

**WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015**
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	EXSERVICEMEN RESETTLEMENT SOCIETY
Address	9A, BEPARITOLA LANE KOLKATA 700072 WEST BENGAL
GSTIN	19AAAAE1552E1Z4
Case Number	10 of 2021
ARN	AD190621003012T
Date of application	July 05, 2021
Order number and date	09/WBAAR/2021-22 dated 30/09/2021
Applicant's representative heard	NIRMAL DHAOA, Applicant

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be a registered society providing security services and scavenging services (Karma Bandhus) to different Medical Colleges & Hospital, District Hospitals and other hospitals of Government of West Bengal.

1.3 It is submitted by the applicant that as per labour laws of Government of West Bengal, the applicant claims Minimum Wage + Employer Portion of EPF @ 13% + ESI @ 3.25% and charges tax @ 18% leviable under the GST Act on gross bill amount in every month for providing security & Karma Bandhus (Scavenging) services to the Government Hospitals.

1.4 However, the Audit Authority (Indian Audit and Accounts Department, West Bengal) in course of audit of Bankura Sammilani Medical College & Hospital, has raised objection of excess payment of GST upon observation that 'GST' to be payable only on Management Fees/Services Charges.

1.5 Further, few hospital have raised objection that since employer portion of EPF & ESI amount are deposited to respective authority (i.e. EPF & ESIC), the amount of EPF & ESIC should be exempted from paying GST.

1.6 Under these circumstances, the applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (i) *Whether GST to be payable on Management Fee/Administrative charges only or otherwise complete billing amount?*
- (ii) *Whether employer portion of EPF & ESI amount of the bill are exempted for paying GST?*

1.7 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant has appeared for personal hearing proceedings and reiterated the submissions as narrated above.

2.2 The applicant argues that as per labour laws of Govt. of WB, this society is claiming Minimum Wage + Employer Portion of EPF (13%), ESI (3.25%) and is paying GST @18% on gross bill amount in every month for providing Security & Karma Bandhus (Scavenging) services to the Govt Hospitals.

2.3 Medical Colleges & Hospital, District Hospitals and other Hospitals of Govt of WB, on capacity of recipient, sanction above mentioned bill amount through Pay & Accounts/Treasury. The applicant disburses the same amount to their employees (Security Guards) through bank payment. EPF, ESI & CGST/SGST are deposited through e-challan.

2.4 In course of personal hearing, the applicant has furnished following documents in support of his submission:

- A copy of letter dated 04.03.2004 issued by the Department of Health & Family Welfare, M.A. Branch, Government of West Bengal which is stated by the Applicant as the initial Work Order for providing security personnel to various Medical College & Hospital;
- A copy of letter dated 18.05.2015 issued by the Department of Health & Family Welfare, M.A. Branch, Government of West Bengal on the subject matter of 'Engagement of Ex-servicemen through ERS (Ex-servicemen Resettlement Society) for providing security services at different Second Tier Govt. Hospital;
- Copy of work order for extension of security services at B.S. Medical College & Hospital, Bankura;
- Photocopy of bill issued by the Applicant to Bankura Sammilani Medical College & Hospital for the months of June'20 and June'21 showing tax is charged on entire billing amount;
- Copy of Bank Statement;
- A print out of relevant pages (only two pages) of e-Tender for security services for Lady Dufferin Victoria Hospital under Memo No. LDVH/2021/828 dated 12.05.2021 where GST on 'Management Fee' has been specified.

2.5 The applicant has reiterated that few hospitals have again raised objection that employer portion of EPF & ESI amount are deposited to respective authority (i.e. EPF & ESIC). So the amount of EPF & ESIC should be exempted from paying GST.

3. Submission of the Revenue

The concerned officer from the revenue has expressed his view in writing which is reproduced verbatim as under:

3.1 The valuation aspect under GST era is dealt with only one section i.e. section 15 under the CGST Act and there is a separate chapter i.e. chapter IV in name of "Determination of Value of Supply" containing rules 27 to 35 under the CGST Rules.

Now sub. Sec. 15(1) of CGST Act 2017 very categorically states that:

"The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply".

3.2 Further, sub-section (2) of section 15 of the CGST Act 2017 even more clearly states that

"(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods

and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.”

3.3 Hence as per opinion of the undersigned it is crystal clear that for the purpose of valuation one has to take the total value as indicated in the Invoice / Bill.

3.4 It is submitted that only Management Fees / Administrative charges consists the taxable amount is merely a presumption and not backed by any law. Further the objection of Audit also fails to refer any legal provision, what so ever, to justify their objection. The only point of their argument was that in the e-tender there was a clause of Management Fees / Administrative charges [4th Para of the Audit Query, attached by the applicant]. But the condition of an e-tender cannot be the basis of determining the assessable value under any Tax Law. The said assessable value must be defined by specific provision of law. And as discussed above that specific provision of law clearly speaks that the entire amount shown in the invoice excluding the CGST / SGST or IGST part, as the case may be, is the assessable / taxable value.

3.5 Regarding the point of inclusion of employer's contribution towards EPF & ESI separately indicated in the bill, the submission of the undersigned is that, sub-section (2) of section 15 of the CGST Act 2017 (supra) categorically clarifies that each and every component of the invoice, except GST taxes, must form a part of the taxable value. Hence there is no ambiguity that EPF & ESI amount shown in the bill has to be included in the taxable value to calculate the GST liability.

3.6 Further both the EPF & ESI contribution amount, stated ibid, have nothing to do with the recipient of the service or the supplier of the service. These are the amount related to the employee of the supplier of the service. The role of the supplier of the service is nothing but collector cum depositor of the stated amount to specific Govt. exchequer. Now in the course of business the supplier of the service has received this amount from the recipient of the service in lieu of providing service. Hence, whatever the use of the said amount may be, it must be taxable as per laws stated above.

3.7 In this regard, the undersigned prefers to make reference towards advance ruling given by the Ld. Advance Ruling Bench of Karnataka [Advance Ruling No. KAR ADRG 02/2021 dated 29/01/2021] where though the factum was a bit different but the principle was the same and the observation was as under (in the order part),

“The value of the taxable supply of the manpower services is the transaction value equivalent to the bill amount ...”.

3.8 On the basis of argument supra the undersigned is most respectfully making the following submission:

“The taxable value in this case is the entire billing amount inclusive of the EPF & ESIs amounts and any other amount(s) in whatever form or in whatever nomenclature it may be described, except the tax parts under the GST Acts.”

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the Revenue.

4.2 The applicant submits that he is engaged in providing security services and scavenging services to various Medical College and hospitals for which he charges the amount to be paid to the guards as per Minimum Wages Act. The issue involved in the instant case, as we find, is to decide the value of supply in respect of the supply of the services on which the applicant is liable to pay tax under the GST Act.

4.3 The applicant has produced photocopies of some tax invoices issued by the applicant wherein SAC of the services provided by the Applicant is found to be 998525 which is taxable @ 18% (CGST @ 9% + WBGST @ 9%) vide entry serial number 23 of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time [corresponding W.B. State Notification No. 1135 F.T. dated 28.06.2017, as amended from time to time]. The same is not disputed.

4.4 Levy and collection of tax under the GST Act has been specified in section 9 of the GST Act and section 5 of the Integrated Goods and Services Tax Act, 2017. Sub-section (1) of section 9 of the GST Act reads as follows:

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

Sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 reads as under:

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

4.5 It follows from above that except in cases of integrated tax on goods imported into India, tax under the GST Act as well as IGST Act shall be levied on the value determined under section 15 of the GST Act.

4.6 For the sake of convenience and further discussion, relevant portion of section 15 is reproduced herein under:

"15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*
- (b) after the supply has been effected, if—*
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply."*

4.7 It transpires from the above-noted provisions of the Act that while sub-section (2) of section 15 clearly specifies the elements that will form a part of value of supply, sub-section (3) of section 15 excludes the elements that are not to be included in the value of supply.

4.8 The aforesaid provisions of the Act leave no room to deduct any amount like management fee, employer portion of EPF and ESI for the purpose of determination of value of supply under section 15 of the GST Act meaning thereby in the instant case, tax is leviable under section 9 of the Act ibid on the entire billing amount.

In view of the above discussions, we rule as under:

RULING

Question: Whether GST to be payable on Management Fee/Administrative charges only or otherwise complete billing amount?

Answer: GST is payable on total value of supply, as discussed.

Question: Whether employer portion of EPF & ESI amount of the bill are exempted for paying GST?

Answer: Answered in the negative.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

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