provides that the question on which a ruling can be sought is restricted to applicability of a notification on the applicant. Therefore, an application under Section 97(2) (b) of the GST Act can be sought on the applicability of a notification regardless of whether the sweep of such notification operates on the applicant or any other person.

4.14 The applicant further contends that wherever the Legislature wanted the questions on which ruling should be sought having an effect only on an applicant, they have specifically provided so and therefore, a conscious non-use of the word “applicant in Section 97(2) (b) of the GST Act clearly shows that the Legislature did not want to restrict the sweep of Section 97(2)(b) of the CGST Act to only such cases where a notification applies on an applicant. Furthermore, section 97(2)(f) and (g) of the GST Act clearly restricts the question on which ruling can be sought qua aspects that directly pertain to an applicant, since in both the situations, the word “applicant” has been consciously used by the Legislature. Whereas in none of the situations covered under Section 97(2)(a) to (e) of the CGST Act, the Legislature has used the word “applicant” in body of these clauses and is therefore a conscious omission.

4.15 The applicant also draws attention to clause (a) of section 95 of the GST Act which speaks that ‘advance ruling’ means a decision provided by this Authority or the Appellate Authority, as the case may be, on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 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 applicant submits that the expression “in relation to” is very broad expression which pre-supposes another subject matter and once the word “in relation to” has been held to be an expression of expansion, it would bring within its sweep not only aspects that effect the applicant directly but also those that effect the applicant indirectly in making its supplies. Since the applicant has submitted that the sub-contractor performs a substantial part of the scope of work of the applicant, which has an inevitable impact on the applicant’s quality of supply, pricing, credits etc, there can be no manner of doubt that the issue posed for a ruling under this application vis-à-vis applicability of notification on the sub-contractor is a question which is in relation to applicant’s supply.

4.16 We have duly considered the contention of the applicant as noted above. The applicant has not denied the fact that in respect of supplies involved in question number (ii) and (iii), he is recipient of services. Admittedly, the supply of services on which ruling has been sought for vide question number (ii) and (iii), has not been undertaken or proposed to be undertaken by the applicant.

4.17 In the matter of M/s USV Private Limited, the Advance Ruling Authority, Maharashtra has not admitted the application on the following grounds:

(i) the AAR found the applicant as a recipient of services;

(ii) the questions are in respect of past and completed supply.

4.18 In re Godavari Marathwada Irrigation Development Corporation, the Advance Ruling Authority, Maharashtra has observed as follows:

'Section 95 of the CGST Act, 2017 allows this authority to decide the matter in respect of supply of goods or services or both, undertaken or proposed to be undertaken by the applicant. We find that the applicant has not undertaken the supply in the subject case. Rather, the applicant is a recipient of impugned services in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per provision of Section 95 of the GST Act. Hence without discussing the merit of the case, we reject the subject application as not being maintainable.'

4.19 In this context, we would like to refer sub-section (1) of section 103 of the GST Act which reads as follows:

"Applicability of advance ruling.—

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
(b) on the concerned officer or the jurisdictional officer in respect of the applicant."

The aforesaid sub-section, thus, categorically speaks that the ruling pronounced is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. If an application is filed by the recipient of goods or services or both on the taxability of his inward supply of goods or services and ruling is pronounced accordingly, such ruling shall be binding only on him and on the concerned officer or the jurisdictional officer of him. In no way, the ruling shall be binding on the supplier of such goods or services.

To illustrate, say Mr A of West Bengal receives inward supply of goods from Mr B (Location of Mr B may be in West Bengal or may be in other states).Mr A files an application of advance ruling seeking the taxability of his inward supply. The Advance Ruling Authority pronounces ruling declaring the supply to be an exempt supply. However, since the same is

not binding on his supplier, the supplier may not follow the ruling and even find the supply as a taxable supply. In such a scenario, the ruling loses its relevance and applicability.

Any provisions of the Law, therefore, should not be interpreted in a way which defeats the very purpose of the objective and purpose of the law provision. We are therefore of the view that in the subject application, the applicant cannot seek an advance ruling in relation to the supply where he is a recipient of services.

In view of the above discussions, we rule as under:

RULING

1. Supplies provided by the applicant to State Government for collection and disposal of bio-medical waste from various clinical establishments shall get covered under entry serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 12/2017 State Tax (Rate) dated 28/06/2017.

2. No ruling can be given on question number (ii) and (iii) since the applicant is recipient of services in respect of supplies involved in the aforesaid questions.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling