

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	WEBEL TECHNOLOGY LIMITED
Address	PLOT 5, BLOCK BP SECTOR V, SALT LAKE, KOLKATA-700091
GSTIN	19AAACW4201G1ZM
Case Number	WBAAR18 of 2024
ARN	AD1909240033824
Date of application	September 10, 2024
Jurisdictional Authority (State)	Salt lake Charge
Jurisdictional Authority (Central)	Bidhan Nagar Division, Kolkata North Commissionerate
Order number and date	19/WBAAR/2024-25 dated 14.01.2025
Applicant's representative heard	Mr. Subal Saha, Advocate Ms Pinki Shaw, FCA

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 it is a Public Sector Undertaking Company of Government of West Bengal. It basically works as Nodal Agency of Government of West Bengal regarding Development of Information Technology Infrastructure, E-governance and maintenance thereof for various Departments of Government of West Bengal and PSUs. The Company collects orders from various Government organizations and appoint third party vendors, back-to-back contract basis and it basically earned a margin for maintaining its Administration and Supervision charges.

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 raising following questions vide serial number 14 of the application in FORM GST ARA-01:

1. What is the rate of tax in respect of the work allotted by Department of Public Health Engineering (PHE) as a part of Jal Jeevan Mission (JJM) which is mission of Government of West Bengal?
2. Whether supply of data entry operator & junior engineer (System Administrator, Software Support Personnel) throughout the West Bengal in connection with JJM is pure service provided to the West Bengal Government 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.
3. Whether supply of data entry operator & junior engineer in connection with JJM has nexus 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 and therefore exempted by virtue of Serial No. 3 of Notification 12/2017-State Tax rate vide No. 1136- F.T. 28th June, 2017.

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

1.5 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.

1.6 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 submits that the Constitution of India in its Eleventh & Twelfth Schedule has enumerated the functions entrusted to a Panchayat under article 243G or to a municipality under article 243W respectively. The West Bengal Government through its Public Health Engineering Department (PHE) has initiated Water Supply Scheme for the benefit of the general public. The applicant was engaged in this project to supply data entry operator & junior engineer (System Administrator, Software Support Personnel).

2.2 The applicant submits that as per entry no 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, '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' is exempted from payment of tax, However, the nature of service provided by him do not have any direct nexus 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. Hence provision of such manpower services is liable to tax at 18 per cent (9 per cent CGST and 9 per cent WBGST).

2.3 The applicant has drawn attention to a memo issued by the Directorate of Public Health Engineering wherein the aforesaid supply of services has been claimed to be an exempted supply and therefore the Directorate has raised a demand of tax amount already paid by them from the applicant.

2.4 The applicant submits that the nature of service provided by him is supply of manpower services and in order to claim exemption on supply of manpower services vide serial number 3 of the exempt notification supra, following two conditions should be satisfied simultaneously:

- i) Pure Services (excluding works contract service or other composite supplies involving any goods) provided to the Central Government, State Government or Union territory or local authority.

ii) 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.

According to the applicant, since the services is provided to the State Government, the first condition gets satisfied in his case.

2.5 However, the second condition is never fulfilled by the applicant since Article 243G and 243W confers upon an exhaustive and not illustrative list of activities that are covered under it. The same list of activities is reproduced below for reference: -

As provided in 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.

Matters listed in Eleventh Schedule are:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and water shed 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.

2.6 As provided 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 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 Municipalities, subject to such conditions as may be 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 may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.

There are 18 items in the twelfth schedule of the Constitution which are as below:

1. Urban planning including town planning.
2. Regulation 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 slaughterhouses and tanneries.

2.7 It is stated that the above is an exhaustive list provided by the Articles 243G and 243W and no other activities or services rendered can be subjected to exemption apart from the ones already mentioned above.

Since, the applicant providing data entry operators and Junior System Engineers and their services were never covered under Entry 3 or Entry 3A as provided above. Hence it can be concluded that these manpower services are not provided 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. Hence provision of such manpower services is liable to tax at 18% (9% CGST and 9% WBGST).

2.8 The applicant submits that by virtue of amendment in Notification No. 16/2021-Central Tax (Rate) dated 18th November, 2021 and corresponding WBGST Notification No. 38-F.T. dated 10th January, 2021 the words "or a Government Authority or a Government Entity" came to be omitted from Sr. 3 & 4 from the Notification No. 12/2017- State Tax rate vide No. 1136- F.T. 28th June, 2017. Accordingly, it is stated that since the Public Health Engineering (PHE) is a Government Authority, the benefit of exemption under Notification 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is not applicable in his case.

2.9 The applicant submits that the personnel deployed was carried out only for support or ancillary activities which were necessary to implement the primary activities. This makes it abundantly clear that the data entry operators and Junior System Engineers are completely outside the purview of 243G and 243W of the Constitution of India. In that regard, the applicant relied upon the judgement as pronounced by the Hon'ble Authority for Advance Rulings Karnataka in the case of Madivalappa Karveerappa Belwadi, [2021] 131taxmann.com269(AAR - KARNATAKA)/[2021] 88 GST 552 (AAR-KARNATAKA)/[2021] 55 GSTL 597 (AAR - KARNATAKA) [30-07-2021]. The relevant excerpt of such ruling is annexed for kind reference:- "GST: Manpower services like Data Entry Operator, Drivers 'D' Group etc., to City Corporation/ Municipalities/ Zilla Parishads and manpower services like clerical staff (FDA, SDA), typists to Social Welfare Department are not by way of any activity in relation to any function entrusted to a Panchayat under article 234G of Constitution or in relation to any function entrusted to a Municipality under article 243W of Constitution and, hence, attracts tax at rate of 18 per cent GST".

2.10 The applicant submits that there is a plethora of Rulings by various Hon'ble Authority for Advance Rulings in relation to the same issue facing by the applicant where it has been held the nature of service provided are taxable. The extracts of the same are duly annexed serially for kind reference and perusal: -

Chhattisgarh Anusandhan & Vikas Firm-

"GST: Supply of manpower services by way of providing technical personnel, data operator, housekeeping services etc. to Central Government and State Government are not exempted as said services cannot be considered as function entrusted to panchayat or municipality GST: Manpower services provided by way of providing technical personnel, data operator, housekeeping services, etc., to various Central Government and State Government departments fall under SAC 998513 attracting 18 per cent GST".

2.11 Hon'ble Authority for Advance Rulings, Maharashtra in the case of M/s. Geospatial Studio LLP [WWW.TAXSCAN.IN-Simplifying Tax Laws-2024 TAXSCAN (AAR) 199] has held that:- "5.6.4 Final decision on Supply of Services where time of supply is on or after 01.01.2022. After considering all the aforesaid facts, provision of law, issue and decision therein, we have no hesitant in holding the "Technical Consultancy for Project Development and Management Support Service", provided by the applicant to the MJP for its Water Supply Scheme where time of supply is on or after 01.01.2022, are not covered by the entry at Sl No. 3 of the Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017. As the words "or a Government Authority or a Government Entity", are omitted from the aforesaid Entry at Sl. No.3".

3. Submission of the Revenue

3.1 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 representatives of the applicant during the course of personal hearing.

4.2 We find from the documents produced before us that the applicant is engaged in the project of Water Supply Scheme for the benefit of the general public by Public Health Engineering Department (PHE) to supply contractual junior engineers to execute " JAL JEEVAN MISSION " project in the state of west Bengal.

4.3 We find that the applicant has raised three questions in the application made in FORM GST ARA-01. However, all the three questions, being repetitive in nature, may be summarized into a single issue which is to determine the taxability of supply of man power services to PHE

Department in terms of Serial No 3 of Notification no. 12/2017 State Tax (Rate) vide 1136 F.T. dated 28.06.2017.

4.4 The applicant contends that the aforesaid supply of services does not get covered under serial no. 3 of Notification No.12/2017- Central Tax (Rate) dated 28-06-2017, as amended. The issue before us is to decide whether such supply would qualify for exemption vide the aforesaid entry. For ease of reference, the relevant entry is reproduced herein under:

Sl No.	Chapter/Section/Heading/Group	Description of service	Rate(per cent)	Condition
3	Chapter 99	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.	NIL	NIL

4.5 We find that the Executive Engineer, Resource Division, P.H.E. Department, Govt of West Bengal in its Memo No. 1919/RS dated 15.07.2024 has informed the applicant regarding Payment of bills in connection with the salary of Data Entry Operators & Junior Engineers throughout West Bengal in connection with JJM stating that “ *It is pertinent to mention here as per the Govt Notification No. 56/2017/25 dated 29th June 2017 & Notification No. 12/2017-State tax rate vide no. 1136-F.T 28th June, 2017 vide Sl. No. 3 the rate of GST for the services rendered is NIL. The work entrusted to you comes under the purview of Sl. No. (3) of the above Mentioned notification and attract NIL GST.*

In consonance with the above Notification, the GST claimed through the tax invoice for the services rendered is inadmissible. Accordingly, Payment is required to be made excluding the GST component against the preferred claim.”

4.6 The aforesaid document thus clearly shows that the work has been awarded by the PHE to the applicant for rendering manpower services to them for JJM project. Now, in order to decide whether the services provided by the applicant are eligible for exemption under serial number 3 of the Notification supra, we need to ascertain whether all the following factors get satisfied in the instant case:

- (i) whether the instant supply of services can be regarded as pure services;
- (ii) whether the applicant provides services to the Central Government, State Government or Union Territory or local 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.

4.7 The term 'pure services' has not been defined under the GST Act. However, a bare reading of the description of services as specified in entry serial number 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, denotes supply of services which does not involve any supply of goods can be regarded as pure services. The applicant has submitted that as per the work order issued to him by PHE, he provides manpower services of 583 Junior Engineers for executing 'JAL JEEVAN MISSION' Project. It prima facie appears that the aforesaid supply doesn't involve any transfer of materials in goods. We therefore hold that the supply of services as provided by the applicant is pure services.

4.8 Now we proceed to examine the second condition i.e., whether the applicant provides services to the Central Government, State Government or Union Territory or local authority. Both the work order and the letter bearing memo no 1919/RS dated 15.07.2024 [supra] submitted by the applicant issued by Directorate of Public Health Engineering, Govt of West Bengal. It transpires from above that the applicant provides the aforesaid services to Government of West Bengal. We therefore find that the first and second conditions i.e., the supply of services can be regarded as pure supply of goods and services and having been provided to the State Government get satisfied.

4.9 Now the issue left with us is to decide 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 has already been mentioned earlier in para 2.5 and 2.6 respectively.

4.10 It is thus imperative to examine the nature of the work being undertaken by the applicant in order to determine whether the supply made by the applicant is in relation to any of the functions as enumerated in the eleventh and twelfth schedule of the Constitution of India. In this context, we like to reproduce the information available in the website of Public Health Engineering Department [www.wbphed.gov.in] which as follows:

"The vision of WB-JJM, which is to provide safe, clean & free drinking water to every household of rural Bengal, is facilitated by the implementation of various Mega Projects that the Public Health Engineering Department, Government of West Bengal undertakes."

The documents, as submitted by the applicant, also reveals that the work allotted to them are supply of junior engineers throughout the West Bengal in connection with JJM.

4.11 We further find from the website of the Department of Drinking Water & Sanitation, Ministry of Jalshakti that "Jal Jeevan Mission, is envisioned to provide safe and adequate drinking water

through individual household tap connections by 2024 to all households in rural India. The programme will also implement source sustainability measures as mandatory elements, such as recharge and reuse through grey water management, water conservation, rain water harvesting.” 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. Thus, the services as provided by the applicant for supply of data entry operator & junior engineer (System Administrator, Software Support Personnel) throughout the West Bengal in connection with JJM is found to be covered by the subject matter as listed in the Eleventh and/or Twelfth Schedule thereby can be regarded as a supply in relation to functions entrusted to a Panchayat under article 243G and/or to a municipality under article 243W of the Constitution of India.

4.12 The applicant contends that supply of data entry operator & junior engineer (System Administrator, Software Support Personnel) to the Public Health Engineering Department (PHE), Government of West Bengal is completely outside the purview of 243G and 243W of the Constitution of India and therefore such supply cannot be claimed as an exempt supply. The applicant, in support of his contention, has placed reliance on a number of advance rulings. We have duly considered all the advance rulings as relied up on by the applicant.

4.13 In *Madivalappa Karveerappa Belwadi*, [2021] 131taxmann.com 269 (AAR - KARNATAKA)/[2021], the advance ruling authority has observed that the applicant is providing Manpower Services like Drivers and cleaners for solid waste management system to City Corporation/Municipalities. This is in relation to function entrusted to a municipality under article 243W of the Constitution which is covered by 6th entry of twelfth schedule which says 'Public health, sanitation conservancy and solid waste management and therefore exempted from payment of tax. However, the authority has not allowed such exemption in regard to supply of manpower services like Data Entry Operator, Drivers "D" Group etc. to Zilla Panchayat departments since these manpower services are not provided 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.

4.14 In *Chhattisgarh Anusandhan & Vikas Firm* (supra), the authority for advance ruling has held that supply of manpower services by way of providing technical personnel, data entry operator, housekeeping services etc. to Central Government and State Government are not exempted as the said services cannot be considered as function entrusted to panchayat or municipality. We find that in the said order, the authority has observed that *“Nothing is in record to establish that the activity/provision of service of manpower which includes providing of technical personal, data operator, housekeeping service etc. by the applicant to different State Government and Central Government Department have any direct and proximate relationship with any of the activities listed in Article 243G or Article 243W read with Eleventh Schedule and Twelfth Schedule of the*

Constitution of India. No evidence to relate the aforesaid activities or relate the same to functions as envisaged under covered under the functions entrusted and as specified to municipalities/panchayats under 243G/243W of the Constitution of India is forthcoming.”

4.15 Finally, in the case of M/s. Geospatial Studio LLP, the question before the advance ruling authority is what is the rate of tax of the technical consultancy services provided by the applicant to various Governments, Semi-Government, Government Corporations and Quasi-Government Institutions in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, performed and invoiced before 1-1-2022? The Maharashtra Authority for Advance Ruling has held that such supply is exempted from payment of tax vide Entry at Sr. No. 3 of the Notification No. 12/2017-Central tax (Rate)-dated 28th June, 2017.

4.16 We thus find that in all the rulings as referred to by the applicant, the decisive factor was whether the activity is 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. In cases where the direct and proximate relationship was established in this regard, the authority has held that such supply qualifies for exemption under entry No. 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

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

RULING

Supplies of data entry operator & junior engineer (System Administrator, Software Support Personnel) made by the applicant to the Public Health Engineering Department (PHE), Government of West Bengal for executing Jal Jeevan Mission is 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.

(Dr. TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 14th January, 2025

To,

Webel Technology Limited

Plot 5, Block BP Sector V, Saltlake, Kolkata-700091

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector,
Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Charge Officer , Saltlake Charge, Jalasampad Bhavan, block DF, Sector I, Saltlake,
Kolkata-91
- (4) The Commissioner, Kolkata North Commssionerate, CGST & CX, 180, Shantipally,
R.B.Connector, Kolkata-700107
- (5) Office Folder

