

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:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX

Mr 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 thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Reach Dredging Limited
Address	Flat No. 9, 1 st floor, Ideal Centre, AJC Bose Road, Shakespeare Sarani, Kolkata-700017
GSTIN	19AAECR9181L1ZN
Case Number	WBAAR 19 of 2022
ARN	AD190622006609Z
Date of application	July 13, 2022
Jurisdictional Authority (State)	Esplanade Charge
Jurisdictional Authority (Central)	BBD Bag I Division, Kolkata North Commissionerate
Order number and date	21/WBAAR/2022-23 dated 13.01.2023
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 the Water Resources Department, Government of Andhra Pradesh for desilting of the foreshore of Prakasam Barrage from KM 7.500 to KM 8.400 in Krishna River and the applicant has entered into a contract with the concerned department of Government of Andhra Pradesh for the execution of above-mentioned Works Contract.

1.3 The applicant submits that the said work includes dredging in the foreshore of Prakasam Barrage with dredger and depositing materials in the area of Govt. lands/Path lands available adjacent to the river bunds including mobilization and demobilization of the dredger and laying the pipeline, POL's spares, repair and manpower and all other items required for operation and maintenance of dredger pipeline reclamation of banks and formation and maintenance of slurry bunds and including all the leads and lifts specified by the department.

1.4 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:

- (a) Whether Government of Andhra Pradesh- Water Resources Department comes under the purview of State Government?
- (b) Whether amendment made vide Notification No. 39/2017 dated 13-10-2017 Integrated Tax (Rate) in the table against Serial No. 3 for the item (vii) will be applicable in this case?

1.5 The aforesaid questions 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.

1.6 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.

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

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that the work being undertaken by him pursuant to the contract made with the Water Resource Department, Government of Andhra Pradesh falls under the category of works contract as defined in clause (119) of section 2 of the GST Act. Further, the definition of Government under clause (53) of section 2 of the CGST Act reads as “Government means the Central Government”. As per clause (23) of section 3 of the General Clauses Act, 1897, the Government includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the ‘Central Government’ in relation to anything done or to be done after the commencement of the Constitution, means the president. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of the section 3 of the General Clauses Act, 1897, the ‘State Government’ in respect of anything done after commencement of the Constitution, shall be the Governor in a state and in a Union Territory, the Central Government. As per article 154 of the Constitution, the executive power of the state shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of the Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

2.2 The applicant submits further that the powers and functions of the Water Resources Department, Andhra Pradesh are as follows:

- (a) Drought Proofing of the state and providing water security to all stakeholders (drinking, irrigation and industry)
- (b) Providing sufficient water to all available cultivable land of Andhra Pradesh.
- (c) Improve economic status and happiness index of the farmer by improving water efficient and crop yields, by providing the right amount of water to the right farm at the right time.

- (d) Interlinking of rivers to ensure adequate and reliable water is available to all regions across the state.
- (e) Completion of all irrigation projects on a priority basis in a time bound manner.
- (f) Cascade development to optimize run-off capture within the basins.
- (g) Long term sustainable double-digit growth.
- (h) Operations and maintenance of reservoirs and canal system.
- (i) Adopting leading edge technologies and world class practices to achieve the above-mentioned goals.
- (j) Presentation of data & analysis on water availability, utilization of Inter-state river basins to the respective tribunals.

2.3 According to the applicant, he is providing dredging service which predominantly involves earth work. As per the work order, the total value of the dredging/excavation, loading, unloading, transportation and leveling of earthwork is more than the 75% of the total contract value. Apart from the GST rate mentioned in Schedule-A of Part II of the agreement, a certificate vide letter no. EE/KC/VIJ/346 dated 29th March, 2022 has been provided in which the executive engineer of Krishna Central Division, Vijayawada, Government of Andhra Pradesh has certified that the “ Desilting of silt from the foreshore of Prakasam Barrage from KM 7.500 to KM 8.400” vide Original Agreement No.21/SE/2021-22 dated 10th of August, 2021 is a works contract service and the applicable GST rate is 5(Five) percent in terms of Notification No. 39/2017 Integrated Tax (Rate) dated 13th October, 2017 against serial no 3 for the item (vii) as the total value of the works contract constitutes mainly of dredging and earthwork excavation which is pure service work and cost of material transferred and consumed for execution and completion of the work contract is less than 25(Twenty Five) percent of the total agreement value”.

2.4 The applicant thus contends that that the applicant is providing services to the Government of Andhra Pradesh and the supply would attract tax @ 5% vide serial number 3 for the item (vii) mentioned in Notification no. 39/2017 Integrated Tax (Rate) dated 13th October, 2017 up to 17th July, 2022 and thereafter the supply would be taxable @ 12% vide Notification no. 03/2022 Integrated Tax (Rate) dated 13th July, 2022.

2.5 The applicant, in support of his contention that the supply being undertaken by him would be taxable @ 5%, has placed reliance on the following Advance Rulings pronounced by the West Bengal Authority for Advance Ruling:

- Order No. 07/ WBAAR/2020-21 dated 10/08/2020 in case of Reach Dredging Limited [Case No. 08 of 2020]
- Order No. 08/ WBAAR/2020-21 dated 10/08/2020 in case of Reach Dredging Limited [Case No. 07 of 2020]
- Order No.16/WBAAR/2020-21 dated 05/02/2021 in case of RDL-ZYCHL-JV [Case No.18 of 2020]

3. Submission of the Revenue

The submission of the officer concerned from the revenue may be summarized as under:

3.1 Entry No. 3 (vii) of the Notification provides that a supply is taxable @ 5% if the contract is a composite supply of works contract as defined under section 2(119) of the GST Act, involving earthwork exceeding 75% of the contract value and the recipient is the Central Government, State Government, Union Territory, a government authority or a government entity.

3.2 It appears that the services provided by the applicant includes earthwork but whether the value of earthwork involved exceeds 75% of the contract value or not cannot be ascertained in absence of work order. The value and scope of material supply, charges related to hiring of machineries etc and value of earth work in relation to total work can be ascertained only from the detailed work order with value wise break up.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representative of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue.

4.2 Entry No. 3 (vii) of the Notification No. 39/2017- Integrated Tax (Rate) dated 13.10.2017 specifies that 'Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity' would attract tax @ 5%. However, the rate has been

changed to 12% w.e.f. 18.07.2022 vide Notification No. 03/2022- Integrated Tax (Rate) dated 13.07.2022.

4.3 The applicant has submitted that the impugned contract/work order consists of dredging in the foreshore of Prakasam Barrage with dredger and depositing materials in the area of Govt. lands/Path lands available adjacent to the river bunds including mobilization and demobilization of the dredger and laying the pipeline, POL's spares, repair and manpower and all other items required for operation and maintenance of dredger pipeline, reclamation of banks and formation and maintenance of slurry bunds and including all the leads and lifts specified by the Water Resource Department, Government of Andhra Pradesh. According to the applicant, impugned activity is a composite supply of works contract as defined in clause (119) of section 2 of the GST Act, 2017 and the supply is provided to the State Government.

4.4 In course of personal hearing, the authorised representative of the applicant furnishes copy of an agreement bearing No. 21/SE/2021-22 dated 10.08.2021 in support of work for 'Desilting of Slit from the foreshore of Prakasham Barrage from Km 7.500 to Km 8.400 in Krishna River' along with copy of the tender notice bearing number 19SE/2020-21 dated 07.01.2021 issued by the Water Resource Department, Government of Andhra Pradesh. As per the tender notice, all construction materials like stone, sand, cement, steel, hume pipes, bitumen etc. shall be procured by the contractor at his own cost wherefrom it appears that the instant work, which is predominantly supply of services, also involves transfer of property in goods. The work, as we find from the documents produced, is aimed at the improvement of immovable property which involves both supply of services and goods in the course of its execution. The instant supply therefore qualifies as 'works contract' as defined in clause (119) of section 2 of the GST Act.

4.5 Now, to decide whether the activities being undertaken by the applicant falls under the category of earth work or not, we may refer to Para 12.1 of the Advance Ruling pronounced by the Jharkhand Authority for Advance Ruling in the matter of P.K.Agarwala [2019] 103 taxmann.com 107. The said para is reproduced hereinunder:

"The term "Earth Work" has not been defined under any GST provisions. The Webster Dictionary defines Earth Work as an embankment or construction made of earth specially one used as a field fortification. The Collins Dictionary defines Earth Work as "excavation of earth as in engineering construction; a fortification made of earth. The Wikipedia defines Earth Work as "Earth work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks. After going through different definitions of earth work, we find that Bulk earthworks include the removal, moving or adding of large

quantities of soil or rock from a particular area to another. They are done in order to make an area of suitable height and level for a specific purpose”

Further, the Maharashtra Appellate Authority for Advance Ruling, in the case of Soma Mohite Joint Venture [2020] 122 taxmann.com.276 has held that *“It is therefore established beyond doubt that expression “Earthwork” implies “Excavation”.*

4.6 It is evident that the applicant undertakes the work of dredging in the foreshore of Prakasam Barrage. Dredging is the process of removing the silt and other materials from the bottom of bodies of water. As per Wikipedia, “Dredging is the excavation of material from a water environment. Possible reasons for dredging include improving existing water features; reshaping land and water features to alter drainage, navigability, and commercial use; constructing dams, dikes, and other controls for streams and shorelines; and recovering valuable mineral deposits or marine life having commercial value. In all but a few situations the excavation is undertaken by a specialist floating plant, known as a dredger”. We, therefore, hold that the instant works contract involves earth work. The applicant has furnished copy of a certificate issued on 29.03.2022 by the Executive Engineer, Krishna Central Division, Vijayawada wherein it has been certified by the issuing authority that “The above contract is a works contract service and the applicable GST rate is 5(five) percent in terms of Notification No. 39/2017 dated 13.10.2017 Integrated Tax (Rate) against serial number 3 for the item (vii). As the total value of 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 works contract is less than 25 (twenty five) percent of the total agreement value.”

4.7 On due consideration of the cost of the materials involved in the instant supply, as certified by the Executive Engineer, Krishna Central Division, Vijayawada, we are of the opinion that the work being undertaken by the applicant is a composite supply of works contract which predominantly involves earth work i.e., constituting more than 75 per cent. of the value of the works contract as specified under serial number 3(vii) of Notification No. 39/2017- Integrated Tax (Rate) dated 13.10.2017.

4.8 Finally, we take the issue to decide whether the supply being provided by the applicant to the Water Resource Department, Government of Andhra Pradesh would be considered as supply to the State Government so as to cover under serial number 3 (vii) of the Notification No. 39/2017- Integrated Tax (Rate) dated 13.10.2017. In this regard, Question No. 7 of the FAQ on Government Services, issued by the Central Board of Indirect Taxes & Customs, may be referred to which reads as under:

- Question 7: Would services provided by one department of the Government to another Department of the Government be taxable?
- Answer: Services provided by one department of the Central Government/State Government to another department of the Central Government/ State Government are exempt under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 [S No 8 of the Table].

However, this exemption is not applicable to:

- (a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, the State Government and Union Territory;*
- (b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;*
- (c) services of transport of goods and/or passengers.*

It thus appears that a department of Central/ State Government shall be regarded as Central/State Government and therefore, supply being provided by the applicant to the Water Resource Department of Government of Andhra Pradesh qualifies as a supply to the State Government.

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

RULING

The instant supply being undertaken by the applicant to the Water Resource Department, Government of Andhra Pradesh for desilting of the foreshore of Prakasam Barrage is a composite supply of works contract involving predominantly earth work and would be taxable vide entry No. 3 (vii) of the Notification No. 39/2017- Integrated Tax (Rate) dated 13.10.2017, as amended.

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 13.01.2023

To,

Reach Dredging Limited

Flat No. 9, 1st floor, Ideal Centre, AJC Bose Road, Shakespeare Sarani, Kolkata-700017

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, Esplanade Charge, 14, Beliaghata Road, Kolkata-700015
- (4) Office Folder