

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, Additional 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	SHYAMA CHATTERJEE
Address	995, NABAPALLY CIRCULAR ROAD, P.O. NABAPALLY, BARASAT, North Twenty Four Parganas, Pincode- 700126
GSTIN	19ACRPC3592J2Z2
Case Number	WBAAR 02 of 2024
ARN	AD190124013307G
Date of application	January 25, 2024
Jurisdictional authority (State)	Barasat Charge
Jurisdictional authority (Centre)	Barasat Division
Order number and date	03 /WBAAR/2024-25 dated 29.07.2024
Applicant's representative heard	Mr. Sisir kumar Basak, Advocate Mr. Writajo Chatterjee, Advocate

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 awarded several contracts from different local bodies/municipalities for survey, design, drawing, estimate and preparation of comprehensive plan related to water supply schemes, undertaken by those local bodies/municipalities.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling whether the works being undertaken by the applicant can be classified as ‘Pure Service’ as specified in serial number 3 of the Notification No. 12/2017 – Central tax (Rate) dated 28.06.2017.

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (b) 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, being a proprietorship concern, carries on business under the trade name of ‘SETECH INDIA’ has received the following works which are detailed below: -

- a. Work order of collection of information and micro-planning on safe drinking water, waste water management, rejuvenation of water bodies and rain water harvesting within 12 numbers of urban local bodies under Cluster 1 (Cooch Behar, Alipurduar and Jalpaiguri District) of the State of West Bengal (State Mission Director, AMRUT. Adress: ILGUS Bhawan Campus, HC Block SecIII, Bidhannagar, Kol- 700106)
- b. Survey, design, drawing, estimate and preparation of comprehensive ground water/ surface based DPR (Detailed Project Report) for Taki Municipal Area under AMRUT 2.0. (Office of the Municipal Councillors of Taki, Address:- P.O. Taki, District North 24 Parganas).

- c. Work for survey, design, drawing, estimation and preparation of comprehensive ground water based DPR (Detailed Project Report) for Ramjibonpur Municipal Area (Augmentation Work) under AMRUT 2.0. (Office of The Municipal Councillors of Ramjibonpur, Adress:- P.O. Ramjibonpur, District:- Paschim Medinipur, Pin-721242).
- d. Work Order for survey and preparation of Detailed Project Report for rural water supply schemes against 169 No. of new PWSS for left out HH for Office of the Executive Engineer (Golaghat Division, Govt. of Assam).
- e. Work Order for Preparation of DPR (Detailed Project Report) for Four Multi Village Rural Water Supply Scheme of District – Alirajpur (Madhya Pradesh Jal Nigam Maryadit, “D” Wing, 2nd Floor, Vindhyachal Bhawan, Bhopal – 462004).
- f. Work Order for Preparation of Detailed Project Report of the body under AMRUT 2.0. (Office of the Municipal Council Ajaygarh District – Panna, Madhya Pradesh.)
- g. Work Order for Preparation of Detailed Project Report for Implementation of AMRUT 2.0. under Municipal Council Budhar (Office of the Municipal Council Burhar District – Shahdol, Madhya Pradesh.)
- h. Work Order of Examination and analysis of water and submission of report for ASN, RNG, STN, BRR and CRJ stations to assess the water consumption, waste water generation pattern, complete water balance of the facilities, water saving opportunities, water used and conservation. (Eastern Railway, Asansol Division. Asansol)

2.2 The applicant submits that the supply in respect of the work orders mentioned as above is exempted from payment of tax in terms of entry number 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017, as amended, which reads as under:

- *Pure services (excluding works contract service or other composite supplies involving supply of any goods) 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.*

2.3 The scope of work as Micro Planning Organization for collecting of information and micro planning on safe drinking water, water waste management, rejuvenation of water bodies and rain water harvesting under 12 nos of urban bodies in Coochbehar, Jalpaiguri

and Alipurduar districts is as follows:

#### Water supply

- ✓ To examine this as is situation of existing drinking water source including piped water supply.
- ✓ Existing infrastructure analysis with depreciation of the same from all sources including piped water supply
- ✓ Gap Analysis of existing infrastructure and supply
- ✓ Micro plan to achieve 100% coverage detailed the gap probable source & methodology

#### Waste water Management

- ✓ To examine this as is situation of existing waste water management system including sewerage, septage and drainage infrastructure
- ✓ Existing infrastructure analysis with depreciation of the same
- ✓ Gap Analysis of existing infrastructure and service (manual/mechanical)
- ✓ Micro plan to introduce rain water harvesting system highlighting latest technology

#### Rejuvenation of water Bodies

- ✓ To examine the as is situation of existing water bodies
- ✓ Detailed list of water bodies need to be rejuvenated

#### Rain Water Harvesting

- ✓ To examine this as is situation of existing rain water harvesting system and technology
- ✓ Detailed list of points where rain water harvesting system installed.

2.4 The scope of work as survey, design, drawing, estimate and preparation of comprehensive ground water/surface based DPR for Taki Municipal Area is as follows:

- ✓ Agency to conduct data collection, validation, coordination, follows up with the ULBs staff/MED/KMDA and all the data must be collected from the ULBs as per the survey format to be prepared in consultation with AMRUT directorate.
- ✓ Survey and investigation and alignment for proposed water pipe line route survey work including contour using total station instrument & auto level machine for Taki municipal area covering the entire site shall be conducted in view of ground realities with geo reference collection of existing data which has been provided by the Urban Local Bodies & preparation of drawing after design of distribution pipe network & clear water rising using water gem or other appropriate software.
- ✓ Preparation of cost estimate for distribution pipeline & rising main including permanent road restoration
- ✓ Testing of water from existing DTW or other means and proposing the requisite number and their location to cater the demand for an interim measure until PHED

supply treated water to the CWR.

2.5 The scope of work as survey, design, drawing, estimate and preparation of comprehensive ground water/surface based DPR for Ramjibonpur municipal Area is as under:

- ✓ Agency to conduct data collection, validation as survey format
- ✓ Survey and investigation and alignment for proposed water pipe line route survey work including contour using total station instrument & auto level machine for Taki municipal area covering the entire site shall be conducted in view of ground realities with geo reference collection of existing data which has been provided by the Urban Local Bodies & preparation of drawing after design of distribution pipe network & clear water rising using water gem or other appropriate software.
- ✓ Preparation cost estimate for distribution pipe line & raising main including permanent road restoration
- ✓ Proper zoning of OHR in the distribution network drawing and design of its capacity
- ✓ Designing of capacity of pump at OHR and its cost estimate for vetting from the competent authority.

2.6 The scope of work, awarded by Golaghat division of PHE, Govt of Assam encompasses survey and preparation of detailed project report for rural water supply schemes against 169 nos of new PWSS.

2.7 The scope of work, awarded by Madhya Pradesh Jal Nigam Marydit (A Govt of Madhya Pradesh Undertaking) is to prepare detailed project reports of four schemes, namely of 'A-35" Dabadi Multi Village Rural Water Supply scheme; 'A-36" Vegalgaon- Sagbara Sumniyawant Multi Village Rural Water Supply scheme; 'A-37" Sagota-Sejawada-Hirapur Multi Village Rural Water Supply scheme; 'A-38" Ramsingh ki Chouki-Daberi-Ghongnya Multi Village Rural Water Supply scheme.

2.8 The scope of work, awarded by Directorate of Urban Administration and Development, Govt of Madhya Pradesh is to prepare detailed project reports related to water supply, sewerage including reuse of waste water, rejuvenation of water bodies and green spaces projects in various cities of Madhya Pradesh, under Jal Jivan Mission (Urban).

### **3. Submission of the Revenue**

The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

#### **4. Observations & Findings of the Authority**

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

4.2 As the question of the applicant pertains to serial No. 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 [corresponding State Notification No. 1136 F.T. dated 28.06.2017] , the following criteria needs to be examined in order to decide whether the services provided by the applicant are eligible for exemption under the aforesaid serial number or not:

- (i) whether the instant supply of services can be treated as pure services;
- (ii) whether the applicant provides services to the Central Government, State Government or Union Territory or local authority or a Governmental authority; and
- (iii) whether the said services are in relation to any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution of India.

4.3 The term 'pure services' has not been defined under the GST Act. However, a bare reading of the description of services as specified in serial number 3 of the Notification No. 12/2017 CT(R) dated 28.06.2017 [corresponding State Notification No. 1136 F.T. dated 28.06.2017] denotes that supply of services which does not involve any supply of goods can be regarded as pure services. The said entry, therefore, specifically excludes works contract services or other composite supplies involving supply of any goods since 'works contract' as defined in clause (119) of section 2 of the GST Act necessarily involves transfer of property in goods (whether as goods or in some other form).

4.4 The applicant has submitted that the scope of work as executed by him towards survey, design, drawing, estimate and preparation of detailed report in respect of water supply schemes in rural or municipalities areas, doesn't involve any supply of goods. In support of his submission, the applicant has submitted samples copies of five (5) work orders issued by the Taki Municipality, Ramjibonpur Municipality, Golaghat division of PHE, Govt of Assam, Madhya Pradesh Jal Nigam Maryadit (A Govt of Madhya Pradesh Undertaking), Directorate of Urban Administration and Development, Govt of Madhya Pradesh and State Mission director, Amrut, West Bengal. On going through the work schedule, it prima facie appears that the scope of work involves survey, design, drawing, estimate and preparation of detailed report in respect of water supply schemes which doesn't involve any supply of goods. We thus hold that the supply being provided by the applicant can be regarded as pure services.

4.5 Now we proceed to examine whether such pure services being provided by the applicant satisfies the condition as specified in serial number 3 of the exemption notification supra in respect of the status of the recipient. The applicant has made supplies to the Taki and Ramjibon Municipalities in West Bengal, Directorate of Public Health Engineering, Government of Assam, State Mission Director, Amrut, West Bengal and Madhya Pradesh Jal Nigam Maryadit (A Govt of Madhya Pradesh Undertaking).

4.6 Clause (b) of sub section 69 of section 2 of the GST Act, 2017 defines “Local Authority” to mean “a Municipality as defined in clause (e) of the article 243P of the Constitution.” Thus, supplies made to Taki and Ramjibon Municipalities in West Bengal qualifies to be a supply made to a local authority. Further, supplies made to the Public Health Engineering, Government of Assam is a supply made to the State Government.

4.7 However, Madhya Pradesh Jal Nigam Maryadit (MPJNM) is a Govt. of Madhya Pradesh undertaking which is incorporated under the Company’s Act 1956 with an objective to ensure safe drinking water availability to all house hold with adequate quantity on sustainable basis by tap connection within household premises throughout the year and also ensure proper treatment and disposal of sewerage in the urban and rural areas. MPJNM is a wholly owned State Government Company under the Chairmanship of Hon’ble Chief Minister, Govt. of Madhya Pradesh where share capital of the company is held by the State Government in the name of Governor (Point no 38a & 46 of Articles of Association of MPJNM). It acts as a nodal agency of the State Government for executing group water supply and sewerage schemes and allied infrastructure projects and is responsible for design, execution, implementation, operation and maintenance of rural water supply schemes in the state to ensure safe, adequate drinking water to every household with tap connection in the areas of the state. We are therefore of the view that supplies made by the applicant to MPJNM doesn’t qualify to be supply made either to the State Government or to a local authority.

4.8 Atal Mission for Rejuvenation and Urban Transformation (AMRUT) is a development mission launched by Central Government with the focus to establish infrastructure that could ensure adequate robust sewage networks and water supply for urban transformation by implementing urban revival. In the state of West Bengal, activities under AMRUT project are supervised by Department of Urban Development and Municipal Affairs, Government of West Bengal. The applicant’s supply under this project therefore qualifies as a supply to the State Government.

4.9 Now the issues left with us is to ascertain whether the said services are in relation to any functions entrusted to a Panchayat under article 243G or to a municipality under article

243W of the Constitution of India. The functions entrusted to a Panchayat and to a municipality under article 243G and 243W of the Constitution along with eleventh and twelfth schedule are reproduced herein under:

243G: Powers, authority and responsibilities of Panchayats. -Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

Eleventh Schedule [Article 243G of the Constitution (Seventy-Third Amendment) Act, 1992]:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying, and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. **Drinking water.**
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.



23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system. 29. Maintenance of community assets."

243W. Powers, authority and responsibilities of Municipalities, etc.-Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

- (a) the Municipalities with such powers and authority as maybe necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as maybe specified therein, with respect to
  - (i) the preparation of plans for economic development and social justice;
  - (ii) the performance of functions and the implementation of schemes as maybe entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) the Committees with such powers and authority as maybe necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992]:

1. Urban planning including town planning.
2. Planning of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. **Water supply for domestic**, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

4.10 It transpires from above that the functions entrusted to a Panchayat or to a Municipality as listed in the Eleventh and/or Twelfth Schedule includes the functions like drinking water or water supply for domestic, industrial and commercial purposes.

4.11 Thus, the services provided by the applicant for survey, design, drawing, estimate and preparation of comprehensive plan related to water supply schemes application is found to be a matter as listed in the Eleventh and/or Twelfth Schedule in relation to functions entrusted to a Panchayat under article 243G and/or to a municipality under article 243W of the Constitution of India.

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

### **RULING**

Supplies made by the applicant for survey, design, drawing, estimate and preparation of comprehensive plan related to water supply schemes to the State Government and the local authorities are exempted from payment of tax vide serial number 3 of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 [corresponding State Notification No. 1136 F.T. dated 28.06.2017], as amended, except services provided to Madhya Pradesh Jal Nigam Maryadit which cannot be regarded either as the State Government or local authority.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(Dr.TANISHA DUTTA)  
Member  
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)  
Member  
West Bengal Authority for Advance Ruling

To,

SHYAMA CHATTERJEE

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- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Additional Commissioner of Revenue, Barasat Charge , 48, Jessore Road, Barasat, Pincode-700124
- (4) The Commissioner, Kolkata North Commissionerate, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (5) Office copy

