

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 51 / 2019

Date : 18th September 2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Yashaswini Enterprises, #6-2-125, Near BRB College, Kadur Gunda Idapnur, Raichur- 584140, Karnataka.
2.	GSTIN or User ID	29AQAPN4425C1Z4
3.	Date of filing of Form GST ARA-01	22-11-2018
4.	Represented by	Sri Shivaprakash J, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Belgaum Commissionerate, Belgaum
6.	Jurisdictional Authority - State	LGSTO-530, Raichur
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN SBIN 18112900310965 dated 22-11-2018 & Rs.5,000/- under KGST Act vide CIN SBIN 18082900071980 dated 10-08-2018.

ORDER UNDER SECTION 98(4) OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Yashaswini Enterprises (herein after called "applicant"), #6-2-125, Near BRB College, Kadur Gunda Idapnur, Raichur-584140, Karnataka, having GSTIN number 29AQAPN4425C1Z4, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of the CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Partnership firm, registered under the Goods and Services Tax Act, 2017. They are into business of drilling bore wells and are pursuing work issued by M/s. Dr. B R Ambedkar Development Corporation Limited,



Schedule Tribes Welfare Department, Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited and other implementing agencies under Social Welfare Department, Government of Karnataka sponsored scheme for providing Bore Well Irrigation purpose to small and marginal land owners of schedule Caste/Schedule tribe/Other backward class farmers of economic weaker section by digging Bore Well for Agriculture purpose. Thus the applicant has sought advance ruling in respect of the following question:

Applicability of Notification No. 2/2018 – Central Tax (Rate) dated 25/01/2018 with respect to Sl. No.3A of the notification in the Table, to the applicant. The contents of the Table are reproduced below:

(1)	(2)	(3)	(4)	(5)
"3A	<i>Chapter 99</i>	<i>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 or a Governmental authority or a Government Entity 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.</i>	<i>NIL</i>	<i>NIL</i>

3. The applicant concern furnishes some facts relevant to the stated activity:
- a. The applicant is engaged in drilling of Bore wells, in pursuance or work orders issued by some of the agencies under Social Welfare of Department, Government of Karnataka, to small and marginal land owners of schedule Caste/Schedule tribe/Other backward class farmers of economic weaker section, by digging Bore Well, for Agriculture purpose.
 - b. The applicant stated that the following supply of goods & services is included in their service of drilling bore wells under the aforesaid scheme.
 1. Geo Physical Survey for the Bore well point
 2. Drilling of Bore Well
 3. Fixing of MS / uPVC casing pipe
 4. Providing of collar, threading
 5. Transportation of Drilling Machine/rig and supporting vehicle
 6. Examination/Certification of Water Yield form the Bore Well from Mine & Geology Department

After execution of the above work, the goods passed on are PVC casing pipes and Collar. The cost of these components is very minimum (approximately less than 5% of the total contract value per bore Well).

4. The applicant submits that their transaction, relating to execution of the aforesaid work order, is covered under article 243G of the Constitution, their supply is meant to the Government Entity and hence it is exempted under Sl.No.3A of *Notification No. 2/2018 - Central Tax (Rate) dated 25/01/2018*. Thus the applicant contends that their activity / service is taxable at NIL rate on the following grounds:

- a. As per the Consitution of India, the Panchayat/Municipality is entrusted with certain responsibilities under Article 243G / 243W respectively (an extract of the Article 243G and the Eleventh Schedule is enclosed). Minor Irrigation, Water Management and Watershed Development is covered under the entry 3 of the Eleventh Schedule.
- b. The Entry 3A of the Notification No.2/2018 - Central Tax (Rate) dated 25.01.2018 prescribes NIL rate of tax for the *"Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity 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."*

PERSONAL HEARING: / PROCEEDINGS HELD ON 31.12.2018

5. Sri Shivaprakash, Chartered Accountant and authorised representative of the applicant appeared for personal hearing proceedings held on 31.12.2018, reiterated the facts narrated in their application. Further the authorized representative furnished additional written submissions after the hearing vide their letter dated 30.01.2019, inter alia stating as under:

5.1. The applicant, with regard to the issue that whether drilling of bore well is one of the objectives of minor irrigation, submitted that the Minor Irrigation Department is under Ministry of Minor Irrigation, Government of Karnataka and the "Ground Water Wing" of the said Department has the following functions :

- Groundwater resource estimation
- Groundwater Level monitoring
- Select sites for drilling borewell for domestic, agriculture and industrial purpose"



The above functions establish that one of the functions of Minor Irrigation Department is to identify the sites for drilling bore wells for agricultural purpose.

5.2 The applicant, with regard to the issue that whether Dr.B.R.Ambedkar Development Corporation Limited and Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited are Government Entities, submitted that that the said two entities are owned by the Government of Karnataka and are appearing in the Government of Karnataka portal at Sl.No.23 and 26 respectively. Further, they also submitted the copies of the Certificate of Incorporation and other documents in support of their claim that they are Government entities.

6. The authorized representative contends that the applicant has been awarded contract works by the state government entities such as M/s. Dr. B R Ambedkar Development Corporation Limited, Schedule Tribes Welfare Department, Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited and other implementing agencies under Social Welfare Department, Government of Karnataka, for providing the composite supply of service of drilling of bore well for Irrigation purpose to small and marginal land owners of Schedule Caste/Schedule tribe/Other backward class farmers of economic weaker section, for agriculture purpose.

6.1 The learned representative draws the attention to the notification no. 33/2017 -Central tax (rate) dated 13-10-2017 where in "Government entity" is defined to mean an authority or a board or any other body including society, trust, corporation,

- (i) Set up by the act of state legislature or
- (ii) Established by any government,

with 90 percent, or more participation by way of equity or control, to carry out a function entrusted by the central Government, State Government, Union territory or a local authority.

6.2 The applicant submits that The Karnataka Schedules Castes and Tribes Development Corporation Limited had been incorporated under Companies Act 1956, vide number 2755 dated 20-03-1975. Later the name of the company has been changed over to Dr.B.R.Ambedkar Development Corporation Limited. Similarly, The Karnataka Scheduled Tribes Development Corporation Limited has been incorporated under Companies Act 1956, dated 26-07-2006 with the main object being to extend irrigation facility to the Small and marginal farmers belonging to Scheduled Castes under individual & community irrigation scheme, lift irrigation scheme etc. To carry out any event, the entire control lies with state government.

7. FINDINGS & DISCUSSION:

7.1 We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri Shivaprakash, Chartered Accountant during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

7.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

7.2 The applicant has been awarded of contract works by the corporations of Karnataka Government such as M/s Dr.B.R.Ambedkar Development Corporation Limited, Schedule Tribes Welfare Department, Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited and other implementing agencies under Social Welfare Department, Government of Karnataka for providing the composite supply of drilling of bore wells for Irrigation purpose to small and marginal land owners of Schedule Caste/Schedule tribe/Other backward class farmers of economic weaker section, for agriculture purpose.

7.3 The applicant contends that the supplies are made to the Government entities and the said supply of provision of bore wells to the beneficiaries for irrigation purposes are covered under Serial no 3 of schedule 11 of the Constitution (under Article 243-G) i.e. *Minor irrigation, water management and watershed development*. Therefore these two issues are before us to decide. We take up these issues one at a time.

7.4 In this regard, the nature of supply in the instant case is examined and found that under the Ganga-Kalyana scheme which is related to the drilling of individual bore wells, the brochure of the relevant corporation reveals the following:

- (a) Irrigation facility will be provided to the agricultural lands held by the small and marginal scheduled tribe farmers (in case of Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited) by digging bore well/ open well, installation of pump, motor and accessories and followed by energization.
- (b) Unit cost is Rs.3.00 Lakhs. This includes subsidy of Rs.2.50 lakhs and loan of Rs.0.50 lakhs. Loan carries interest at 6% p.a. subsidy includes energization cost of Rs.0.50 lakh. The loan and interest is repayable in 6 years in half yearly instalment

However, in respect of Kolar, Ramanagara, Chikkaballapura, Bengaluru Urban & Rural and Tumkur districts where ground water table is depleted,



the unit cost is fixed at Rs.4.00 lakhs, inclusive of subsidy of Rs.3.00 lakhs, energization cost of Rs.0.50 lakh. Loan carries interest at 6 % per annum. Loan and interest is repayable in 6 yeas in half yearly instalments.

7.5 From the above, it is very clear that the energized bore wells would be provided to the beneficiaries from the said Government Corporations. The beneficiaries are identified by the Corporation and the agreements are signed between the Corporation and the beneficiaries and the land is hypothecated to the Corporation towards the Loan component.

7.6 The corporations allot the work to the drillers like the applicant and the contract is between the applicant and the corporation and there is no privity of contract between the applicant and the ultimate beneficiary. Further, the consideration for this contract is paid by the Corporation in full. Hence the service is provided by the applicant to the Corporation.

7.7 Clause (93) of section 2 of the Central Goods and Services Tax Act, defines a recipient of goods or services or both as under:

“ recipient” of supply of goods or services or both, means –

- a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*
- b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*
- c) Where no consideration is payable for the supply of service, the person to whom the service is rendered,*

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting on behalf of the recipient in relation to the goods or services or both supplied;”

7.8 In the instant case, the corporation is liable to pay the consideration for the composite supply of services of providing an energized bore well and hence the corporation would be deemed to be the recipient of supply of goods or services or both as per clause (93) of section 2 of the CGST Act and the supplier of this service is the applicant.

8. Regarding the question as to whether the corporations, which are receiving the service from the applicant, are Government entities within the meaning of the GST Act, the following are noted:

8.1 The term "Government Entity" is defined in Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 which is amended by Notification No. 32/2017 - Central Tax (Rate) dated 13-10-2017 reads, for the purposes of the Notification, as under:

"(zfa) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

i) set up by an Act of Parliament or State Legislature; or

ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

It is very clear that the corporations, Dr.B.R.Amedkar Development Corporation and Karnataka Maharshi Valmiki Scheduled Tribes Development Corporation Limited are both entities, established by the Government of Karnataka with 100% share capital and control to carry out the function entrusted by the Government of Karnataka. Hence they are clearly covered under the definition of "Government Entity".

8.2 The Minor Irrigation Scheme is defined by the Ministry of Water Resources, Government of India to include all ground water and surface water (both flow and lift) having culturable command area up to 2000 hectare individually. The provision of individual bore wells would come under the minor irrigation scheme for the reason that it involves the ground water by lifting and the culturable command area is less than 2000 hectare. Hence the provision of Energized Bore wells to individual farmers under the Ganga Kalyana Scheme would be covered under the Minor Irrigation Scheme.

8.3 Entry No.3A to the Notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018-Central Tax (Rate) dated 25-01-2018 reads as under:

Sl. No.	Chapter/ Section/ Heading/ Group/ Service Code	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
3A	Chapter 99	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	Nil	Nil



		territory or local authority or a Governmental authority or a Government Entity 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		
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It is clear from the above entry that for any supply of service to be covered under the above entry, the following conditions are to be satisfied:

- (a) It should be a composite supply of goods and services in which the value of the supply of goods constitutes not more than 25% of the value of the said composite supply
- (b) The supply should be made to the Central Government, State Government or Union territory or local authority or a Governmental Authority or a Government Entity
- (c) The supply should be 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.

In the instant case the supply is made by the applicant to the corporations, as described earlier and the value of the goods involved in the composite supply of an energized bore well is less than 25% of the total value of the composite supply. Therefore the first condition is fulfilled.

The recipient of the supply of the applicant in the instant case is a Government entity as already discussed earlier and hence the second condition also is satisfied.

The third & last condition is that the supply of the applicant should be an activity in relation to any function entrusted to a Panchayat under article 243G or to a Municipality under article 243W of the Constitution.

In this regard, the applicant's claim that the activity is covered under entry no. 3 of the Eleventh Schedule of the Constitution, is examined and found the following:

Article 243G of Constitution reads as 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.”

The article 243G clearly states that the Panchayats may be endowed with such powers and authority to enable them to function and such law may contain provisions for devolution of powers with respect to 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. This very clearly shows the Eleventh Schedule is a list of those activities that may be entrusted to the Panchayat for implementation.

Therefore it is pertinent to examine here that whether the activity of drilling of bore wells and their energisation is covered under the functions entrusted to the panchayats in Karnataka state. In this regard we draw attention to the Karnataka Panchayat Raj Act 1993.

Sections 58,145 & 184 of Karnataka Panchayat Raj Act 1993 specifies the functions entrusted to the Gram Panchayat, Taluk Panchayat and Zilla Panchayat respectively under Schedules I, II & III of the said Act. The Taluk Panchayats, under Section 145, in Schedule II have been entrusted with the following activities under the major function IV, which reads as under:

IV. Minor irrigation, water management and watershed development:

- (1) Assisting the Government and Zilla Panchayat in the construction and maintenance of minor irrigation works.
- (2) **Implementation of community and individual irrigation works.**

It could be seen from the above that the function of **implementation of individual irrigation works** has been entrusted to the Taluk Panchayat. The activity of **drilling bore wells and their energisation**, involved in the supply of the applicant is clearly in relation to the said function entrusted to the panchayat by Government of Karnataka, stipulated under Article 243 G of the Constitution of India. Thus the third condition is also satisfied.

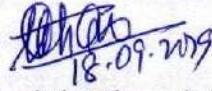
8.4 The service, being provided by the applicant, satisfies all the three required conditions and hence qualifies to be covered under entry No.3A to the Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.2/2018-Central Tax (Rate) dated 25-01-2018 & thereby attracts “NIL” rate of



9. In view of the foregoing, we pass the following

RULING

The composite supply of energized bore wells to the recipients being Government entities as explained by the applicant is covered under the entry no. 3A of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended by the Notification No.2 /2018 – Central Tax (Rate) dated 25.01.2018, for the reasons enumerated above.


18.09.2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad.M.P.)
Member



Place Bengaluru,
Date 18-09-2019

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone,
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Belgaum Commissionerate, Belgaum

The Asst. Commissioner, LGSTO-530, Raichur

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