

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14, Beliaghata Road, Kolkata – 700015

Name of the applicant	EX-SERVICEMEN RESETTLEMENT SOCIETY
Address	9A, Beparitola Lane, Kolkata-700072
GSTIN	19AAAAE1552E1Z4
Date of application	October 31 st , 2018
Case No	34 of 2018
ARN	AD1910180008760
Order number and date	38/WBAAR/2018-19 dated 28/01/2019
Applicant's representative	Major Nirmal Kumar Dhaoa (Retd), President

1. The Applicant, stated to be a registered society providing Security Services and Scavenging Services to various hospitals under the State Government as well as the Central Government, seeks a ruling as to whether exemption from payment of GST is available to them in terms of Notification No 12/2017-CT(Rate) dated 28.06.2017 and WB Govt Gazette Notification-1136-FT dated 28.06.2017, as amended (hereinafter collectively referred to as "the Exemption Notification").

Advance Ruling is admissible on the question under Section 97(2)(b) of the CGST/WBGST Acts, 2017 (hereinafter referred to, collectively, as "the GST Act").

The Applicant further submits that the question raised in the Application is neither decided by nor pending for decision before any authority under any provisions of the GST Act.

The officer concerned raises no objection to admission of the Application.

The Application is, therefore, admitted.

2. The Application states that the Applicant is supplying of Security Guards & Scavenging Services to the medical colleges and hospitals of West Bengal without and also to the Central Govt. Cancer Institute.

The Applicant has stated that under the Exemption Notification, the services provided by them are exempt by way of 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.

The Applicant, in letter ERS/GST/2019 dated 07.01.2019, has stated that they are supplying Scavenging/Karmabandhu/Menial Personnel in addition to Security Personnel. The nature of activities performed by the Scavenging Personnel comprise of:-

- a) Manual cleaning where required;
- b) Duties of attendants viz. bringing of Medicine/Oxygen Cylinders from a particular store to different wards;
- c) Operating trolleys for the carriage of patients from the Emergency Ward to different wards, or from the Wards to the different laboratories for different tests, like blood tests, x-rays, scans, etc.

They have also declared that for the functions of the above categories, no materials/equipments are supplied by them.

3. A careful read of conditions laid down under the Exemption Notification makes it clear that exemption from GST is granted under Serial No 3 to the 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 or a Governmental 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.

4. The concerned officer from the revenue submits that the above exemption is extended to Panchayats and Municipalities. The Applicant, being a private party, is not eligible for this exemption.

It is pertinent to examine in this context the ambit of the exemption under SI Nos. 3 or 3A of the Exemption Notification. They cover supply of certain services to the government, local authority, governmental authority, or government entity. The service should be an activity *in relation to any function* entrusted to a Panchayat under Art 243G of the Constitution or to a Municipality under Art 243W of the Constitution.

5. In its Circular No. 51/25/2018-GST dated 31/07/2018 the Central Government clarifies that the service tax exemption at serial No. 25(a) of Notification No. 25/2012 dated 20/06/2012 (hereinafter the ST Notification) has been *substantially*, although not in the same form, continued under GST vide SI No. 3 and 3A of the Exemption Notification. SI No. 25(a) of the ST notification under the service tax exempts “services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and upgradation.” The Circular further explains in relation to the specific issue of ambulance service to the Government by a private service provider (PSP) that such service is a function of ‘public health’ entrusted to Municipalities under Art 243W of the Constitution, and, therefore, eligible for exemption under SI No. 3/3A of the Exemption Notification.

The above Circular leaves no doubt that the phrase ‘in relation to any function’, as applied in SI Nos. 3 and 3A above, makes no substantial difference between SI No. 25(a) of the ST Notification and SI No. 3/3A of the Exemption Notification. Under the previous service tax regime, the exemption was limited to certain functions specified in SI No. 25(a) of the ST Notification; whereas, under the GST the ambit has been broadened to include all such functions as entrusted to a Panchayat or a Municipality under the Constitution.

The example of ambulance service provided by a PSP also makes it clear that the phrase ‘in relation to any function’ refers not to who the service provider is or what activities the recipient of the service is engaged in, but only to what service the supplier is providing. While examining whether ambulance service supplied to the Government is eligible for the exemption, the Circular does not go on to explore whether the recipient of the service is engaged in an activity listed under the Eleventh or the Twelfth Schedules and whether the ambulance service is being supplied in relation to any such activity. It simply focuses on the nature of the service itself (ie. The ambulance service) and examines whether its classification relates to an activity listed under the schedules referred to above.

The Applicant’s eligibility under SI No. 3 or 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the service being supplied is pure service or composite supply, (2) whether the recipient is government, local authority, governmental authority or government entity, and (3) whether the services provided are classifiable as a function entrusted to a Panchayat or a Municipality under the Constitution.

6. Pure service is not defined in the GST Act. However, it appears from the context that services involving no supply of goods are considered as pure service. The Applicant claims he is not supplying any goods while provisioning the services. The Applicant's services are, therefore, classifiable as pure service.

The supplies are made, according to the Application, to hospitals owned or managed by the government. It is, therefore, obvious that the recipient is government or governmental authority etc.

7. Before deciding the applicability of SI No. 3 of the Exemption Notification, the functions of a Panchayat or a Municipality under the Constitution needs to be discussed. Article 243G of the Constitution discusses the Powers, authority and responsibilities of Panchayats, stating that "*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 subject to such conditions as may be specified therein, with respect to.....(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 of Indian Constitution contains the following 29 functional items placed within the purview of the Panchayats:

1	Agriculture including agricultural expansion
2	Land improvement, implementation of land reforms, land consolidation and soil conservation
3	Animal Husbandry, Dairying and poultry
4	Fisheries Industry
5	Minor irrigation, water management and watershed development
6	Social forestry and farm forestry
7	Small scale industries in which food processing industry is involved
8	Minor forest produce
9	Safe water for drinking
10	Khadi, village and cottage industries
11	Rural housing
12	Fuel and fodder
13	Rural electrification, including distribution of electricity
14	Road, culverts, bridges, ferries, waterways and other means of communication
15	Education including primary and secondary schools
16	Non-conventional sources of energy
17	Technical training and vocational education
18	Adult and non-formal education
19	Public distribution system
20	Maintenance of community assets
21	Welfare of the weaker sections of the in particular of the schedule caste and schedule tribes
22	Social welfare, including welfare of the handicapped and mentally retarded
23	Family welfare
24	Women and child development
25	Markets and Fairs
26	Health and sanitation including hospitals, primary health centres and dispensaries

27	Cultural activities
28	Libraries
29	Poverty Alleviation Programmes

It is expected that the subjects covered under the Eleventh Schedule of the Indian Constitution are made to ensure the development of the rural India.

Article 243W of the Constitution discusses the Powers, authority and responsibilities of Municipalities, etc stating that “*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow,.....b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule*”.

List of 18 items covered under the Twelfth Schedule of the Indian Constitution are as follows;

1	Regulation of land use and construction of land buildings
2	Urban planning including the town planning
3	Planning for economic and social development
4	Urban poverty alleviation
5	Water supply for domestic, industrial and commercial purposes
6	Fire services
7	Public health sanitation, conservancy and solid waste management
8	Slum improvement and up-gradation
9	Safeguarding the interests of the weaker sections of society, including the physically handicapped and mentally unsound
10	Urban forestry, protection of environment and promotion of ecological aspects
11	Construction of roads and bridges
12	Provision of urban amenities and facilities such as parks, gardens and playgrounds
13	Promotion of cultural, educational and aesthetic aspects
14	Burials and burials grounds, cremation and cremation grounds and electric crematoriums
15	Cattle ponds, prevention of cruelty to animals
16	Regulation of slaughter houses and tanneries
17	Public amenities including street lighting, parking spaces, bus stops and public conveniences
18	Vital statistics including registration of births and deaths

The municipalities have been established for the administration of the towns and smaller cities. There are many other names of the municipalities like; municipal council, municipal committee, municipal board, city municipality and others.

8. A study of the two lists, as given above, makes it clear that “Security Services” provided to Government Hospitals and Medical Colleges, as institutions of Central/State/District/Local authorities, are clearly not covered under the either list.

The services provided under the head “Scavenging Services”, according to the Applicant’s submission, includes manual cleaning, duties of attendant or operator of trolleys.

Article 243G under Serial No 26 covers “Health and sanitation, including hospitals, primary health centres and dispensaries”.

Article 243W under Serial No 7 covers “Public health sanitation, conservancy and solid waste management”.

No other entries in the Eleventh or the Twelfth Schedules of the Constitution appear relevant while examining applicability of the Applicant’s services bundled as ‘Scavenging Services’.

'Health Care Service' is defined under clause 2(zg) of the Exemption Notification. It means inter alia any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicine in India and includes services by way of transportation of patient to and from a clinical establishment. It is classified under SAC 99931. It does not include any of the services the Applicant bundled under the description 'Scavenging Services'.

Again, 'Sanitation and similar services' are classified under SAC 99945. It includes sweeping and cleaning, but only with reference cleaning of a road or street. Cleaning of hospital premises is not, therefore, classified under 'Sanitation or similar service'.

The services the Applicant bundled under the description 'Scavenging Services' are, therefore, not exempt under SI No. 3 of the Exemption Notification.

In view of the foregoing we rule as under.

RULING

Benefit of exemption from the payment of GST is not available to the Applicant under Notification No 12/2017-CT(Rate) dated 28.06.2017 and WB Govt Gazette Notification-1136-FT dated 28.06.2017, as amended, for the supply of Security Services and the bundle of service that he describes as 'Scavenging Services'.

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

Sd-

(SYDNEY D'SILVA)

Member

West Bengal Authority for Advance Ruling

Sd-

(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling