M/s Mahendra Roy

Authority for Advance Ruling — West Bengal

24/WBAAR/2019-20 Dated **23.09.2019**

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 the TDS notifications, namely 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 supply.

F Facts

The Applicant provides conservancy and solid waste management services to the Conservancy Department of the Howrah Municipal Corporation under work orders. The work involves lifting and removing daily garbage from vats, dumping yards, containers and roads, and the Applicant must supply vehicles, payloaders with drivers, labour, machinery and fuel. The HMC is deducting TDS from payments under the 2018 TDS notifications, and the Applicant asks whether the supply is exempt and whether those notifications apply.

H Ruling

Exemption of the supply to HMC under Sl No. 3 or 3A of Notification No. 12/2017 - CT (Rate)	**Exempt from GST under Sl No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017**	**Exemption rests on the supply being a pure service**, with no supply of goods in executing the work. The ruling relies on Sl No. 3 only and does not separately rule on Sl No. 3A.
Applicability of section 51 and TDS notifications (Notification No. 50/2018 - CT and SGO 6284 - F(Y))	**Do not apply to the Applicant's supply**	**Applicant is making an exempt supply, so TDS under section 51 is not triggered.** The bar applies to the TDS mechanism in those notifications and order.

The Authority held that the Applicant's supply to HMC is a pure service, is exempt from GST under Sl No. 3 of Notification No. 12/2017 - Central Tax (Rate), and is a function under Sl No. 6 of the Twelfth Schedule. Because the supply is exempt and not taxable, section 51 and the TDS notifications, including Notification No. 50/2018 and SGO 6284 - F(Y), do not apply to it.

R Reasoning

The Authority examined three limbs: whether the supply is pure service or a composite supply with goods not exceeding 25 per cent, whether the recipient is a government or local authority, and whether the activity relates to a function entrusted to a municipality. It found that the work orders measure payment only by quantity of garbage lifted, with no transfer of property in goods, so the supply is a pure service. HMC is a municipal corporation and

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therefore a local authority under section 2(69), and solid waste management and conservancy fall within Sl No. 6 of the Twelfth Schedule to Article 243W. The Authority relied on CBEC Circular No. 51/25/2018-GST dated 31/07/2018 as continuing the earlier service tax exemption. Since section 51(1) permits TDS only on payments for taxable supplies, the TDS notifications do not apply to an exempt supply.

P Provisions Relied On

- Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017, Sl No. 3 (and Sl No. 3A, considered)
- Corresponding State Notification No. 1136 - FT dated 28/06/2017
- Notification No. 50/2018 - Central Tax dated 13/09/2018
- Corresponding State Notification No. 1344 - FT dated 13/09/2018
- State Government Order No. 6284 - F(Y) dated 28/09/2018
- Section 51 of the GST Act, including section 51(1) and 51(1)(d)
- Section 2(69) of the GST Act (local authority)
- Section 97(2)(b) of the GST Act (admissibility)
- Section 103 and section 104(1) of the GST Act (binding effect and voidness)
- Article 243W of the Constitution and Twelfth Schedule, Sl No. 6
- CBEC Circular No. 51/25/2018-GST dated 31/07/2018

! For the Practitioner

This ruling helps municipal contractors who supply labour, vehicles and machinery for garbage and conservancy work on a pure service basis, since it treats such supplies as exempt under Sl No. 3 and removes TDS exposure under section 51. It rests on the work orders showing no transfer of goods and payment measured by quantity, so a contractor with a goods element or a different contract structure should check the facts against the order. It does not decide the position for composite supplies where goods exceed 25 per cent of value, and it does not address whether Sl No. 3A would independently apply.

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_24_2019-20_mahendra_roy_23.09.19.pdf

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