Ex-servicemen Resettlement Society

Authority for Advance Ruling — West Bengal

35/WBAAR/2019-20 Dated **29.11.2019**

Q Questions Before the Authority

- Whether the Applicant is liable to pay GST on the portion of the payment received from the recipient on account of the bonus paid or payable to the persons it deploys as security personnel.

F Facts

The Applicant, a registered society, supplies security and scavenging services to State Government hospitals under agreements, classifying the security service under SAC 998525. Under the State Finance (Audit) Department's Memo No. 3790-F(Y) dated 21/07/2014, the monthly charge has a service charge (based on L1 bid, fixed for the contract period) and a security charge (minimum wages, plus ESI, EPF and bonus entitlements, varying with the minimum wages). The Applicant bills the minimum wages, employer's EPF and ESI portions and charges GST on that gross amount, but raises separate bonus bills, on which no GST is charged, following the Health and Family Welfare Memo No. HF/O/MS/273/W-148/2015 dated 28/10/2016 directing bonus at 8.33% per year.

H Ruling

Whether GST is payable on the portion of the payment received on account of bonus paid or payable to deployed security personnel	**Yes. The Applicant is liable to pay GST on that portion.**	No rate is stated in the ruling. The ruling is valid subject to Section 103 and until declared void under Section 104(1). The Authority did not address the rest of the security charge in terms.

The Authority ruled that the Applicant is liable to pay GST on the portion of the payment received on account of the bonus paid or payable to the security personnel it deploys. The bonus component is not treated as a non-taxable reimbursement of wages, because the security personnel are not employees of the recipient and the Applicant is their employer. The ruling is valid subject to Section 103 and until declared void under Section 104(1).

R Reasoning

The Authority classified the activity as security services under SAC 998525 and found that the security personnel are not employees of the State Government. The Applicant recruits, deploys and replaces them, and is their employer responsible for statutory dues including employer's EPF, ESI and bonus. Its right to pass these costs to the recipient under the agreement does not create a master-and-servant relationship between the recipient and the personnel, relying on Security Agencies Association vs Union of India (2013) 58 VST 295 (Kerala). Since the bonus is not paid by the recipient as an employer, the Authority held that the payment is not guided by Para 1 of Schedule III, so the bonus portion is a taxable supply.

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

P Provisions Relied On

- Section 97(2)(c) and (e) of the CGST/WBGST Act, 2017 (admissibility of advance ruling)
- Section 99 of the WBGST Act, 2017 (constitution of the Appellate Authority)
- Section 100(1), (2) and (3) of the CGST/WBGST Act, 2017 (appeal)
- Section 103 of the CGST/WBGST Act, 2017 (binding effect of ruling)
- Section 104(1) of the CGST/WBGST Act, 2017 (ruling declared void)
- Schedule III, Para 1 of the CGST/WBGST Act, 2017 (considered and held not applicable)
- SAC 998525 (security services, as classified by the Applicant)
- Memo No. 3790-F(Y) dated 21/07/2014, Finance (Audit) Department, Government of West Bengal
- Memo No. HF/O/MS/273/W-148/2015 dated 28/10/2016, Health and Family Welfare Department, Government of West Bengal
- Security Agencies Association vs Union of India (2013) 58 VST 295 (Kerala)

! For the Practitioner

This ruling is useful for manpower-based security or housekeeping contractors supplying government institutions who pass through bonus and statutory costs. It settles that bonus recovered from a recipient, where the contractor is the employer, is taxable and cannot be billed without GST simply because it is a statutory pass-through. It does not decide the GST rate, the valuation of the bonus component, or the treatment of the service charge or EPF and ESI components. As an advance ruling it binds only the Applicant and the jurisdiction, and it is open to appeal within the time limit under Section 100(2).

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 -> wb_aar_35_2019_29.11.2019_ers.pdf

Prepared 14-11-2026.

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