

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)

Members present:

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	Banchu Das
Address	Sastitala, Ramrajatala, Santragachi, Kona Road, Howrah, Pin Code 711104
GSTIN	19AFZPD2482B3Z8
Case Number	WBAAR 23 of 2022
ARN	AD1908220116436
Date of application	August 31,2022
Jurisdictional Authority (State)	Shibpur Charge
Jurisdictional Authority (Central)	Bally II Division, Howrah Commissionerate
Order number and date	13/WBAAR/2022-23 dated 21.10.2022
Applicant's representative heard	Mr. Tanmay Ghosh, 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 is stated to be engaged in providing conservancy/solid waste management services to the Conservancy Department of the Howrah Municipal Corporation (HMC, for short) under the trade name of PEAU TRANSPORT.

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:

- Whether conservancy/solid waste management services provided by us is exempt from GST?

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

1.5 The 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

2.1 The applicant submits that the services provided by them is a "Pure service" which is covered under serial number 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding West Bengal State Notification No. 1136 – FT dated 28/06/2017), as amended, which exempts "pure service" (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or Local Authority or a Government Authority or a Governmental Entity by way of an 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.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue has not expressed any view on the issue raised by the applicant.

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.

4.2 In the instant case, the work order issued by the Conservancy Department of Howrah Municipal Corporation describes the nature of the work for annual operation and maintenance of capacity portable compactor and hook loader. Further, from the copies of invoices as furnished by the authorized representative in course of personal hearing, it is

noticed that the applicant has issued invoices describing particulars as 'annual operation and maintenance of Compactor Machine for lifting and removal of garbage'.

4.3 The applicant has contended that the supply shall be covered under serial number 3 of the Exemption Notification which describes following services:

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 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 The term 'pure services' has not been defined under the Act. However, a bare reading of the description of services as specified in serial number 3 of the Exemption Notification denotes supply of services which does not involve any supply of goods can be regarded as pure services. In the case in our hand, the work order has been issued for operation and maintenance of compactor and hook loader. According to us, annual maintenance of compactor and hook loader involves supply of goods like spare parts. We are, therefore, unable to hold the instant supply to be pure services.

4.5 However, we find that serial number 3A of the said Notification exempts following services:

Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local 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.

4.6 We are therefore of the opinion that the instant supply for annual operation and maintenance of compactor and hook loader is a composite supply of goods and services and such supply can qualify for exemption vide serial 3A of the Exemption Notification only when the value of goods involved in such composite supply does not exceed 25% of the value of supply and the same is provided to the Central Government, State Government or Union territory or local 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.

4.7 Now we are going to ascertain whether the services provided by the applicant are in relation to any functions entrusted to a municipality under article 243W of the Constitution of India.

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

- **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. Cattle 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.

4.8 It transpires from above that the functions entrusted to a municipality as listed in the Twelfth Schedule include the functions like sanitation conservancy and solid waste management. We are therefore of the view that the applicant's services to HMC may be exempted under serial number 3A of the Exemption Notification if the value of goods involved in such composite supply does not exceed 25% of the value of supply.

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

RULING

The applicant's supply to the Howrah Municipal Corporation for operation and maintenance of capacity portable compactor and hook loader is eligible for exemption from payment of tax vide serial number 3A of the Notification No. 12/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding West Bengal State Notification No. 1136 – FT dated 28/06/2017), as

amended from time to time, if the value of goods involved in such composite supply does not exceed 25% of the value of supply.

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

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 21.10.2022

To,

Banchu Das

Sastitala, Ramrajatala, Santragachi, Kona Road, Howrah, Pin Code 711104

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Sr. JCCT, Shibpur Charge,7/1,Mackenzie Lane,Howrah-711101
- (4) The Commissioner, Howrah Commissionerate, Customs House, M.S. Building, 2nd floor, 15/1, Strand Road, Kolkata-700001
- (5) Office Folder