

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 Act, 2017)

BENCH

Mr Sydney D'Silva, Joint Commissioner, CGST & CX  
Mr Parthasarathi Dey, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services 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 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	Champa Nandi, carrying on business under the trade name M/s Industrial Handling
Address	UNF-41, Unnayan, 3 <sup>rd</sup> Floor, 1050/1 Survey Park, E M Bye Pass, Kolkata - 7000075
GSTIN	19ABQPN6470L1ZS
Case Number	WBAAR 12 of 2019
ARN	AD190419002151F
Date of application	12/04/2019
Order number and date	10/WBAAR/2019-20 dated 25/06/2019
Applicant's representative heard	Nemai Chandra Chakraborty, Authorized Representative

1. Admissibility of the application

1.1 The Applicant, stated to be leasing out cranes and equipment and locomotives, provides diesel-hydraulic locomotives to several companies for placement/shunting of rakes/wagons/oil tankers from the siding or terminal of the Indian Railways to the factory premises of the company and vice versa. The Applicant seeks a ruling on the classification of the above service and the applicable rate of tax under Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 – FT dated 28/06/2017), as amended from time to time [hereinafter collectively referred to as Rate Notifications (Service)].

1.2. Section 97(2) (a) & (b) of the GST Act empower this Authority to pronounce a ruling on the classification of any goods or the applicability of a notification issued under the GST Act. Classification refers to the determination of the nature and character of the goods or services being supplied. The purpose of the exercise is to ascertain the applicability of any entry of the notifications issued under the GST Act, specifying the rate of tax or exemption from payment of tax. Rate of tax on the supply of services is specified under the Rate Notifications (Service), mentioned above. Rate of tax on supply of goods is specified under Notification No. 1/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1125 – FT dated 28/06/2017), as amended from time to time (hereinafter collectively referred to as Rate Notifications (Goods)).

1.3 The questions raised by the Applicant involve classification to ascertain the applicability of the Rate Notifications (Service). The questions are, therefore, admissible for advance ruling under section 97 (a) & (b) of the GST Act.

1.4 The concerned officer from the Revenue submits that the question raised in the application is not pending or decided in any proceedings of the GST Act. As such, he does not object to the admissibility of the application. The application is, therefore, admitted.

## 2. Submission of the Applicant

2.1 The Applicant submits that she supplies cranes and equipment on monthly rental basis and charges GST @ 18%, the service is classified as 'Leasing or rental services concerning construction machinery and equipment with or without operator' (SAC 997313). Likewise, she leases out diesel-hydraulic shunting locomotive inter alia to M/s Damodar Valley Corporation, Andal, Burdwan (hereinafter the DVC), which has objected to charging GST at 18% rate. The DVC refers to Circular No. Books/GST/17-18/pt I dated 19/07/2017 of East Central Railway. In the said circular the railway authority informs that charges for terminal access, shunting, stabling, haulage or detention is classifiable under 'leasing or rental services concerning transport equipment with or without operator' (SAC 997311) and taxable at the rate applicable to the goods. As diesel locomotives are taxable @ 5% under SI No. 236 of the Rate Notifications (Goods), the service mentioned above is taxable @ 5% as well.

2.2 The Applicant, however, maintains that a diesel-hydraulic shunting locomotive is not transport equipment. Furthermore, services provided by the Indian Railways are not like the one she provides to the DVC. The shunting locomotives are not hauling at a stretch but moving to and from the full/empty coal rakes between the DSTPS Siding, the DVC and Andal Railway Station. It is akin to railway pushing and towing service (SAC 996731).

## 3. Submission of the Revenue

3.1 The concerned officer from the Revenue submits that the Applicant's service of 'hiring of diesel-hydraulic shunting locomotive on monthly hire basis' is classifiable as 'railway pushing and towing service' (SAC 996731) and taxable @ 18% under SI No 11(ii) of the Rate Notifications (Service).

## 4. Observations and findings of the Bench

4.1 The activities the supplier of service is expected to perform may vary from contract to contract. For example, the lessor of transport equipment with or without operator may provide the recipient complete operational control. He provides the equipment in the custody and possession of the recipient, who can employ it whenever and wherever he needs it. On the other hand, the recipient may hire the equipment for a specific activity. The supplier may retain a good deal of control over the equipment and may be required to perform activities, the scope of which is defined by the purpose for which the recipient has hired the equipment. The two contracts are different. The former is plain leasing and renting contract. The latter is a complex one. The supplier is not only providing the equipment on lease but also performing the activities for which the equipment has been taken on lease. The essence of the contract is defined by the extent to which the supplier is engaged in performing those activities. Classification of the service provided in such complex umbrella contract is, therefore, entirely dependent upon the terms of the specific contract. As the dispute regarding the classification of the Applicant's service relates to the contract with the DVC, this Authority examines the question with respect to that contract.

4.2 The DVC issues Work Order no. CE/DSTPS/T/1021(17)/ARC LOCO/Fuel/WO/903 dated 07/10/2017 for the hiring of diesel shunting locomotive on lease for placement/shunting of rakes at DSTPS Siding, DVC, Andal. The Scope of Works annexed to the Work Order includes *round the clock manning and operation of locomotives for movement of empty and*

*loaded wagons/rakes at DSTPS, DVC, Andal Siding as and when required.* The Applicant shall operate the locomotives inside the plant, arrange the placement of wagons over Wagon Tippler/Track Hopper, form the empty rakes and shunt them to empty lines and do any other work related to placement/shunting with Loco. She shall provide one driver and one shunt man for the Loco round-the-clock, who will move the Loco and look after the locomotive, couple/de-couple the Loco/Wagons and repeat the signal aspects. The Applicant shall arrange for necessary permission for route and first-time placement of Loco at DSPTS site and bear the related cost. She will also supply the necessary workforce for operation and maintenance of the Loco and shall be responsible for the safety of her men at the worksite. She will also bear the cost of insurance of the Loco and her personnel.

4.3 Railway pushing and towing service (SAC 996731), according to the Explanatory Notes to the Scheme of Classification, refers to the service of moving railway cars and wagons between the terminal yards, industrial sidings and the like. It is grouped under 'Supporting Services for Railway Transport'. The Work Order includes all aspects of the above service. Therefore, unless the railway tracks under the administration of the DVC and the transportation of coal etc. to the DSTPS Siding from Andal Railway Station is excluded from railway transport, as defined under the Railways Act, 1989, the Applicant's activities, as described in the Work Order, definitely qualify as the supporting service of railway pushing and towing.

4.4 The term "railways" is not defined in the GST Act. It, however, is defined under section 2(31) of the Railways Act, 1989, meaning "a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes

- (a) All lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
- (b) All lines of rails, sidings, or yards, or branches used for the purpose of, or in connection with, a railway;
- (c) All electric traction equipment, power supply and distribution installations used for the purpose of, or in connection with, a railway;
- (d) All rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, waterworks and water supply installations, staff dwellings and any other works constructed for purpose of, or in connection with, railway;
- (e) All vehicles which are used and any road for the purpose of traffic of a railway and owned hired or worked by a railway;
- (f) All ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purpose of the traffic of a railway and owned, hired or worked by a railway administration,

but does not include-

- (i) A tramway wholly within a municipal area; and
- (ii) Lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation."

Furthermore, the Railways Act, 1989, distinguishes between, but covers, Government Railway under section 2(20) and Non-Government Railway under section 2(25) of the Act. It, therefore, includes scope for railways under both Government and private administrations, provided it involves public carriage of passengers or goods. Whether the phrase "public

carriage of passengers or goods” prevents a private siding from being included in the definition of ‘railways’ has repeatedly come up for judicial scrutiny. The courts generally held that the phrase ‘public carriage of passengers or goods’ cannot be construed in such manner as to exclude from the ambit of ‘railways’ the sidings built and owned by organisations other than the government.

[Cases relied upon: DMRC –vs- Municipal Corporation of Delhi, 2008 (103) DRJ 369 (Delhi High Court); Commissioner, Central Excise, Raipur –vs- Anand Construction, 2017 (51) STR 435 (CESTAT, Principal Bench, New Delhi); SMS Infrastructure Ltd –vs- Commissioner, Central Excise, Nagpur, 2017 (47) STR 17 (CESTAT, West Zonal Bench, Mumbai)]

4.5 Art 366(20) of the Constitution excludes from the ambit of ‘railway’ only (a) a tramway wholly within a municipal area and (b) any line of communication wholly situated in one State and declared by Parliament by law not to be a railway. The Parliament excludes by law, apart from the tramways, the lines of rails mentioned under section 2(31)(ii) of the Railways Act, 1989, being rails built solely for recreation. The term ‘public carriage’, therefore, cannot be given any meaning that may add more exclusion than specifically provided under section 2(31)(ii) of the Railways Act, 1989. The DVC is the owner of the DSTPS Railway Siding. It is meant for the carriage of coal to DSTPS. The purpose of the carriage of goods is, therefore, not recreation, but producing public goods like electricity. It is, therefore, not excluded under section 2(31)(ii) of the Railways Act, 1989.

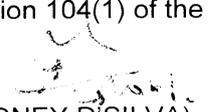
4.6 Transportation of coal from Andal Station to DSTPS Siding is, therefore, railway transport, and the service of moving empty or loaded wagons/rakes at DSTPS Siding is nothing but the supporting service of railway pushing and towing (SAC 996731). It describes the nature of the Applicant’s service more specifically than ‘leasing or rental services concerning transport equipment, including containers with or without operator (SAC 997311). The communication from the East Central Railway referred to above, which deals with the GST applicable to different services that the Railways offer to the customer, is not relevant in the present context.

Based on the above discussion, we rule as under:

#### **RULING**

The Applicant’s service to the DVC, as described in para no. 4.1, is classifiable as ‘railway pushing and towing service’ (SAC 996731) and taxable @ 18% under SI No 11(ii) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1135 – FT dated 28/06/2017), as amended from time to time.

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

  
(SYDNEY D'SILVA)  
Member

  
(PARTHASARATHI DEY)  
Member

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