

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14, Beliaghata Road, Kolkata – 700015

BENCH

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

Name of the applicant	Altabur Rahaman Mollah, carrying on business under the trade name M/s Reliable Hospitality service
Address	Siddharth City Centre, 122, Lenin Sarani, 4 th Floor, Kolkata-700013
GSTIN	19AFDPM0534MIZB
Date of application	July 8, 2019
Case No	30 of 2019
ARN	AD1906190010077
Order number and date	21/WBAAR/2019-20 dated 09/09/2019
Applicant's representative	Mr Sahil Ringsia, ACA

1. Admissibility of the Application

1.1 The Applicant, stated to be supplying facility management services like mechanised and manual cleaning, housekeeping, security services etc. to various Central Government and State Government hospitals, seeks a ruling as to whether exemption from payment of GST is available for such supplies in terms of Notification No 12/2017-CT(Rate) dated 28.06.2017 and WB Govt Gazette Notification-1136-FT dated 28.06.2017, as amended (hereinafter collectively referred to as "the Exemption Notification").

1.2 Advance Ruling is admissible on the question under Section 97(2)(b) of the GST Act. The Applicant further submits that the question raised in the Application is neither decided by nor pending for decision before any authority under any provisions of the GST Act. The concerned officer from the Revenue does not object to admission of the Application.

1.3 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits that he supplies the following services:

- a) Mechanised and automated cleaning of the hospital premises, including the toilets;
- b) Mechanised and automated cleaning of the of different parts of the academic and hostel area, including the toilets;
- c) Manual cleaning of different parts of the campus of the institute.

The Applicant also supplies cleaning material incidental or ancillary to provisioning the cleaning services.

2.2 Exemption under SI No 3/3A is granted to services provided to *the Central Government, State Government or Union territory or local authority or a Governmental authority 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.* The Applicant's services, therefore, need to be an activity in relation to the functions listed under the Eleventh or the Twelfth Schedules of the Constitution. SI No. 22 of the Eleventh Schedule covers 'health and sanitation, including hospitals, primary health centres and dispensaries'. SI No. 7 of the Twelfth Schedule covers 'public health sanitation, conservancy and solid waste management'.

2.3 The Applicant is not providing 'health service' to any hospitals. The scope of 'sanitation and similar services', as classified under SAC 99945, in as much it includes 'cleaning and sweeping', is limited to cleaning and sweeping of roads and streets. Cleaning of hospitals is, therefore, not to be treated as 'sanitation' service under the GST Act. The Applicant's supplies are, therefore, admittedly not qualified for exemption under SI No. 3/3A of the Exemption Notification.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue submits that the above exemption is extended to Panchayats and Municipalities. The Applicant, being a private party, is not eligible for this exemption.

4. Observations & Findings of the Authority

4.1 In its Circular No. 51/25/2018-GST dated 31/07/2018 the Central Government clarifies that the service tax exemption under SI 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 upgradation." 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. 3/3A of the Exemption Notification.

4.2 The above Circular leaves no doubt that the phrase 'in relation to any function', as applied in SI Nos. 3 and 3A above, makes no substantial difference between SI No. 25(a) of the ST Notification and SI No. 3/3A 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 all such functions as entrusted to a Panchayat or a Municipality under the Constitution.

4.3 The example of ambulance service provided by a PSP also makes it clear that the service provider need not be a Panchayat or a Municipality. The phrase 'in relation to any function' refers not to who the service provider is or what activities the recipient of the service is engaged in, but only to what service the supplier is providing. If the service is an activity relatable to a function like public health, sanitation etc., listed under the Eleventh or the Twelfth Schedule under Art 243 G or 243 W of the Constitution, its supply to the government, governmental authority, local authority or a government entity should be exempt under SI No. 3/3A of the Exemption Notification, provided it is either a pure service or a composite supply where the supply of goods constitutes not more than 25% of the value.

4.4 The Applicant has submitted a copy of the work order issued by SSKM Hospital. It refers to dusting, scrubbing, mopping disinfecting the hospital premises, cleaning of toilets etc. *The work order clearly mentions that GST @ 18% is applicable on the services.* It is a State Government hospital and, therefore, the Applicant's service in terms of the above work order qualifies to be a supply to the Government. The Applicant is supplying cleaning and sweeping service, which is a composite supply having supply of cleaning material ancillary or incidental to the principal supply of cleaning and sweeping service. Therefore, the only point that needs to be examined is whether the service being provided is an activity relatable to a function listed under the Eleventh or the Twelfth Schedule under Art 243 G or 243 W of the Constitution.

4.5 Eleventh schedule of Indian Constitution contains the following items:

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

Items covered under the Twelfth Schedule of the Indian Constitution are as under:

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

4.6 'Security services' provided to Government Hospitals and Medical Colleges are not covered under the either lists. 'Cleaning and sweeping services' can be considered as related to the function listed under SI No. 26 of the Eleventh Schedule, namely "Health and sanitation, including hospitals, primary health centres and dispensaries", provided 'sanitation service', as classified under SAC 99945, includes sweeping and cleaning of places like hospitals etc. As the scope of the functions listed under the Eleventh Schedule is considered with respect to applicability of the Exemption Notification under the GST, the scope of any service should be determined in terms of the Scheme of Classification of the Services referred to in Explanation 3(i) of the Exemption Notification.

4.7 'Sanitation and similar services', classified under SAC 99945, includes sweeping and cleaning, but only with reference cleaning of a road or street. Cleaning of hospital premises is not, therefore, classified under 'Sanitation or similar service'.

4.8 The services the Applicant are, therefore, not exempt under SI No. 3 or 3A of the Exemption Notification.

In view of the foregoing we rule as under.

RULING

Benefit of exemption from the payment of GST is not available to the Applicant under Notification No 12/2017-CT(Rate) dated 28.06.2017 and State Govt Notification-1136-FT dated 28.06.2017, as amended, for the supply of security services and cleaning and sweeping services.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.



(SUSMITA BHATTACHARYA)
Member

West Bengal Authority for Advance Ruling



(PARTHASARATHI DEY)
Member

West Bengal Authority for Advance Ruling