

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)

BENCH

Ms Susmita Bhattacharya, 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 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	Newtown Kolkata Development Authority
Address (correspondence)	3, Major Arterial Road, New Town, Kolkata- 700156
GSTIN	19AAALN1239L1ZT
Case Number	47 of 2019
Date of application	December 09, 2019
Order number and date	42/WBAAR/2019-20 dated 06/03/2020
Applicant's representatives heard	Mr. Navin Kumar Agarwal, CA Mr. Avra Mazumder, Advocate Mr. Bhargav Mitra, Advocate

1. Admissibility of the Application

1.1 The Applicant, New Town Kolkata Development Authority (hereinafter called NKDA), seeks a ruling whether the services it supplies are exempt under Notification No 12/2017 Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017) as amended time to time (hereinafter collectively called the Exemption Notification) and whether it is liable to be registered. The question is admissible under section 97(2)(b)&(f) of the GST Act.

1.2 The concerned officer from the Revenue submits that 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 is a statutory authority constituted under the New Town Kolkata Development Authority Act, 2007 (hereinafter the NKDA Act) for providing various civic

services and amenities within the local area of New Town, Kolkata. It provides civic facilities to the area like water supply, drainage, sewage, collection, removal and disposal of solid waste etc.

2.2 The Applicant argues that it is a local authority within the meaning of section 2(69)(c) of the GST Act. It discharges all functions assigned to a Municipality under Article 243W of the Constitution of India. The Applicant has the power to collect various taxes, fees, charges etc. All such taxes, fees and charges are credited to the 'Development Fund' constituted under section 19 of the NKDA Act. Said 'Development Fund' is a Local Fund, as defined under section 2 of the Local Authorities Loans Act, 1914 and rule 6.29 of West Bengal Treasury Rules, 2005 (hereinafter WBTR). The Applicant also submits a copy of letter no. 4866 dated 08/11/2012 from the Urban Development Department, Government of West Bengal, informing the Principal AG (A&E), West Bengal that NKDA has come under the control of the said department of the State Government and the department would bear all its liabilities for salary and other grants and that NKDA has no Local Fund of its own. The Government, therefore, has requested the AG to open a Local Fund for NKDA. The Applicant submits letter dated 28/04/2014 from Principal AG (A&E), West Bengal, to the PAO, Kolkata Pay & Accounts Office – III, informing the latter that it has given approval to NKDA to operate a Local Fund. All these, according to the Applicant, establishes that NKDA is a statutory authority legally entitled to and entrusted by the State Government with the control and management of a local fund. It is, therefore, a local authority as defined under section 2(69)(c) of the GST Act.

2.3 The Applicant, therefore, claims that the exemptions available to a local authority under the various entries of the Exemption Notification should apply to its services also.

2.4 Although it has raised in its application the question of liability for registration, the Applicant's written submission remains silent on that matter.

3. Submissions of the Revenue

3.1 The concerned officer from the Revenue submits that NKDA, according to its official website, is a transitional arrangement in the way of creation of an Urban Local Body. He refers to the case *Agarwal Vs Hindusthan Steel* [(1970) AIR 1150 (SC)] to establish that the manpower of statutory authorities or bodies do not become officers subordinate to the President of India under Art 53(1) of the Constitution and similarly to the Governor under Art 154(1). Therefore, such a statutory body, corporate or an authority as judicial entity is separate from the State. The officer also reflects upon *R.C. Jain & Ors*, [(1981) 2 SCC 308] to point out the distinctive characteristic of a local authority. He is skeptical whether interpretation of local fund in WBTR is applicable to the GST Act. In his opinion, regulatory bodies and other autonomous entities may not be regarded as local authorities for the purpose of the GST Act.

4. Observations & Findings of the Authority

4.1 Section 2(69) of the GST Act defines a local authority as below.

"Local authority" means—

- (a) Panchayat as defined in clause (d) of article 243 of the Constitution;
 - (b) a Municipality as defined in clause (e) of article 243P of the Constitution;
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- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 [and article 371J] of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;”

4.2 The Applicant claims that NKDA is a local authority under section 2(69)(c) of the GST Act, being an authority other than a Municipal Committee, a Zilla Parishad or a District Board that is legally entitled to and entrusted by the State Government with the control and management of a local fund.

4.3 Section 2(69)(c) of the GST Act is similar to section 3(31) of the General Clauses Act, 1897, which defines a local authority to mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund. In *Agricultural Produce Market Committee Narela, Delhi* [(2008) 9 SCC 434] the apex court has examined the context in which it has earlier interpreted the words ‘other authority’ in *R C Jain (supra)*. The court adopted the test of ‘like nature’. As the words ‘other authority’ came after the words ‘Municipal Committee’, ‘District Board’ or ‘Body of Port Commissioners’, it took color from these earlier words. But Municipal Committees or District Boards, although have significance in 1897, have little relevance nowadays except being kept in the statute out of abundant caution. The purpose and object are, therefore, to cover those bodies, which are discharging municipal functions but are not covered by the definition of municipalities as required to be constituted under Art 243Q of the Constitution [refer to the apex court judgment dated 12/10/2018 on *Urban Improvement Trust (Case No. CA 10577 of 2018)*]. The words ‘Body of Port Commissioners’ are not relevant in the context of section 2(69)(c) of the GST Act.

4.4 It appears from the objects and reasons for enactment of the NKDA Act that it intends to provide for the planned development in the areas within New Town, Kolkata, and matters connected therewith or incidental thereto. Section 16 of the NKDA Act lays down that NKDA shall, within the territorial limits of New Town, make adequate provision for such public works as water supply, construction, maintenance and cleaning of sewers and drains, sewerage and drainage works, construction, maintenance, alteration and improvement of public streets, bridges and culverts, fly-overs, sub-ways etc. In the sphere of town planning and development NKDA shall control all building operations and regulation of building uses, maintain public parks, squares, gardens, water-bodies and recreation centers, take measures for beautification of the township and similar activities related to development of a planned township. NKDA, therefore, performs such functions as are listed under the Twelfth Schedule and entrusted to a Municipality under Art 243W of the Constitution. This apart, the State Government may transfer to NKDA in terms of section 17 of the NKDA Act such functions and duties relating to Government under any law which the State Legislature is competent to enact or which are otherwise within the executive power of the State. Section 35 of the NKDA Act allows the Applicant to levy a development charge on the owners or the occupiers of any land within its territorial jurisdiction for carrying out the activities referred to above.

4.5 NKDA is, therefore, a statutory authority established to carry out the functions entrusted to a Municipality under Art 243W of the Constitution. It is a body discharging municipal functions, although not a municipality as required to be constituted under Art 243Q of the Constitution and is fit to be included as 'other authority' under section 2(69)(c) of the GST Act. It will also be a local authority within the meaning of the above section of the GST Act if the Applicant is legally entitled to or entrusted by the State Government with the control or management of a municipal or local fund.

4.6 NKDA is not a Municipality. It cannot, therefore, be entrusted with the control or management of a municipal fund, as described under section 67 of Chapter VII of Part III of the West Bengal Municipal Act, 1993.

4.7 The GST Act does not define a local fund. Section 2 of the Local Authorities Loans Act, 1914, defines a local authority as a person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area, and 'funds' used with reference to such a local authority includes any local or municipal funds. Local fund is defined in T.R 6.29 of section VII of WBTR as (a) revenues administered by bodies which by law or rule having the force of law come under the control of the Government whether in regard to the proceedings generally, or to specific matters such as approving their budgets, sanction to the creation or filling up of posts, making leave, pension or similar rules, (b) the revenue of any body which may be specially notified by the Government as such.

4.8 Section 3 of the NKDA Act provides that the members of NKDA, including the Chairman, shall be appointed by the State Government. It sanctions and creates or reduces posts of officers under NKDA and, if it thinks necessary, may appoint its officers on deputation to NKDA on such terms and conditions as it may determine (section 10 and 11 of the NKDA Act). The State Government may decide the pay and allowances of the officers and other employees of NKDA and may provide grant towards payment of such salary (section 12 of the NKDA Act). It shall prescribe the manner in which the accounts of NKDA are to be kept and audit such accounts on regular basis (sections 24 and 25 of the NKDA Act). The State Government may annul any proceedings or resolutions of NKDA or remove any member of NKDA and the latter shall be guided by such directions as the State Government may provide in conformity with the provisions of the NKDA Act (sections 169 and 170 of the NKDA Act). In short, NKDA is a body which by law comes under the control of the State Government, as envisaged in TR 6.29 (a) of WBTR.

4.9 Section 19 of the NKDA Act provides for constitution of a Development Fund for the purpose of the Act and all amounts received by NKDA, including the charges levied under section 35, grants received from the State Government, shall be credited to the said fund. Correspondence mentioned in para 2.2 above also establishes that NKDA has come under the control of the State Government which would bear its liabilities for salary and other grants and that the Principal AG (A&E), Kolkata, approves NKDA to operate a local fund.

4.10 The above discussion establishes that NKDA, a statutory authority discharging municipal functions (although not a municipality as required to be constituted under Art 243Q of the Constitution) within the territorial jurisdiction of New Town, Kolkata, is legally entitled to and entrusted by the State Government with the control or management of a local fund as defined in TR 6.29 of WBTR. It is, therefore, a local authority under section 2(69) (c) of the GST Act and entitled to the exemptions available under the Exemption Notification on the services it supplies.


Based on the above discussion, we rule as under:

RULING

The Applicant is a local authority within the meaning of section 2(69) (c) of the GST Act and is entitled to the exemptions available on the services it supplies in terms of the various entries of Notification No 12/2017 Central Tax (Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017), as amended time to time.

The question of liability for registration is not taken up for ruling, as the Applicant has not pursued the matter in its written submission and in course of the personal hearing.

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


06/03/2020
(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


6/3/2020
(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling
