M/s Singh Transport Agency

Authority for Advance Ruling — West Bengal

29/WBAAR/2019-20 Dated **21.10.2019**

Q Questions Before the Authority

- Whether the applicant's conservancy and solid waste management service supplied 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 (corresponding State Notification No. 1136 - FT dated 28/06/2017), as amended.
- Whether, if the supply is exempt, the TDS Notifications (Notification No. 50/2018 - Central Tax dated 13/09/2018, corresponding State Notification No. 1344 - FT dated 13/09/2018, and State Government Order No. 6284 - F(Y) dated 28/09/2018) apply to the applicant's case.

F Facts

The applicant provides conservancy and solid waste management services to the Conservancy Department of the Howrah Municipal Corporation, under work orders requiring it to lift and remove daily garbage accumulated in vats, dumping yards, containers and other places on HMC roads and lanes. The HMC deducts TDS from the consideration it pays under the TDS Notifications, and the applicant seeks a ruling on both the GST exemption and the applicability of those notifications.

H Ruling

Exemption of conservancy and solid waste management supply to HMC	**Exempt under Sl No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017**	Applies to the supply described in para 3.5 of the order. The supply is treated as a pure service because the consideration measures only the quantity of garbage lifted and removed, with no transfer of goods. The function falls under item 6 of the Twelfth Schedule to Article 243W.
Applicability of the TDS Notifications to the applicant's case	**Do not apply to the applicant's supply**	Because the supply is exempt and not taxable, section 51 and the TDS Notifications do not apply, to the extent they mandate and deal with the mechanism of TDS.

The applicant's supply to HMC is a pure service and is exempt from GST under Sl No. 3 of Notification No. 12/2017 - Central Tax (Rate). Because the supply is exempt, the provisions of section 51 and the TDS Notifications do not apply to it, to the extent they deal with the mechanism of TDS.

R Reasoning

The Bench examined three conditions under Sl No. 3 and 3A: whether the supply is a pure service or a composite supply with goods under 25 per cent of value, whether the recipient is a government or local authority, and whether the activity relates to a function entrusted to a municipality under Article 243W. It found the recipient is a municipal corporation and therefore a local authority under section 2(69), and that the work orders and payment terms show a pure service, since no goods are transferred. It then relied on CBIC Circular No. 51/25/2018-GST

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

dated 31/07/2018, which treats the earlier service tax exemption at Sl No. 25(a) of Notification No. 25/2012 as continued in substance under Sl No. 3 and 3A. Since the supply is exempt, the Bench held that section 51(1), which allows a local authority to be mandated to deduct TDS on payments for taxable supplies, has no application.

P Provisions Relied On

- Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017, Sl No. 3 and Sl No. 3A (and corresponding State Notification…
- Section 2(69) of the GST Act (local authority)
- Article 243W of the Constitution and item 6 of the Twelfth Schedule
- Section 51 of the GST Act, including section 51(1) and section 51(1)(d)
- Notification No. 50/2018 - Central Tax dated 13/09/2018 (State Notification No. 1344 - FT dated 13/09/2018)
- 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, Sl No. 25(a) (as referred to in the circular)
- Section 97(2)(b), section 100(1), section 103 and section 104(1) of the GST Act (admissibility, appealability and validity of the…

! For the Practitioner

This order is useful for conservancy and solid waste contractors who supply pure services to municipal bodies, as it confirms that Sl No. 3 of the exemption notification can apply to garbage lifting work and that such exempt supplies fall outside the TDS regime under section 51. It supports the position that a contractor should not be subjected to TDS on exempt supplies. The order is a state AAR ruling binding only on the applicant, and it does not decide the position for composite contracts where goods exceed the 25 per cent threshold, nor the treatment of other municipal functions outside the Twelfth Schedule.

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_29_2019_21.10.2019_sta.pdf

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