

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.

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|----------------------------|---|
| Name of the applicant      | Sumitabha Ray   |
| Address                    | 53/1, Kali Prasad Banerjee Lane, Kadamtala, Howrah-711101 |
| GSTIN                      | 19ADCPR6862L1ZU   |
| Date of application        | July 25, 2019   |
| Case No                    | 33 of 2019  |
| ARN                        | AD1907190006222   |
| Order number and date      | 27/WBAAR/2019-20 dated 23/09/2019                         |
| Applicant's representative | Sri Sumitabha Ray, Proprietor                             |

1. Admissibility of the Application

1.1 The Applicant has entered into contracts with the Government of Tamilnadu and the Government of Mizoram for providing services as a Financial Management Specialist and Institutional Development Specialist, respectively. He seeks a ruling on whether exemption in terms of SI No. 3 of Notification No 9/2017-Integrated Tax (Rate) dated 28.06.2017, as amended from time to time (hereinafter referred to as "the Exemption Notification"), is available on such services.

1.2 The supplier is located in West Bengal, and the place of supply is in another State. The supplies on which the advance ruling is sought are, therefore, inter-state supplies. An advance ruling is admissible on this question under section 97(2)(b) of the GST Act read with section 20(xviii) of the IGST Act, 2017.

1.3 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 of the Application.

1.4 The Application is, therefore, admitted.

## 2. Submissions of the Applicant

2.1 The Applicant submits that the Government of Tamilnadu, Water Resource Department, is implementing a project namely, 'Climate Adaptation in Vennar Sub-basin in Cauvery Delta' with fund from the Asia Development Bank (ADB). It has engaged him as a Financial Management Specialist to look after the financial management of the project fund. The project aims at improving the flood risk management and upgrading the irrigation infrastructure in the delta area. The civil work involves re-sectioning and strengthening the embankments of the six main channels and improving their resilience and flood conveyance capacity. It also includes upgrading minor irrigation and drainage structures.

2.2 The Applicant submits that the Government of Mizoram, Public Works Department, is implementing under the Regional Transport Connectivity Project (hereinafter RTCP) road sector modernisation and performance enhancement through institutional strengthening. It is part of the Road Sector Modernization Plan (hereinafter RSMP), which carries forward and deepens various institutional development initiatives in the road sector. The Applicant, as Institutional Development Specialist, handles implementation of the RSMP.

2.3 The Applicant argues that he is supplying services to the State Governments that involve no supply of goods. The services are in relation to such functions as irrigation, water management and watershed development in Tamilnadu, and development of roads and bridges in Mizoram. These are functions listed under the Eleventh and Twelfth Schedules of the Constitution. The services he supplies are, therefore, eligible for exemption under SI No. 3 of the Exemption Notification.

## 3. Observations & Findings of the Authority

3.1 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 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 of the Exemption Notification.

3.2 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.

3.3 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 that 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 listed under the Eleventh or the Twelfth Schedule under Art 243 G or 243 W of the Constitution, its supply to the Central or State Government, local authority, a Governmental Authority or a Government Entity should be exempt under SI No. 3 of the Exemption Notification, provided the service is not a composite supply involving goods.

3.4 It should be clarified in this connection that the functions entrusted to a Panchayat or a Municipality under Art 243 G or 243 W are not limited to the matters listed under the Eleventh or the Twelfth Schedule. The State Legislature may, by law, endow a Panchayat or a Municipality with such powers and authority as may be necessary for implementing the schemes for economic development and social justice as may be entrusted to them, including the matters listed in the Schedules referred to above. The functions entrusted to a Panchayat or a Municipality are not, therefore, limited to the ones listed in the above Schedules, but may include other functions as may be specified in the enactments on Panchayats or Municipalities in the particular State where the goods or services are being consumed. Therefore, questions regarding the applicability of SI No. 3 of the Exemption Notification so far as the scope of the function entrusted to a Panchayat or a Municipality is concerned, should be addressed with reference to the enactments referred to above.

3.5 In light of the above discussion applicability of the provisions under SI No. 3 of the Exemption Notification should be examined.

3.6 It appears from the copies of the contracts that the State Governments have directly contracted for the Applicant's service.

3.7 In terms of the scope of work under clause 5 of Appendix 2 to the contract with the Government of Tamilnadu the Applicant is required to support the Finance Officer of the Project Management Unit (PMU) during the project start-up to set up the accounts and manage the finances to meet the requirements of ADB. He shall also train the PMU staff on ADB procedures and reporting requirements, assist PMU in managing the project accounts, preparing the annual budget and audit reports, generating different accounting reports and financial statements, ensuring smooth funds flow from ADB and in obtaining reimbursements from ADB.

3.8 In terms of the scope of work under clause 3 of Annex A to the contract with the Government of Mizoram the Applicant is required to assist PWD to develop, finalize and implement the activities in RSMP, assist in reviewing the progress, developing the road sector strategy, assist in identifying and implementing long-term development strategy etc.

3.9 In both the cases nature of the Applicant's service is that of a consultant and does not apparently involve any supply of goods.

3.10 Each of the contracts should now be examined to ascertain whether the Applicant's service is relatable to a function listed under the Eleventh or the Twelfth Schedule under Art 243 G or 243 W of the Constitution. Clause 1 of Appendix 2 of the contract with the Tamilnadu Government states the purpose of the assignment. The Applicant is required to support the Water Resources Department in implementing the 'Climate Adaptation in Vennar Sub-basin in Cauvery Delta Project'. The project aims at improving water management in the Vennar System. The expected outputs are improved flood risk management and up-gradation of irrigation infrastructure. Seven consultants, including the Applicant have been engaged for supporting the PMU in implementing the project.

3.11 Entry 3 of the Eleventh Schedule of the Constitution includes minor irrigation, water management and watershed development. The Applicant is, therefore, providing pure service to the State Government in relation to a project that involves functions listed under Entry 3 of the Eleventh Schedule. The Applicant's service to the Government of Tamilnadu is, therefore, eligible for exemption under SI No. 3 of the Exemption notification.

3.12 Annex A to the contract with the Government of Mizoram provides a brief outline of the project and the scope of the Applicant's service. PWD is implementing the project for improvement and construction of State highways. RSMP is part of the project. The Applicant is required to assist PWD to develop, finalise and implement the activities in the RSMP, assist in reviewing the progress, developing the road sector strategy, assist in identifying and implementing long-term development strategy etc. He is required to assist in establishing and operating cells for management of roads, bridges, road safety, quality assurance and control.

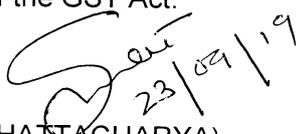
3.13 Entry 13 of the Eleventh Schedule lists roads, culverts, bridges, ferries, waterways, and other means of communication. But Art 243M (2) states that the Part of the Constitution containing provisions on Panchayats, including Art 243G, does not apply to Mizoram. However, Entry 4 of the Twelfth Schedule and Entry 4 of the Mizoram Municipalities Act, 2007 include roads and bridges. Improvement, construction and modernisation of roads is, therefore, a function entrusted to a Municipality under Art 243 W of the Constitution. The Applicant is, therefore, providing pure service to the State Government in relation to a project that involves functions listed under Entry 4 of the Twelfth Schedule. The Applicant's service to the Government of Mizoram is, therefore, eligible for exemption under SI No. 3 of the Exemption notification.

Based on the above discussion, we rule as under,

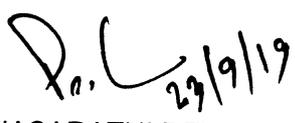
#### RULING

The Applicant is providing pure service to the State Governments in relation to the projects described in para nos. 3.10 and 3.12 above. The projects involve functions entrusted to a Panchayat or a Municipality under Art 243G or 243W of the Constitution. The Applicant's service to the State Governments is, therefore, eligible for exemption under SI No. 3 of Notification No 9/2017-Integrated Tax (Rate) dated 28.06.2017, as amended from time to time.

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