Champa Nandi, carrying on business under the trade name M/s Industrial Handling

Authority for Advance Ruling — West Bengal

10/WBAAR/2019-20 dated 25/06/2019 (the date is partly garbled in the sc… Dated **25.06.2019**

Q Questions Before the Authority

- What is the classification and applicable rate of tax on the Applicant's service of hiring diesel-hydraulic shunting locomotives, with operating crew, to Damodar Valley Corporation (DVC) for placement and shunting of rakes at the DSTPS siding, Andal, under Notification No. 11/2017-Central Tax (Rate)?

F Facts

The Applicant leases out cranes, equipment and diesel-hydraulic shunting locomotives. Under DVC Work Order dated 07/10/2017, she supplies a locomotive for placement and shunting of rakes at the DSTPS siding, Andal, on a round-the-clock basis. The scope includes operating the locomotive inside the plant, forming and shunting rakes, providing a driver and a shunt man, obtaining route permissions, supplying the workforce, and bearing insurance costs. The applicant charged 18% GST on the rental, while DVC contended that the service should attract 5% as a transport-equipment lease.

H Ruling

Classification and rate of the Applicant's service to DVC (hire of diesel-hydraulic shunting locomotive with crew for placement/shunting of rakes at DSTPS siding)	****Railway pushing and towing service, SAC 996731, taxable at 18%****	Sl No. 11(ii) of Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135-FT). The ruling is tied to the DVC contract as described in the order (cited in the ruling as para 4.1; the work order discussion is at para 4.2). Valid subject to Section 103 and until declared void under Section 104(1).

The Authority held that the Applicant's service to DVC is classifiable as railway pushing and towing service (SAC 996731) and is taxable at 18% under Sl No. 11(ii) of the service rate notification. It rejected the argument that the service is a plain leasing or rental of transport equipment (SAC 997311) at the goods rate. The ruling is stated to be valid subject to Section 103 and until declared void under Section 104(1) of the GST Act.

R Reasoning

The Authority held that classification depends on the terms of the specific contract, and that the DVC arrangement is a complex umbrella contract, not plain leasing, because the Applicant also performs the shunting operations with her own crew. Relying on the Explanatory Notes to the Scheme of Classification, it treated the moving of railway wagons between terminal yards and industrial sidings as railway pushing and towing. It held that the DSTPS siding is a 'railway' under section 2(31) of the Railways Act, 1989, since its exclusion under section 2(31)(ii) applies only to recreational lines, and that Article 366(20) of the Constitution does not exclude it. The East Central Railway circular relied on by DVC was held not relevant to this service.

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

P Provisions Relied On

Section 97(2)(a) and (b) of the GST Act	Section 100 of the GST Act
Section 103 of the GST Act	Section 104(1) of the GST Act

Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017, Sl No. 11(ii) (and corresponding State Notification No. 1135-FT)

Notification No. 1/2017-Central Tax (Rate), Sl No. 236, cited by the Applicant and DVC (goods rate, not adopted)

Explanatory Notes to the Scheme of Classification (SAC 996731, SAC 997311, SAC 997313)

Section 2(31), 2(20) and 2(25) of the Railways Act, 1989	Article 366(20) of the Constitution

East Central Railway Circular No. Books/GST/17-18/pt I dated 19/07/2017 (held not relevant)

! For the Practitioner

Practitioners providing locomotives with crew for shunting in industrial or captive sidings can rely on this ruling to support 18% and the railway pushing and towing classification where the contract places the operation of the locomotive on the supplier. It also supports the view that a private or captive siding carrying goods can still be a 'railway' under the Railways Act definition. The ruling does not decide the rate for a plain hire of a locomotive without operator or crew, or for other railway-related service contracts, which the order says depend on their own terms. Its binding effect is limited by Sections 103 and 104(1), as the order itself states.

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 -> 10_wbaar_2019-20-industrial_handling.pdf

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