Indrajit Singh, carrying on business under the trade name M/s Maruti Enterprise (GSTIN 19ALGPS0094K1ZM)

Authority for Advance Ruling — West Bengal

07/WBAAR/2019-20 Dated **10.06.2019**

Q Questions Before the Authority

- Whether the applicant's conservancy and solid waste management service to the Howrah Municipal Corporation is exempt from GST under Sl No. 3 or 3A of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017.
- If so, whether the TDS notifications (Notification No. 50/2018-Central Tax dated 13/09/2018 and State Government Order No. 6284-F(Y) dated 28/09/2018) apply to the applicant's supply.

F Facts

The applicant provides conservancy and solid waste management services to the Conservancy Department of the Howrah Municipal Corporation. The work orders require him to lift and remove daily garbage from vats, dumping yards, containers and roadside locations, and to supply vehicles, drivers, labour and machinery, with the consideration measured by the quantity of garbage removed. The HMC nevertheless deducts TDS on payments under the TDS notifications.

H Ruling

Exemption of the applicant's supply to HMC for conservancy and solid waste management	**Exempt from GST under Sl No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017**	Applies because the supply is a pure service (no transfer of goods), the recipient is a local authority, and the activity falls under public health, sanitation, conservancy and solid waste management (Twelfth Schedule, Sl No. 6). Sl No. 3A was not applied.
Whether the TDS notifications apply to the applicant's supply	**Do not apply**	Section 51 and Notification No. 50/2018-Central Tax dated 13/09/2018 (and corresponding State notification and SGO No. 6284-F(Y) dated 28/09/2018) apply only to taxable supplies, so they are not applicable to an exempt supply, to the extent they deal with TDS.

The Authority held that the applicant's supply to the HMC is a **pure service** provided to a local authority in relation to a Municipality function under Article 243W, and is therefore exempt under Sl No. 3 of Notification No. 12/2017-Central Tax (Rate). Because the applicant makes an exempt supply, section 51 and the TDS notifications do not apply to his supply.

R Reasoning

The Authority relied on Circular No. 51/25/2018-GST dated 31/07/2018, which treats the earlier service tax

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exemption under Sl No. 25(a) of Notification No. 25/2012-Service Tax as substantially carried into Sl No. 3 and 3A of the GST exemption. It then examined three elements: whether the supply is a pure service or a composite supply with goods under 25%, whether the recipient is a government, local authority or governmental authority, and whether the activity relates to a function entrusted to a municipality under the Constitution. On the work orders, it found no transfer of goods, so the supply was a pure service. It held that the HMC is a local authority under section 2(69), and that conservancy and solid waste management are functions under Article 243W read with Sl No. 6 of the Twelfth Schedule. On TDS, it held that section 51(1) applies to taxable supplies only.

P Provisions Relied On

- Section 97(2)(b), Central/West Bengal GST Act, 2017 (admissibility)
- Section 100 (appeal reference)
- Section 2(69) (definition of local authority)
- Section 51 and section 51(1)(d) (TDS)
- Section 103 and section 104(1) (validity of ruling)
- Article 243W and Twelfth Schedule, Sl No. 6 (Constitution)
- Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017, Sl No. 3 and 3A (and corresponding State Notification No. 113…
- Notification No. 50/2018-Central Tax dated 13/09/2018 (and corresponding State Notification No. 1344-FT)
- State Government Order No. 6284-F(Y) dated 28/09/2018
- Circular No. 51/25/2018-GST dated 31/07/2018
- Notification No. 25/2012-Service Tax dated 20/06/2012, Sl No. 25(a) (referred to in the circular)

! For the Practitioner

This ruling is useful for municipal waste and conservancy contractors who supply pure services to urban local bodies, as it confirms exemption under Sl No. 3 and that TDS provisions do not apply to exempt supplies. It relies on the absence of any goods transfer, so contractors whose contracts involve material supply or composite elements above the 25% threshold should check Sl No. 3A and the work order terms separately. The order is a West Bengal ruling binding only on the applicant, and it does not decide the position for other recipients or for composite contracts.

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 -> 07_wbaar_2019-20-maruti_ent.pdf

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