

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)

Members present:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX 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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	DREDGING AND DESILTATION COMPANY PRIVATE LIMITED
Address	2 nd Floor, 167, Old China Bazar Street, Kolkata – 700001.
GSTIN	19AABCD0790Q1Z5
Case Number	WBAAR 25 of 2023
ARN	AD1909230042538
Date of application	September 18 th , 2023
Jurisdictional Authority (State)	Burrabazar Circle, N.S. Road Charge
Jurisdictional Authority (Central)	BBD Bag I Division, Kolkata North Commissionerate
Order number and date	26 /WBAAR/2023-24 dated 20.12.2023
Applicant’s representative heard	Mr. Sumit Nishania, Authorized Representative

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 submits that he has been rewarded work order by Government of Delhi (Irrigation and Flood Control Department) for "dredging in Najafgarh Drain from RD. 5800m near Ghumanhera Bridge to RD. 13000 m near Jhatikar Bridge" and the applicant has entered into a contract with the concerned department of Government of Delhi for the execution of above-mentioned work.

1.3 The applicant submits that the said work includes the provision for desilting/ removal of silt/ earth/ manure/ sludge etc. from the bed of Najafgarh Drain in entire width of Najafgarh Drain including in or under foul condition up to desired level as per direction of the Engineer-in-Charge using suitable and adequate and latest technology machinery without obstructing the flow of drain. This also includes leveling and dressing of stacking area on the bank/ berm and construction of dykes within the reach if required for drying, disposal of excavated silt/ earth/ manure/ sludge etc. within the reach as per directions of Engineer-in-Charge within lead of 08 kms. The desilted/ excavated material is to be taken away by agency for environmental safe disposal at his direction with all lead and lift.

1.4 The applicant further submits that that the contract constitutes mainly of dredging and earthwork excavation which is pure service work and the cost of material transferred and consumed for execution and completion of the works contract is less than 5 (five) percent of the total work order value.

1.5 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:

- 1) Whether Government of Delhi – Irrigation and Flood Control Department comes under the purview of Union Territory?
- 2) Will our supply be covered under Sl. No. 3 of Notification No. 9/ 2017 Integrated Tax (Rate) dated 28.06.2017- or Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time?
- 3) What will be the rate of GST in our case?

1.6 An applicant desirous of obtaining an advance ruling is required to file an application on

the common portal in FORM GST ARA-01 in respect of subject matter as specified in sub-section (2) of section 97 of the GST Act. However, the question raised by the applicant under serial number (1) is found not to be covered under any of the clauses of the said sub-section.

1.7 The questions under serial number (2) and (3) on which the advance ruling is sought for is found to be covered under clause (b) and (e) of sub-section (2) of section 97 of the GST Act.

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

1.9 The officer concerned from the revenue has raised no objection to the admission of the application.

1.10 The application is, therefore, admitted in respect of question number (2) and (3) only.

Submission of the Applicant

2.1 The applicant submits that the work being undertaken by him pursuant to the contract made with the Irrigation and Flood Control Department, which is a department of the Government of National Capital Territory of Delhi. The applicant further submits that the Tender Contract has been signed by the authorized signatories of "Irrigation and Flood Control Department, Government of NCT of Delhi" and that it also clearly states that the tender is for "execution of the work specified for the President of India". The applicant contends that supply made to the Irrigation and Flood Control Department must imply supply made to the Government of Delhi, which is a Union Territory.

2.2 The applicant submits further that the powers and functions of the Irrigation and Flood Control Department include the following:

- (a) Protecting the city of Delhi from floods in River Yamuna, by construction, strengthening and maintenance of marginal embankments including planning execution and maintenance of flood protection & river training works.
- (b) Protecting the city of Delhi against floods in Sahibi Nadi-Najafgarh Nallah basin by maintenance of Dhansa Bund, Najafgarh Drain and construction of a new drain called Supplementary Drain.
- (c) To provide drainage to Delhi area through various trunk storm-water drains having more than 1000 cusecs capacity.
- (d) Effective monitoring of the flood situation in the river basin during floods and to

take all precautionary/ preventive measures to avoid any untoward situation including emergent flood protection/ flood fighting measures, if such a situation arises.

- (e) To provide irrigation facilities to the cultivators of Delhi through State Tube Wells, and to provide treated effluents water (available from various Sewerage Treatment Plants at Okhla, Keshopur & Coronation Pillar) for farming.

2.3 Besides the above main functions, Irrigation & Flood Control Department is also entrusted with planning and execution of various types of civil works to be executed on behalf of different Departments of Government of Delhi such as Rural Development, SC/ST works, DUDA, Panchayat, Trans Yamuna Area Development Board, U.D. Deptt., Wild Life and Forest, Horticulture etc.

2.4 According to the applicant, the scope of work falls within the ambit of matter listed at Sl. No. 29 of Schedule Eleven of Article 243 G of the Constitution of India, i.e. "Maintenance of community assets". Maintenance of a drainage system also constitutes maintenance of community assets.

2.5 The applicant further submits that the scope of work is also in relation to matter listed at Sl. No. 6 of the Twelfth Schedule of 243 W of the Constitution of India, i.e. "Public health sanitation conservancy and solid waste management". Any cleaning or desiltation activity carried out in the Najafgarh Drain constitutes Public Health, Sanitation Conservancy and Solid Waste Management.

2.6 The applicant also contends that that the contract constitutes mainly of dredging and earthwork excavation which is pure service work and the cost of material transferred and consumed for execution and completion of the work will be less than 5% (Five percent) of the total work value, if any required.

2.7 In support of his argument, the applicant has placed his reliance on the following advance rulings:

- Order No. 04/WBAAR/2019-20 dated 10/06/2019 in case of Arihant Dredging Developers Pvt. Ltd.
- Order No. 05/WBAAR/2019-20 dated 10/06/2019 in case of Neo Built Corporation
- Order No. MAH/AAAR/SS-RJ/21/2019-20 dated 20/01/2020 in case of Soma Mohite Joint Venture
- Order No 03/WBAAR/2019-20 dated 10/06/2019 in the case of Dredging and Desiltation Company Private Limited.

Submission of the Revenue

3.1 The officer concerned from the revenue has not expressed any view in this regard.

Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during the course of personal hearing.

4.2 We find from the documents produced before us in course of personal hearing that the applicant has been intimated by the Office of the Executive Engineer, Civil Division No. I, I & FC Department, Government of NCT of Delhi in respect of acceptance of tender on behalf of the President of India. The tender is related to the work for removal of hump (silt/ earth/ manure/ sludge etc.) by dredging from Khyala Bridge D/S RD (41980m) to Basaidarapur Bridge (RD 45350m) at Najafgarh Drain. The work of removal of silt/ earth/ manure/ sludge etc. is to be carried out from the bed of Najafgarh Drain in entire width of Najafgarh Drain including in or under foul condition up to desired level using suitable, adequate and latest technology machinery without obstructing the flow of drain. This also includes leveling and dressing of stacking area on the bank/ berm and construction of dykes within the reach if required for drying, disposal of excavated silt/ earth/ manure/ sludge etc. within the reach within lead of 08 kms. The desilted/ excavated material is to be taken away by agency for environmental safe disposal with all lead and lift.

4.3 The applicant, in the instant case, undertakes the work of desilting and cleaning of Najafgarh Drain. We find from the website of Wikipedia that the Najafgarh drain or Najafgarh nalah (*nalah* in Hindi means rivulet or storm water drain), which also acts as Najafgarh drain bird sanctuary, is another name for the northernmost end of River Sahibi, which continues its flow through Delhi, where it is channelized, and then flows into the Yamuna. Basis on above, we find it relevant to examine first whether the activities of desilting and cleaning of the drain falls under the purview of "Public health sanitation conservancy and solid waste management" listed at serial number 6 of the Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992].

4.4 The Oxford Dictionary defines 'Sanitation' as conditions relating to public health, especially the provision of clean drinking water and adequate sewage disposal. And term 'Conservancy' has been defined in the Oxford Dictionary as, a body concerned with the preservation of natural resources or the conservation of wildlife and environment. Hence the term 'sanitation conservancy' should refer to a body which performs services (or refer to the services) which are concerned with regard to maintaining sanitation services for e.g.,

provision of clean drinking water, sewage disposal etc.

A report by World Health Organization has defined 'Sanitation' as a 'big idea' which covers inter alia:

- Safe collection, storage, treatment and disposal/reuse/recycling of human excreta (faeces and urine);
- Management/reuse/recycling of solid wastes (trash or rubbish);
- Drainage and disposal/reuse/recycling of household water (often referred to as sullage or grey water);
- Drainage of storm water;
- Treatment of disposal/reuse/recycling of sewage effluents;

[Source: scribd.com]

4.5 On going through the nature and scope of work being undertaken by the applicant, we are of the view that the instant work falls within the ambit of matter listed at Sl. No. 6 of the Twelfth Schedule of 243 W of the Constitution of India, i.e. "Public health sanitation conservancy and solid waste management".

4.6 The records submitted by the applicant also includes certificate dated 07.08.2023 under No. F.22(112)/2022-23/AB-CD-I/3890 issued by the Executive Engineer, Civil Division-I, Irrigation & Flood Control Department, Government of NCT of Delhi, New Delhi, wherein he has certified that "the works contract constitutes mainly of dredging and earthwork excavation which is pure service work and the cost of material transferred and consumed for execution and completion of the work contract is less than 5 (five) percent of the total work order value, if any required". This clearly establishes that there is an element of goods also in the supply, although in a small percentage.

4.7 Therefore, the instant supply is found to be a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

4.8 Now, entry at Sl No. 3A of Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.2017, as amended [Sl. No. 3A of Notification No. 12/2017-Central Tax (rate) dated 28.06.2017, as amended] describes that *Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any*

function entrusted to a Municipality under article 243W of the Constitution is exempted. We therefore hold that the instant supply made by the applicant to Government of NCT of Delhi shall be covered under the aforesaid entry.

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

RULING

Supply of services being undertaken by the applicant for removal of hump (silt/ earth/ manure/ sludge etc.) by dredging at Najafgarh Drain as awarded by the Irrigation and Flood Control Department, Government of Delhi shall be covered under Sl. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 and therefore shall be exempted from payment of tax.

(Dr.TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 20th December, 2023

To,

Dredging and Desiltation Company Private Limited.,

2nd Floor, 167, Old China Bazar Street, Kolkata – 700001

Copy to:

(1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B. Connector,
Kolkata-7000107

(2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015

(3) The JCCT, N.S. Road Charge, 14, Beliaghata Road, Kolkata-700015

(4) Office Folder