

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015

TRADE CIRCULAR No. 04/2019 (*Circular No. 83/02/2019-GST*)

DATED: 08.01.2019

Subject: Applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC).

Representations have been received seeking clarification regarding applicability of GST on Asian Development Bank (ADB) and International Finance Corporation (IFC). The matter has been examined.

2. The ADB Act, 1966 provides that notwithstanding anything to the contrary contained in any other law, the Bank, its assets, properties, income and its operations and transactions shall be exempt from all the taxation and from all customs duties. The Bank shall also be exempt from any obligation for payment, withholding or collection of any tax or duty [Section 5 (1) of the ADB Act, 1966 read with Article 56 (1) of the schedule thereto refers]. DEA has already conveyed vide letter No. 1/28/2002-ADB dated 22-01-2004 addressed to ADB that taxable services provided by ADB are exempted from service tax.

2.1 Similarly, IFC Act, 1958 also provides that notwithstanding anything to the contrary contained in any other law, the Corporation, its assets, properties, income and its operations and transactions authorised by the Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty [Section 3 (1) of IFC Act, 1958 read with Article VI, Section 9 (a) of the Schedule thereto refers].

3. CESTAT Mumbai vide final order dated 17-10-2016 in the case of M/s Coastal Gujarat Power Ltd. has held that when the enactments that honour international agreements specifically immunize the operations of the service provider from taxability, a law contrary to that in the form of Section 66A of Finance Act, 1994 will not prevail. With the provider being not only immune from taxation but also absolved of any obligation to collect and deposit any tax, there is no scope for subjecting the recipient to tax. There is no need for a separate exemption and existing laws enacted by the sovereign legislature of the Union suffice for the purpose of giving effect to Agreements.

4. Accordingly, it is clarified that the services provided by IFC and ADB are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.

5. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Commissioner.

6. This Trade Circular shall be deemed to have come into force with effect from the 1st January, 2019.

Sd/-
(Smaraki Mahapatra)
Commissioner,
State Tax, West Bengal

Memo. No. 06 CT/PRO
3C/PRO/2019

Date: 08.01.2019

Copy forwarded to the Senior Joint Commissioner, Commercial Taxes/ ISD for information and for uploading it on the official website and internal website of the Directorate for information of all concerned.

Sd/-
(Adesh Kumar)
Addl.CST & PRO