Ashis Ghosh

Authority for Advance Ruling — West Bengal

09/WBAAR/2019-20 dated 25/06/2019 (Case Number WBAAR 11 of 2019) Dated **25.06.2019**

Q Questions Before the Authority

- Whether the applicant's work for M/s Mackintosh Burn Ltd, filling the compound, tank, low land and similar areas with silver sand and earthwork in layers, including spreading and compacting, at the district Correction Home, Baruipur, is classifiable as a supply of sand under HSN 2505.

F Facts

The applicant held two contracts from M/s Mackintosh Burn Ltd (MBL) for filling the compound, tank, low land and similar areas with silver sand and earthwork at the district Correction Home, Baruipur, including spreading and compacting. The applicant relied on contract figures showing sand as 90.52% and 78.40% of contract value and earthwork as 9.48% and 21.60%, and on an Jharkhand AAR order in the P K Agarwala matter. The Revenue argued the activity was site preparation service, and the objection that the supply was already complete was rejected on admissibility.

H Ruling

Classification of the applicant's silver sand filling and earthwork contracts with MBL	**Works contract service; site preparation service, SAC 99543, taxable at 18%; not HSN 2505**	Under Sl No. 3(xii) of Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017, with corresponding State Notification No. 1135-FT dated 28/06/2017, as amended. Based on the contract facts as described in para 4.1 of the order.

The Authority held that the activity is a **works contract service** and not a supply of goods, because the transaction transfers property in sand and earth in the course of preparing land for construction. It classified the activity as **site preparation service (SAC 99543) taxable at 18%** , and held that it is not classifiable under HSN 2505. The Authority also rejected the applicant's reliance on the Jharkhand order because the earthwork share was below the threshold in the relevant notification.

R Reasoning

The Authority read the work orders as requiring filling of foundation and low-lying areas in layers with silver sand and good earth, followed by consolidation through ramming and water saturation. It treated this as improving and modifying land, which is immovable property, so the transaction fell within the definition of works contract under section 2(119) of the GST Act rather than a sale of goods. The applicant's percentage-based sand argument was not accepted because the test was the nature of the transaction, not the value mix of its inputs. The Authority held that the Jharkhand order did not apply, as Sl No. 3(vii) of Notification No. 39/2017-IGST covers works contracts where earthwork exceeds 75% of value and the earthwork share here was below 25%. It also held that MBL, being a company with 51.01% state shareholding, was not a government authority or government entity under

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Explanation 4(ix) and 4(x). On admissibility, the Authority held under sections 97(2) and 95(a) that a ruling may cover activities already undertaken, and that the Revenue's late objection under section 98 could not be entertained.

P Provisions Relied On

- Section 2(119) of the GST Act (works contract)
- Section 95(a) of the GST Act (advance ruling)
- Section 97(2)(a) of the GST Act (admissibility)
- Section 98(2) and 98(4) of the GST Act (hearing and admission)
- Section 100(1), 100(2) and 100(3) of the GST Act (appeal, as stated in the preamble)
- Sl No. 3(vii) of Notification No. 39/2017-IGST dated 13/10/2017 (distinguished)
- Sl No. 3(xii) of Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017
- State Notification No. 1135-FT dated 28/06/2017
- Explanation 4(ix) and 4(x) of Notification No. 39/2017-IGST (government authority and government entity)

! For the Practitioner

This ruling is useful for contractors doing filling, earthwork or site-levelling for public or state-linked clients, as it shows the Authority will classify such work as site preparation at 18% rather than as a sale of sand, even where sand dominates the contract value. It also confirms that an advance ruling may cover activities already performed and that a late Revenue objection to admission is not a bar. It does not decide the position for a pure sale of sand or for works where earthwork exceeds 75% of value, and it does not address whether a company with partial state shareholding could be a government entity in other cases.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> 09_wbaar_2019-20-ashis_ghosh.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: **+91 94594 56700** | sales@patronaccounting.com | patronaccounting.com

Patron Accounting LLP