

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	West Bengal Medical Services Corporation Ltd
Address	GN-29, Swasthya Sathi, 1st Floor, Salt Lake City, Sector-V, Kolkata-700091
GSTIN	19AABCW0178R1ZM
Date of application	July 5, 2019
Case No	29 of 2019
ARN	AD1907190001652
Order number and date	22/WBAAR/2019-20 dated 09/09/2019
Applicant's representative	Tarak Basu, Advocate

1. Admissibility of the Application

1.1 The Government of West Bengal has set up the Applicant under Notification No. HF/SPSRC/WBMSC/40/2008/162 dated 17/11/2008 of the Department of Health & Family Welfare as a fully owned entity for managing the procurement of drugs and equipment for the medical colleges and hospitals and construction and maintenance of health facilities. It charges as administrative cost a certain percentage of the vetted project cost/procurement cost in terms of Notification No. HF/O/MS/208/HSL (MISC-WBMSC)-30/2006 dated 25/02/2011 of the Department of Health & Family Welfare, Government of West Bengal.

1.2 The Applicant seeks a ruling on whether exemption in terms of SI No. 3/3A/4/5 of Notification No 12/2017-CT(Rate) dated 28.06.2017 and WB Govt Gazette Notification-1136-FT dated 28.06.2017, as amended from time to time (hereinafter collectively referred to as "the Exemption Notification"), is

available on such administrative cost, which, according to the Applicant, is the consideration received for the management services provided.

1.3 The concerned officer from the Revenue objects to the admission of the Application on the ground that questions on which an advance ruling can be sought under section 97(2)(a) to (f) do not include rate of tax.

1.4 Section 97(2) (b) of the GST Act empowers this Authority to pronounce a ruling on the applicability of a notification issued under the GST Act. A question on the rate of tax or exemption, as the case may be, examines the applicability of any entry of the notifications issued under the GST Act, specifying the rate of tax or exemption from payment of tax. The question raised by the Applicant, therefore, involves ascertaining the applicability of the specific provisions of the Exemption Notification and is admissible for advance ruling under section 97 (b) of the GST Act.

1.5 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 the admission on this point.

1.6 The Application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The Applicant submits that it is a governmental authority as defined under clause 2(zf) of the Exemption Notification. The services it supplies are activities in relation to the function entrusted to a Panchayat under SI No. 23 of the Eleventh Schedule under Art 243 G of the Constitution of India. It acts as the implementing agency for the procurement of drugs and equipment for the medical colleges and hospitals and construction and maintenance of health facilities. The Department of Health & Family Welfare, Government of West Bengal, sanctions the fund directly in its favour and it, in turn, supplies the Department utilisation certificate upon disposal of such fund.

2.2 The Applicant is merely acting as the canalising agency on behalf of the State Government and cannot appropriate any part of the fund for any other purpose. Notification No. HF/O/MS/208/HSL (MISC-WBMSC)-30/2006 dated 25/02/2011 of the Department of Health & Family Welfare, Government of West Bengal, makes it clear that the Applicant's administrative cost and other expenditure has to be met from the percentage it is allowed to charge on the cost of a project or procurement. In other words, the Applicant's revenue comes from the administrative cost it can charge at the percentage determined by the above notification. It is, therefore, a pure management service. As the service is provided for activities in relation to the function entrusted to a Panchayat under SI No. 23 of the Eleventh Schedule under Art 243 G of the Constitution of India, the Applicant is eligible for exemption under SI Nos 3 or 4 or 5 of the Exemption Notification.

3. Submissions of the Revenue

3.1 The concerned officer from the Revenue does not agree that the Applicant is a Governmental Authority as defined under para 2(zf) of the Exemption Notification. He refers to the apex court's decision in Hindustan Steel (AIR 1970 SC 1150) to conclude that

the employees of such statutory authorities or bodies do not become Government Employees while rendering their services in those entities. He also refers to Para 2.4.10 of the Education Guide of CBEC published on 20/06/2012 to emphasise that such regulatory bodies or autonomous entities would not comprise either Government or local authority.

3.2 The concerned officer from the Revenue does not agree that the Applicant's service is an activity in relation to the function entrusted to a Panchayat or a Municipality. There is no evidence that the Applicant is engaged directly by a Panchayat/Municipality.

3.3 Finally, projects or procurements involve the supply of goods. The Services rendered by the Applicant are, therefore, far from being pure service. Moreover, the Applicant submits no evidence to support any claim that the supply of goods involved constitutes only 25% of the value.

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' makes no substantial difference between SI No. 25(a) of the ST Notification and SI No. 3/3A/4/5 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 or the recipient need not be a Panchayat or a Municipality. While examining whether the ambulance service the PSP provides is eligible for exemption under SI No. 3 of the Exemption Notification, the Circular does not venture into who the service provider or the recipient is. It focuses on the nature of the service and whether it 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. The phrase 'in relation to any function', therefore, 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 by a governmental authority should be exempt under SI No. 3/4/5 of the Exemption Notification.

4.4 In light of the above discussion provisions under SI No. 3/4/5 of the Exemption Notification should be examined. SI No. 3 refers to supply to the Central or State Government, local authority, a Governmental Authority or a Government Entity. The recipient is not, therefore, limited to a Panchayat or a Municipality, but the service rendered must not include supply of goods. SI No. 4 or 5 of the Exemption Notification widens the ambit to include any service by a governmental authority to any recipient, provided it 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. The Applicant's question should, therefore, be examined from two aspects: whether the Applicant is a governmental authority as defined under para 2(zf) of the Exemption Notification, and whether the service it provides 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 According to para 2(zf) of the Exemption Notification, a governmental authority means an authority or a board or any body

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

4.6 The Applicant has been set up under Notification No. HF/SPSRC/WBMS/40/2008/162 dated 17/11/2008 of the Department of Health & Family Welfare, Government of West Bengal, as a fully owned body for managing the procurement of drugs and equipment for the medical colleges and hospitals and construction and maintenance of health facilities.

4.7 SI No. 23 of the Eleventh Schedule of the Constitution specifies the functions of health and sanitation, including hospitals, primary health centers and dispensaries. Since the Eleventh Schedule is built in Art 243G of the Constitution, scope of its entries should be examined with reference to the powers entrusted to a Panchayat under the West Bengal Panchayat Act, 1973 (hereinafter the 1973 Act). Section 153(1)(a) of the 1973 Act empowers the Zilla Parishad [Art 243(d) of the Constitution defines a Panchayat as an institution of self-government constituted under Art 243B. Such a Panchayat, according to section 2(15b) of the 1973 Act, includes a Zilla Parishad] to undertake schemes and adopt measures for public health and sanitation, including establishment and maintenance of dispensaries and hospitals. In other words, the scope of the function under SI No. 23 of the Eleventh Schedule of the Constitution includes inter alia all activities in relation to establishment and maintenance of hospitals and dispensaries.

4.8 Managing procurement of drugs and equipment for the medical colleges and hospitals and construction and maintenance of health facilities is an activity in relation to establishment and maintenance of hospitals and dispensaries. The Applicant, therefore, is a body established by a State Government Notification, with 100 per cent participation by way of equity and control, to carry out a function entrusted to a Panchayat under SI No. 23 of the Eleventh Schedule under Article 243 G of the Constitution. It is, therefore, a Governmental Authority as defined under para 2(zf) of the Exemption Notification.

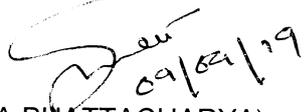
4.9 The Applicant has not provided any invoice or work order. The description of the activity for which the Applicant raises tax invoice is, therefore, not ascertained. However, the Applicant is eligible for exemption under SI No. 5 of the Exemption Notification on supply of any service, including composite supplies like works contract service whatever be the proportion of goods, in relation to establishment and maintenance of hospitals and similar health facilities.

Based on the above discussion, we rule as under,

RULING

The Applicant is a governmental authority as defined under para no. 2(zf) of Notification No 12/2017-CT(Rate) dated 28.06.2017 and State Notification-1136-FT dated 28.06.2017, as amended from time to time, and eligible for exemption under SI No. 5 of the said notifications on supply of any service in relation to establishment and maintenance of hospitals and similar health facilities.

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