West Bengal Medical Services Corporation Ltd

Authority for Advance Ruling — West Bengal

22/WBAAR/2019-20 Dated **09.09.2019**

Q Questions Before the Authority

- Whether the Applicant, a body set up by the State Government to manage procurement of drugs and equipment for medical colleges and hospitals and the construction and maintenance of health facilities, is a governmental authority under para 2(zf) of Notification 12/2017-CT(Rate) and the corresponding WB notification, and is therefore exempt under Sl No. 3, 3A, 4 or 5 on the administrative cost it charges as consideration for management services.

F Facts

The Applicant was set up by a West Bengal Health & Family Welfare Department notification as a fully owned entity to manage procurement of drugs and equipment and the construction and maintenance of health facilities. It acts as a canalising agency, receives project funds from the Department, and charges an administrative cost as a percentage of the vetted project or procurement cost under a 2011 Department notification. It treats that administrative cost as consideration for pure management services.

H Ruling

Exemption for the Applicant's services (administrative cost) under the Exemption Notification	**Exempt under Sl No. 5 of Notification 12/2017-CT(Rate) and the WB notification 1136-FT, as amended**	Limited to services in relation to establishment and maintenance of hospitals and similar health facilities. No invoice or work order was produced, so the specific activity billed was not ascertained.

The Authority held that the Applicant is a governmental authority under para 2(zf) because it is a body established by a State Government notification with 100 per cent equity and control, carrying out a function entrusted to a Panchayat under Sl No. 23 of the Eleventh Schedule. It further held that the Applicant is eligible for exemption under Sl No. 5 on any service, including works contract services whatever the proportion of goods, in relation to establishment and maintenance of hospitals and similar health facilities.

R Reasoning

The Authority held that the admissibility question fell within section 97(2)(b), since it concerned the applicability of an exemption entry, and not the rate of tax. It read the Eleventh Schedule, Sl No. 23 (health and sanitation), together with the West Bengal Panchayat Act, 1973, as covering establishment and maintenance of hospitals and dispensaries. It held that managing procurement and construction of health facilities falls within that function. It rejected the Revenue's reliance on Hindustan Steel and the CBEC Education Guide, and relied on Circular 51/25/2018-GST, which treats the phrase 'in relation to any function' as relating to the nature of the service rather than the identity of the provider. The order also states that Sl No. 4 and 5 extend the exemption to any recipient,

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

so the Applicant's recipient need not be a Panchayat or Municipality.

P Provisions Relied On

Section 97(2)(b) of the CGST/WBGST Act, 2017	Section 103 and Section 104(1) of the GST Act
Notification 12/2017-CT(Rate) dated 28.06.2017, Sl No. 3, 3A, 4 and 5, and para 2(zf)	
WB Government Gazette Notification 1136-FT dated 28.06.2017	
Article 243G and Eleventh Schedule Sl No. 23 of the Constitution	
Article 243W of the Constitution	West Bengal Panchayat Act, 1973, s.153(1)(a) and s.2(15b)
CBEC Circular No. 51/25/2018-GST dated 31.07.2018	
Notification 25/2012-ST dated 20.06.2012, Sl No. 25(a) (service tax)	
Hindustan Steel (AIR 1970 SC 1150), relied on by the Revenue and not accepted	

! For the Practitioner

A practitioner can cite this ruling for the proposition that a State-created procurement or health infrastructure body may be a governmental authority under para 2(zf), and that services relating to hospitals and health facilities can qualify under Sl No. 5 regardless of recipient. It is useful where a similar body charges administrative or management fees. The ruling does not decide the valuation split between goods and services, and the Revenue's point on the 25 per cent goods share was left unresolved. It also does not bind any other State or cover activities for which no invoice or work order has been examined.

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_22_2019-20_wbmscl_09.09.19.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com