
	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &  
: Shri. Abraham Renn S, IRS

Legal Name of the applicant	Dharti Dredging and Infrastructure Ltd
GSTIN	32AABCD6612M1ZS
Address	Sy No. 146/18, Block No. 45, Building No. 12/1983 and 12/1984, Ambattuparambil House, Near Telephone Exchange, Amakkulam, Alathur, Palakkad, Kerala 678541.
Advance Ruling sought for	1. Whether we can avail the benefit of exemption notification Entry No.3; "Pure Services (excluding work contract services 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 vide Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as the services are provided



	to the Irrigation Department which is under the direct control of the Kerala State? 2. Suppose the ruling for the above question is taxable, whether the applicant can pay the goods and services tax to the government under reverse charge basis as per Sl. No. 5, i.e., "Services supplied by the Central Government, State Government, Union territory or local authority to a business entity" of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017?
Date of Personal Hearing	08.12.2021
Authorized Representative	Sreekumar Ravindran

**ADVANCE RULING No. KER/2/2023 Dated 20.02.2023**

1. M/s. Dharti Dredging and Infrastructure Ltd (**hereinafter referred to as the applicant**) is a private limited company who have been awarded a tender for desiltation of Mangalam Reservoir in Palakkad, Kerala by the Irrigation Department, Government of Kerala.
2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

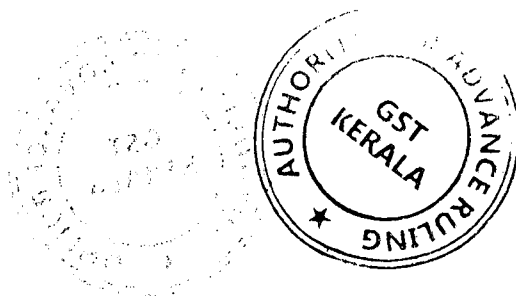


**3. The Applicant requested advance ruling on the following:**

- 3.1 Whether we can avail the benefit of exemption notification Entry No.3; "Pure Services (excluding work contract services 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 vide Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as the services are provided to the Irrigation Department which is under the direct control of the Kerala State?
- 3.2 Suppose the ruling for the above question is taxable, whether the applicant can pay the goods and services tax to the government under reverse charge basis as per Sl. No. 5; i.e., "Services supplied by the Central Government, State Government, Union territory or local authority to a business entity" of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017?

**4. Contentions of the Applicant:**

4.1. The applicant submits that they have been awarded a tender from the Irrigation Department of the Government of Kerala for the desiltation of Mangalam Dam, Palakkad on 19.10.2020. Subject to the terms and conditions of the tender, the department has allotted a desiltation right for using the surrounding of the reservoir. For exercising the right, the Irrigation Department has fixed a lumpsum consideration which is to be payable in instalment during the tender period.



4.2. They have undertaken the project in February 2021 and started their preliminary work to set up the machinery and all other equipment for removing the sand and mud from the reservoir. The total tender value fixed by the Government for taking the residue from the above process is Rs. 15 Crores and the same has to be paid in instalments.

4.3. They are carrying out the desiltation process on behalf of the Government. As a result of the desiltation services they are obtaining by product such as Clay, Soil and Sand. They are making payment to the Government for using the property and hence the payment should be treated as payment to the Government for using such rights. Therefore, they can claim benefit under Entry No. 3 of Notification No.12/2017 CT (Rate) dated 28.06.2017.

4.4. The lumpsum payment is given to the Irrigation department of the State Government and hence it is evident that the receiver of the consideration is the State Government and hence the same is covered by the said notification.

4.5. They are providing desiltation services to the State Government. The desiltation of the dam is the primary activity and the residues from the process is a by-product. They are purchasing the property of the Government for a lumpsum payment. Article 243G of the Constitution discusses the powers, authority and responsibilities of panchayats. It states that subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as 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 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.

4.6. They have gone through the various service accounting codes applicable to the above services but have not found the applicable tax rate for the above-mentioned services and it is covered under the exemption notification. Hence, they are of the view that the above services provided to Government are exempt.

4.7. As per Section 2 (119) of the CGST Act, 2017; "Works Contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. Under their contract there is no material element involved and hence the same is not covered under the definition of works contract. Therefore, on detailed analysis of the various provisions it can be seen that the service is a pure service and the service recipient is the Government and hence they have satisfied all the conditions mentioned in the above notification for claiming exemption.

4.8. If the ruling for the first question is taxable, they can pay the tax on reverse charge basis as per Notification No. 13/2017 CT (Rate) dated 28.06.2017. The lumpsum payment is made to the Irrigation Department of the Government of Kerala and hence it is evident that the receiver of the consideration is the State Government. As per entry at Sl. No. 5 of the above notification the tax on services supplied by the Central Government, State Government, Union territory or local authority to a business entity is to be paid



by the recipient on reverse charge basis. In this case they are the recipient of services from the Government and hence the conditions mentioned in the above notification are satisfied for paying tax under reverse charge.

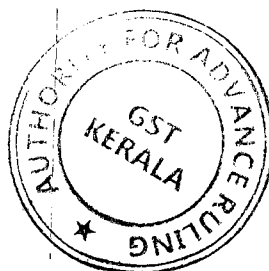
**5. Comments of the Jurisdictional Officer:**

5.1. The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act.

5.2. The jurisdictional officer submitted that there are two supplies involved in the transaction; one is the supply of service and the other is the supply of goods.

5.3. The desilting service is a supply of service wherein the applicant is the supplier and the Irrigation Department, a State Government Department is the recipient. The Irrigation Department gives the consideration of the service in the form of residues such as clay, soil and sand. As there is no transfer of goods in the supply of service provided by the applicant it falls under the category of pure service. This pure service provided by the applicant to Irrigation Department is in relation to a function entrusted with the Panchayat / Municipality under Article 243G/W of the Constitution vide Sl. No. 3 of the 11<sup>th</sup> Schedule. Hence this supply of service can be treated as exempted supply as per Sl. No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

5.4. On receiving the supply of service, the Irrigation Department gives consideration to the applicant by way of residues such as clay, soil and sand and receives from the applicant a fixed sum of Rs. 15 Crore towards the value



of the quantity of residues in excess of the value of consideration for the service. As such there is a supply of goods implicitly to the extent of the quantum of residues for which Irrigation Department receive consideration of Rs. 15 Crores wherein the applicant is the recipient of goods and the Irrigation Department is the supplier. The supply of goods is taxable and the Irrigation Department shall collect the tax and pay to the Government under forward charge mechanism as per Section 9 (1) of the CGST Act, 2017.

**6. Personal Hearing:**

The applicant was granted opportunity for personal hearing on 08.12.2021. The authorised representative of the applicant represented the applicant in the personal hearing. The representative reiterated the contentions made in the application and requested to issue ruling on the basis of the submissions in the application.

**7. Discussion and Findings:**

7.1. The matter was examined in detail. The Irrigation Department of the Government of Kerala has granted a right to the applicant for desilting the reservoir of Mangalam Dam, Palakkad for removing the mud and sand and taking the same for a lumpsum consideration of Rs. 15 Crores which to be payable in instalments during the period of contract. The question raised is regarding the classification; the rate of tax applicable and the person liable to pay the tax on the services rendered as per the tender awarded by the Irrigation Department. In order to answer the questions raised by the applicant it is necessary to determine the supplier of service and the recipient of service in the transaction between the Government and the applicant. To determine the supplier and recipient of service in the transaction, it is necessary to analyse



the terms of the contract with reference to the definitions of consideration, supplier of service and recipient of service in the CGST Act, 2017.

7.2. The term "consideration" is defined in Section 2 (31) of the CGST Act, 2017 as follows;

(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply."*

Section 2 (93) of the CGST Act, 2017 defines recipient of supply of service as follows;

"(93) "recipient" of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and





*(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,*

*and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied."*

Section 2 (105) of the CGST Act, 2017 defines supplier of service as follows;

*(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting a such on behalf of such supplier in relation to the goods or services or both supplied".*

7.3. On analysis of the terms and conditions of the contract with reference to the definition of the terms; consideration, recipient of service and supplier of service as extracted above; it is evident that the transaction covered by the subject contract between the applicant and the Government in sum and substance confers the right to the applicant to extract the mud and sand lying underneath the reservoir of Mangalam Dam and appropriate the same by way of sale or otherwise during the term of the contract for a lumpsum consideration of Rs. 15 Crores payable in instalments spread over the contract period. Therefore, in the subject transaction the supplier of service is the Irrigation Department of the Government of Kerala and the recipient of service is the applicant.

7.4. Having come to the conclusion that the recipient of service in the subject transaction is the applicant, the next issue to be decided is the classification and rate of GST of the service. The Scheme of Classification of Services is notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.



Chapter 99 – Heading – 9973 pertains to leasing or rental services and 997337 pertains to licensing services for the right to use minerals including its exploration and evaluation. As per the Explanatory Notes to the said Scheme of Classification of Services the Heading 997337 includes licensing services for the right to use, mineral exploration and evaluation information, such as mineral exploration for petroleum, natural gas and non-petroleum deposits. In the instant case the applicant has been awarded the right to desilt the dam and extract the sand and mud lying underneath for appropriation. The right so conferred is not limited to using the sand and mud during the contract period but to appropriate the sand and mud extracted during the contract period and hence the Government, does not continue to enjoy title over the sand and mud extracted by the applicant. The applicant enjoys the title over the sand and mud extracted from the dam and accordingly appropriates the property in the sand and mud by way of sale or otherwise. Thus, in the instant case the service granted by Government, on payment of lumpsum amount of Rs. 15 Crores is the transfer of right to extract the sand and mud lying underneath the reservoir of Mangalam Dam and to appropriate the same and accordingly the same merit classification under Heading 997337. Here, one question that may arise is whether the right to desilt can be classified under the category of right to use 'minerals including its exploration and evaluation' falling under Heading 997337. We would like to address this question as well for avoiding any ambiguity in the matter. National Geographic defines; **"Silt"** as a solid, dust-like sediment that water, ice and wind transport and deposit. Silt is made up of rock and mineral particles that are larger than clay but smaller than sand. Soil itself can be called silt if its silt content is greater than 80 percent. Considering, the above definition of silt and the explanatory notes to the Heading 997337 it can be seen that the grant of the right to desilt the reservoir and to extract the sand



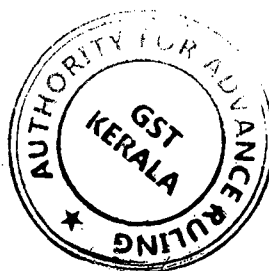
and mud therein falls within the scope of; 'licensing services for the right to use minerals including its exploration and evaluation' as described in Heading 997337 of the Scheme of Classification of Services under GST. On the basis of the discussion above, we conclude that the service is appropriately classifiable under SAC 997337 and attracts GST at the rate of 18% [CGST – 9% + SGST – 9%] as per entry at Sl. No. 17 (viii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

7.5. The next question to be answered is regarding the person who is liable to pay the tax; whether the supplier of service under forward charge or the recipient of service under reverse charge. We have already discussed and concluded that in the instant case the applicant is the recipient of service supplied by the Irrigation Department of the Government of Kerala. As per entry at Sl. No. 5 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 the tax in respect of services supplied by the Central Government, State Government, Union territory or local authority to a business entity shall be paid by the business entity located in the taxable territory on reverse charge basis. Therefore, the applicant is liable to pay the GST on reverse charge basis on the consideration of Rs. 15 Crores given to the State Government for grant of the right to desilt the dam and extract the sand and mud lying underneath for appropriation.

In view of the observations stated above, the following rulings are issued:

#### RULING

**Question 1:** Whether we can avail the benefit of exemption notification Entry No.3; "Pure Services (excluding work contract services 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 vide Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as the services are provided to the Irrigation Department which is under the direct control of the Kerala State?

**Ruling:** No; in view of the finding above that the applicant is the recipient of service supplied by the Irrigation Department of the Government of Kerala by way of transfer of right to extract the sand and mud lying underneath the reservoir of Mangalam Dam and to appropriate the same and the services are appropriately classifiable under SAC 997337 attracting GST at the rate of 18% [CGST – 9% + SGST – 9%] as per entry at Sl. No. 17 (viii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

**Question 2:** Suppose the ruling for the above question is taxable, whether the applicant can pay the goods and services tax to the government under reverse charge basis as per Sl. No. 5, i.e., “Services supplied by the Central Government, State Government, Union territory or local authority to a business entity” of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017?



**Ruling:** Yes. The applicant as the recipient of the services is liable to pay the GST on reverse charge basis on the consideration paid to the State Government as per entry at Sl No. 5 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017.

  
Sreeparyathy S.L.  
Additional Commissioner of Central Tax  
Member

  
Abraham Renn S  
Additional Commissioner of State Tax  
Member

To,

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2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The State Tax Officer – I, Alathur, Palakkad. [E-mail ID: [alathurcto.ctd@kerala.gov.in](mailto:alathurcto.ctd@kerala.gov.in)]

