

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:

Dr Tanisha Dutta, Joint Commissioner, CGST & CX Joyjit Banik, Additional 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.

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| Name of the applicant | ANMOL INDUSTRIES LIMITED |
| Address | Maity Para, Delhi Road, Hooghly, West Bengal, Pin Code-712311 |
| GSTIN | 19AADCB9169P1ZS |
| Case Number | WBAAR 30 of 2022 |
| Jurisdictional Authority (State) | Large Tax Payers Unit |
| Jurisdictional Authority (Central) | Dankuni Division, Howrah Commissionerate |
| Order number and date | 06/WBAAR/2024-25 dated 29.07.2024 |
| Applicant's representative heard | Mr. Ankit Kanodia, Authorized Advocate |

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 entered into a leasing agreement with the Shyama Prasad Mookerjee Port, Kolkata (hereinafter referred to as SMPK), a body incorporated under the Ministry of Ports, Shipping and Waterways, Government of India, wherein, the SMPK has agreed to lease a industrial plot of land at Taratala Road for a period of thirty years (30 years) for setting up commercial office complex. The applicant made an application on 11.10.2022 seeking an advance ruling before the West Bengal Authority for Advance Ruling (hereinafter referred to as the WBAAR) whether the upfront premium payable by the applicant towards the services of leasing of the land for industrial purposes by SMPK is exempted under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

1.3 The WBAAR vide order dated 20.12.2023 has held that the services of leasing of the land for industrial purposes by SMPK to the applicant is found not to be covered under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and therefore cannot be treated as an exempt supply.

1.4 Aggrieved by the said ruling given by the WBAAR, the applicant filed an appeal before the West Bengal Appellate Authority for Advance Ruling (hereinafter referred to as the WBAAAR) where the WBAAAR vide order dated 18.04.2024 has set aside the Advance Ruling Order No. 24/WBAAAR/2023-24 dated 20.12.2023 issued by the WBAAR in the case of the appellant and without delving into the merit of the case, remanded the case to the WBAAR for fresh decision after considering all aspects of the matter.

1.5 In compliance with the order of the WBAAAR, the applicant is heard again by the WBAAR.

Submission of the applicant

2.1 The applicant submits that the services provided by SMPK to him for leasing of an industrial plot of land at Taratala Road for a period of thirty years (30 years) for setting up commercial office complex against upfront lease premium is exempted from payment of tax vide serial number 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended from time to time. The said entry reads as follows:

| SI No | Chapter, Section, Heading, Group or service Code (Tariff) | Description of Services | Rate (Per Cent) | Condition |
|-------|---|---|-----------------|--|
| 41 | Heading 9972 | Upfront amount (called as premium, salami, cost, price, development charges or by | NIL | Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for |

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| | | <p>any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 percent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.</p> <p>Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20 per cent or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.</p> | <p>industrial or financial activity in an industrial or financial business area:</p> <p>Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:</p> <p>Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:</p> <p>Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.</p> |
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2.2 The applicant submits that to qualify for exemption under the aforesaid entry, following conditions need to be satisfied-

- I. Firstly, lease period should be of thirty years or more.
- II. Secondly, the property leased should be an Industrial plot or plots for development of infrastructure for financial business.
- III. Thirdly, service provider must be a state Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory).
- IV. Lastly, Service Recipient must be an Industrial Unit.

2.3 The applicant states that the present lease of land is for thirty years which can be duly indicated in the Allotment Letter dated 21.09.2022 issued by SMPK.

Thus, the first condition as mentioned above is satisfied in the instant case.

2.4 The applicant states that the property being leased is industrial plot owned by SMPK and have been leased out for the purpose of setting up commercial office complex. The Applicant also states that as per the tender document in Plot Details Annexure -1, the list of permitted purpose of lease is given as-

“Mercantile building, Business building, Institutional building, Assembly building (Club, political & religious purpose are not permitted)”

Further, the said tender document defines each of the above terms in clause (8) as-

8.1 *“Institutional building”*: That is to say any building or part thereof ordinarily providing sleeping accommodation for occupants and used principally for the purposes of medical or other treatment or care of persons suffering from physical or mental illness, disease or infirmity, care of infants, convalescents or aged persons and for penal or correctional detention in which the liberty of the inmates is restricted, such building shall include hospitals, clinics, dispensaries, sanatoria, custodial institutions and penal institutions like jails, prisons, mental hospitals and reformatories.

8.2 *“Assembly building”*: That is to say any building or part thereof where groups of people congregate or gather for amusement or recreation or for social, patriotic, civil, travel, sports and similar other purposes as the principal use excluding and except club, religious and political purpose. Such building shall include theatres, motion picture

houses, drive- in-theatres, city halls, town halls, auditoria, exhibition halls, museums, skating rinks, gymnasiums, restaurants, eating houses, bars, hotels, boarding houses, dance halls, gymkhanas, passenger station and terminals of air, surface and other public transportation services, recreation piers and stadiums.

- 8.3 *“Business building”: That is to say any building or part thereof used principally for transaction of business for keeping of accounts and records or for similar purposes. Such building shall include offices, banks, professional establishments, court houses if the principal function of such offices, banks, professional establishments or court houses is transaction of public business or keeping of books and records. Such building shall also include buildings or premises solely or principally used as an office or for office purpose.*
- 8.4 *“Mercantile building (retail)”:That is to say any building or part thereof used principally as shops, stores or markets for display or retail sale of merchandise or for office and storage of service facilities incidental hereto;*
- 8.5 *“Mercantile building (wholesale)”:That is to say any building or part thereof used principally as shops, stores or markets for display or sale of merchandise on wholesale basis, or for office and storage of service facilities incidental thereto, and shall include establishments, wholly or partly engaged in wholesale trade, manufacturer’s wholesale outlets including related storage facilities, warehouses and establishments engaged in truck transport(including truck transport booking agencies).*
- 8.6 *“Mall/FoodPark/Plaza”.....*
- 8.7 *“Setting up of a Commercial Office Complex”: Setting up of a commercial office complex in a particular plot may be allowed where the listed purposes in the tender include Assembly, Business and Mercantile Buildings and the said land shall be used by the original lessee for own Corporate use and excess vacant space of the said office complex to be let out on lease to other corporate entities who will use the complex for setting up of Business Centre, Business Chambers, Conference Rooms, Office Infrastructure, Cafeteria, Restaurant, Gymnasium, Guest House, hotel accommodation, recreation facilities, pharmacies, diagnostic clinics, retail outlets etc. In other words, the original lessee will be a business integrator where various other stake holders/investors/retailers/service providers will operate under the business integrator (original lessee) as sub-lessees.”*

As further stated by the applicant, in the present case he will be setting up their corporate office building wherein all the financial activities of the Applicant shall be undertaken. Further, as per the

sketch of the plot annexed with the tender document, it is clear that the plot is in an industrial area as there was another unit of India Foils Limited running at the said plot.

Thus, the second condition as stated above is duly satisfied in the instant case.

2.5 As regards the third condition stated above, the applicant states that the lessor, SMPK in the instant case, is a body incorporated under the Ministry of Ports, Shipping and Waterways, Government of India. The lessor is directly controlled by the Central Government department.

2.6 The applicant argues that SMPK in its official website “ smporkolkata.shipping.gov.in” has declared vide notice dated 14.12.2018 bearing reference number FIN/368/B that SMPK is covered under the category of notified persons under notification number 50/2018 Central Tax dated 13.09.2018 and is required to deduct tax under section 51 of CGST/WBGST Act 2017. SMPK is therefore registered as a tax deductor in the state of West Bengal bearing registration number 19AAAJK0361L1DC.

2.7 Section 51 of the GST Act provides deduction of tax at source by the following persons:

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

Notification No. 50/2018- Central Tax dated 13.09.2018 further requires to deduct tax under section 51 by the following persons:

- (a) an authority or a board or any other body,-
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,

with fifty-one per cent or more participation by way of equity or control, to carry out any function;

- (b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860(21 of 1860)
- (c) public sector undertakings.

2.8 The applicant contends further that the audit of books of accounts of SMPK is done annually by Comptroller and Auditor General of India under section 19(2) of the Comptroller & Auditor General's (Duties, Powers & Conditions of Service) Act, 1971 read with Section 102(2) of the Major Port Trusts Act, 1963. The applicant states that audit under section 19(2) supra is

conducted only for corporations (not being companies) established under law made by parliament and accounts of such corporations are presented before Parliament.

Extract of section 19(2) of Comptroller & Auditor General's (Duties, Powers & Conditions of service) Act, 1971 is reproduced hereunder-

"The duties and powers of the Comptroller and Auditor-General in relation to the audit of accounts of corporations (not being companies) established by or under law made by parliament shall be performed and exercised by him in accordance with the provisions of the respective legislations."

2.9 According to the applicant, from a conjoint reading of clause (a) to notification 50/2018-Central Tax dated 13.09.2018 and section 19(2) of Comptroller & Auditor General's (Duties, Power & Conditions of service) Act, 1971 it is evident that more than fifty-one percent of control of SMPK is with Central Government. In this context, the applicant also relies on the Major Port Authorities Act, 2021 and states that Chapter V of the said Act deals with supervision of Central Government wherein various powers of Central Government has been noted.

2.10 The applicant further states that for exemption under Sl. No. 41 of Notification No. 12/2017-CT (R) dated 28.06.2017 as amended from time to time, the exemption is provided to an entity having 20 per cent or more ownership of Central Government, State Government, Union territory. Thus, in this case, the word 'ownership' assumes importance.

2.11 In this context, the applicant refers to the Advanced Law Lexicon 6th Edition by P Ramanatha Aiyar Vol 3, where 'ownership' means- "The collection of rights allowing one to use and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and inheritable."

The Applicant states that the control of the said Major Ports rests with the Central Government as there is no share capital in such organisations to determine the ownership in terms of percentage of share capital. However, as per the audited financial statement of SMPK it is clear that the audit of the same is done by the C&AG under Section 19(2) of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 read with Section 44 (2) of the Major Port Authority Act 2021 and everywhere in the audit report the regulations of The Ministry of Ports, Shipping and Waterways (MPSW), Government of India has been referred to. Therefore, it can be averred that SMPK satisfies the third condition stated above.

2.12 In regard to the last condition, the applicant submits that it is a manufacturing company duly registered under CGST/WBGST Act, 2017 and has manufacturing units in the state of West Bengal. Therefore, the applicant fulfils the last condition mention above as well.

Submission of the Revenue

The officer concerned from the revenue has expressed his views as under:

3.1 The issue of exemption, as claimed for by the applicant under the aforesaid entry rests on four different conditions all of which need to be satisfied-

- I. Firstly, lease period should be of thirty years or more.
- II. Secondly, the property leased should be an Industrial plot or plots for development of infrastructure for financial business.
- III. Thirdly, service provider must be a state Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory).
- IV. Lastly, Service Recipient must be an Industrial Unit.

3.2 It is a settled fact that the lease period is for thirty years and the applicant is also an industrial unit. Hence, so far as the first and fourth conditions are concerned, there is no dispute.

3.3 However, besides the afore mentioned four conditions, there are further conditions prescribed in the said exemption entry itself for availing such exemption (inserted vide Notification 28/2019-Central Tax (Rate) dt 31.12.19 w.e.f. 01.01.2020) which are as follows:

*“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, **for industrial or financial activity in an industrial or financial business area:***

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the

plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.” (emphasis inserted)

3.2 On the basis of the above condition, not only the plot should be used for industrial or financial activity but also the area where the plot is located should be an industrial or financial business area.

3.3 Industrial area means any area declared to be an industrial area by the State Government by notification in the Official Gazette, which is to be developed and where industries are to be accommodated. In the application, the applicant did not produce any evidence on the nature of the land and area to prove it as industrial business area.

3.4 Besides, in the petition itself, the applicant sought for advance ruling on exemption only on the ground of the services of leasing land **for industrial purpose**, so, the applicant did not go into “the financial activity” or “financial business area” clauses. Hence, the comments are restricted only on industrial perspective.

3.5 It is mentioned in the allotment letter that the land was leased for “setting up commercial office complex”. The commercial office complex may or may not include industrial activity.

3.6 As the term “industry” is not defined in CGST/WBGST Act, 2017, so, the reference is drawn from Sec – 2(7)(j) of the Industrial Disputes Act, 1947, –

“industry” means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

- (i) any capital has been invested for the purpose of carrying on such activity; or*
- (ii) such activity is carried on with a motive to make any gain or profit,*

and includes—

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment.

but does not include—

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.--For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;”

3.7 In the application, the allotment letter does not specify structure or activities of “commercial office complex”. Also the applicant did not produce any document that can describe the activities to be done in that commercial office complex and whether such activity fulfills all conditions to be termed as “industrial activity”.

3.8 Furthermore, in order to qualify for the exemption as per the afore-mentioned entry of this notification as applicable in this case, SMPK is required to qualify as

- i) State Government Industrial Development Corporations or Undertakings, or
- ii) Any other entity having 20% or more ownership of Central Government, State Government, Union Territory

3.9 SMPK is governed under the Major Port Authorities Act, 2021 (referred hereinafter as “the Act”). Under section 3 of the Act, the Central Government constitutes a Board, in respect of each

Major Port (including SMPK). The Board of Major Port Authority for that Major Port which shall consist of the following Members, namely:—

(a) a Chairperson;

(b) a Deputy Chairperson;

(c) one Member each from the— (i) concerned State Government in which the Major Port is situated; (ii) Ministry of Railways; (iii) Ministry of Defence; and (iv) Customs, Department of Revenue;

(d) not less than two and not exceeding four Independent Members;

(e) one Member not below the rank of Director nominated by the Central Government, ex officio; and

(f) two Members representing the interests of the employees of the Major Port Authority:

3.10 But Section 43 of the Act, mentions that the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other monies due to— (i) the Members of the Board except Members appointed under clauses (d), (e) and (f) of sub-section (1) of section 3 are debited from the General Account of the Board, and not from the Central Government Account.

3.11 Sub-section (2) of Section (3) of the Act explicitly mentions that the Board of each Major Port Authority constituted under this Act shall be a permanent body having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. So, the Board of SMPK is empowered to acquire, hold or dispose of property. The Board of SMPK is the successor of the Board of Trustees constituted under the Major Port Trust Act, 1963 and all the assets and liabilities of the Board of Trustees were transferred to the Board u/s 21 of the Act. So, SMPK holds their properties inherited from the Board of Trustees.

3.12 Section 23 of the Act clearly distinguishes the authority of the Board and the Central Government, in the matter that, where any immovable property is required for the purposes of the Board, the Central Government, or as the case may be, the State Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Right to Fair Compensation and Transparency in Rehabilitation and Resettlement Act, 2013.

3.13 This statute also empowers the Board of Major Ports (including SMPK) to create specific master plan in respect of any development or infrastructure established or proposed to be established within the port limits. The Board also decides the rate for assets and services

available at SMPK, as prescribed in Sec 27 of the Act, and there is no control of the Central Government for such.

3.14 Section 33 of the Act empowers the Board to take financial decisions, like it can raise loans for its capital expenditure or working capital requirements. The loans may be raised by Board in the open market within India and in any country outside India on port securities including but not limited to debentures, bonds and stock certificates issued by the Board or may be obtained from the Central Government or a State Government.

3.15 The Central Government only has supervisory power as prescribed in Chapter V of the Act. Relevant portion of Section 48 of the Act is as follows:

“48. (1) If, at any time, the Central Government is of the opinion—

(a) any Board is unable to perform the duties imposed on it by or under the provisions of this Act or of any other law for the time being in force; or

(b) that any Board has persistently made defaults in performance of the duties imposed upon it by or under the provisions of this Act or of any other law for the time being in force and as a result of such default, the financial position or the administration of that Board has greatly deteriorated,

the Central Government may, by notification, take over the management of that Board for such period, not exceeding twelve months at a time, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give a reasonable time of not less than three months to the Board to show-cause why its management should not be taken over and shall consider the explanations and objections, if any, of that Board.

(2) Upon the publication of a notification under sub-section (1) for taking over the management of the Board,—

(a) all the Members of the Board shall, as from the date of taking over, stand removed from their respective office or position in the Board;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law for the time being in force, to be exercised or performed by or on behalf of the Board, shall be exercised and performed by such person or persons as the Central Government may direct in this behalf until the Board is reconstituted under clause (b) of sub-section (3);

(c) all property vested in the Board shall, until the Board is reconstituted under clause (b) of sub-section (3), vest in the Central Government.

(3) On the expiration of the period of taking over specified in the notification issued under sub-section (1) or at any time prior to such expiration, the Central Government may, by notification,—

(a) extend the period of taking over the management of the Board for such further term, not exceeding twelve months, as it may consider necessary; or

(b) re-constitute the Board by making fresh appointment to all posts of the Board on such terms and conditions as the Central Government may consider necessary, and in such case, any person who stand removed from their offices under clause (a) of sub-section (2) shall be deemed disqualified for appointment.”

3.16 So, it is clear from the above mentioned Section that in normal course of time, the Central Government does not have any control in the management of the Board, and it operates as an autonomous body. The applicant, in this case, referred a particular transaction when the Board of SMPK is managing and exercising the administrative and financial power, so the Central Government had no control over the management in that period and the Central Government only plays a supervisory role. It is also to be mentioned here that the Central Government is liable to place a full report to be laid before the Parliament for taking control of the management of the Board, as prescribed u/s 49 of the Act.

When the board of SMPK takes administrative and financial decisions, raises loans, pays salaries and other financial benefits to its employees and retired employees, decides the rate for assets and services available at the port, creates master plan for infrastructural projects, without any intervention from the Central Government, it should not considered that the Central Government has an ownership, by way of control, in SMPK. Hence, SMPK is controlled by the Board which is an autonomous body.

3.17 SMPK is audited by the Comptroller and Auditor General of India. Art 149 of the Constitution of India mentions –

“The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of

India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.” (emphasis added)

As the audit of SMPK is done by the CA&G, it does not prove that Central Government holds the ownership of SMPK.

3.18 It is a settled principle that the exemption notification should be interpreted strictly and the person who prays for exemption from tax is liable to prove that such exemption notification is applicable for him. So, in this case, the burden of proof lies on the appellant who fails to determine the percentage of ownership of the Central Government in SMPK. In this matter, I would like to rely on the judgment of Hon'ble Supreme Court of India in case of Commissioner of Customs (Import), Mumbai Vs M/s Dilip Kumar & Co. (Civil Appeal No. 3327 of 2007) where the apex court pronounced:

“To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.”

3.19 Therefore, in paucity of supporting evidences, the undersigned prayed before the authority that the exemption should not be allowed as it does not cover all conditions laid down in the notification mentioned above.

Additional submission by the applicant

4.1 In course of personal hearing, the authorized advocate of the applicant made a prayer to allow the applicant to rephrase the question admitting the fact that the land would not be used for industrial activity. The prayer was allowed and the applicant rephrased the question as follows:

Whether the upfront premium payable by the applicant towards the services of by way of granting of long term lease of thirty years, or more of industrial plots or plots for development of infrastructure for financial business by SMPK is exempted under entry 41 of Notification No. 12/2017-CGST (Rate) dated 28.06.2017?

Observations & Findings of the Authority

5.1 We have gone through the records of the issue as well as submissions made by the authorized advocate of the applicant during the course of personal hearing. We have also considered the submission made by the officer concerned from the revenue. The issue before us is to determine whether the services of leasing of an industrial plot of land at Taratala Road for a period of thirty years (30 years) for setting up commercial office complex against upfront lease premium provided by SMPK to the applicant is exempted from payment of tax or not in terms of entry number 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

5.2 The crux of the contention of the applicant is that the applicant being an industrial unit has entered into an agreement for having leased out land for a period of thirty years for setting up commercial office complex against upfront lease premium. According to the applicant, the aforesaid factual position leaves no doubt that the applicant has fulfilled all the conditions as specified in entry number 41 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 from the end of the recipient. And that from supplier's end, SMPK also fulfils the condition specified in the said entry.

5.3 We find that the officer concerned from the revenue has submitted that the issue of exemption, as claimed for by the applicant under the aforesaid entry rests on four primary criteria all of which need to be satisfied. For the sake of convenience, the same is reiterated:

- I. The lease period should be of thirty years or more;
- II. The property leased should be industrial plots or plots for development of infrastructure for financial business;
- III. Service provider must be a state Government Industrial Development Corporations or Undertakings or by any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory);
- IV. Service recipient must be an Industrial Unit.

However, in regard to the second condition, as stated by the officer from the revenue, we are of the opinion that in addition to the fact that the property leased out should be an Industrial plot or plots for development of infrastructure for financial business, all other conditions as specified in the aforesaid entry has also to be met in order to qualify for exemption.

5.4 Now, the first condition regarding lease period of thirty years or more is a settled matter of fact as evident from the allotment letter itself. So, the first condition for availing the benefit of exemption as per the aforesaid entry gets fulfilled.

5.5 Regarding the second condition for availing the benefit of exemption as per the aforesaid entry as to whether the property leased out is an Industrial plot or plots for development of infrastructure for financial business or not, the conditions as further laid down in entry number 41 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time may be revisited:

“Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided further that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard:

Provided also that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

*Provided also that **the lease agreement entered into by the original lessor with the original lessee** or subsequent lessee, or sub-lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners **shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee** subject to above condition and that the parties to the said agreements undertake to comply with the same.” [emphasis supplied]*

5.6 The applicant has argued that by setting up their commercial office complex, all the financial activities shall be undertaken. He has also argued that as per the sketch of the plot annexed with the tender document, it is clear that the plot is in an industrial area as an industrial unit of another business entity was previously operative at the same plot.

5.7 In this context, we like to refer that the last proviso of the condition for exemption vide entry no 41 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 requires that the lease agreement entered into by the original lessor with the original lessee for lease of such plots shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long

term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same. Similar Notification No. 1136 F.T. dated 28.06.2017 issued by the Government of West Bengal speaks about incorporation of exemption from payment of State tax in the lease agreement.

5.8 However, the copy of the allotment letter issued by the SMPK dated 21.09.2022, as submitted by the applicant during the original stage of hearing, doesn't refer any such exemption from payment of tax. On the contrary, para 3(a) of the said allotment letter specifically mentions payment of applicable GST on upfront premium. Even the Notice Inviting Tender [NIT No SMP/KDS/LND/03-2022 dated 15.03.2022] also speaks as follows:

Terms of payment of lease rent:-

(i) The successful bidder shall make full payment towards upfront plus taxes [GST and any other tax(es), if in vogue at the material time], security deposit (SD) as well as yearly token rent for the first year @ Re.1/- per sq. mtr. plus applicable taxes, within 30 days from the date of the offer letter for allotment.

[Clause 15(i) of Annexure-VI: Conditions of Lease]

The tax components will be as in vogue from time to time. Presently, the tax components are as mentioned below:-

| Payment of | G.S.T |
|--|--|
| <i>Upfront</i> | <i>@ 18% on the aggregate of quoted / accepted rent and occupier's share of Municipal Taxor as may be reviewed by Govt. of India</i> |
| <i>Token annual rent (where upfront is paid)</i> | <i>18 % on token annual rent or as may be reviewed by Govt. of India</i> |
| <i>Annual rent</i> | <i>@ 18% on the aggregate of quoted / accepted rent and occupier's share of Municipal Taxor as may be reviewed by Govt. of India</i> |

[Clause 15(f) of Annexure-VI: Conditions of Lease]

5.9 Thus, even we assume that the applicant has taken on lease an industrial plot for financial business from SMPK, the said supply of services doesn't fulfill all the conditions as specified in the relevant entry of the exemption notification supra.

5.10 Now we take the issue to decide the third condition for availing the benefit of exemption as per the aforesaid entry, i.e. whether service provider is a state Government Industrial Development Corporation or Undertaking or any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory).

5.11 The applicant argues that SMPK deducts tax under section 51 of the GST Act and the control of the said Port rests with the Central Government as there is no share capital in such organisations to determine the ownership in terms of percentage of share capital. Therefore, the status of the service provider, as specified in the notification, gets satisfied in the instant case.

5.12 The applicant also states that as per the audited financial statement of SMPK it is clear that the audit of books of accounts of SMPK is done annually by Comptroller and Auditor General of India under section 19(2) of the Comptroller & Auditor General's (Duties, Powers & Conditions of Service) Act, 1971 read with Section 102(2) of the Major Port Trusts Act, 1963 and Section 44 (2) of the Major Port Authority Act 2021 and everywhere in the audit report the regulations of The Ministry of Ports, Shipping and Waterways (MPSW), Government of India has been referred to.

5.13 However, we are on the same page of the view as expressed by the revenue that when the board of SMPK takes administrative and financial decisions, raises loans, pays salaries and other financial benefits to its employees and retired employees, decides the rate for assets and services available at the port, creates master plan for infrastructural projects, without any intervention from the Central Government, it is rather clear that SMPK is controlled by the Board which is an autonomous body.

5.14 In this context, we find it relevant to reproduce the relevant part of the reply given by SMPK which we had mentioned in our earlier order dated 20.12.2023:

“Further, as stated in your letter, the clarification regarding ownership of SMPK is required in reference to clause 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017. In this regard we would like to state that SMPK as per their Land Policy, is collecting Lease Rent payable by the Lessee over the Lease Term calculated on Pro-rata basis multiplying by a G-Sec Rate which is not in the nature of Salami, Premium, development charge etc for providing long term lease for more than 30 years. Further, as stated above, as Central Government has no ownership in SMPK since it is an autonomous body, therefore, the upfront amount paid by the

lessee at the time of entering into the lease agreement shall not be exempted by virtue of clause 41 of the Notification No. 12/2017- Central Tax (Rate).” [emphasis supplied]

5.15 Thus, the third condition for availing the benefit of exemption as per the aforesaid entry, i.e. whether service provider is a state Government Industrial Development Corporation or Undertaking or any other entity having 20 per cent. or more ownership of Central Government, State Government, Union territory (either directly or through an entity wholly controlled by the Central Government, State Government, Union territory) does not get fulfilled in this case.

5.16 Regarding the fourth condition for availing the benefit of exemption as per the aforesaid entry i.e. the service recipient must be an Industrial Unit, there is no dispute whatsoever.

5.17 Thus, as discussed above, we are of the view that the services provided by SMPK by way of grant of long term lease of land at Taratala Road for a period of thirty years (30 years) for setting up commercial office complex to the applicant, as involved in the instant case, doesn't satisfy all the conditions specified in entry number 41 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017, as amended.

In view of the above, we rule as under:

RULING

- Question: Whether the upfront premium payable by the applicant towards the services of by way of granting of long term lease of thirty years, or more of industrial plots or plots for development of infrastructure for financial business by SMPK is exempted under entry 41 of Notification No. 12/2017-CGST (Rate) dated 28.06.2017?
- Answer: Services by way of grant of long term lease of land by SMPK to the applicant for the purpose of “setting up commercial office complex’ as involved in the instant case is found not to be covered under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and therefore cannot be treated as an exempt supply.

(Dr TANISHA DUTTA)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling

To,

Anmol Industries Limited

Maity Para, Delhi Road, Hooghly, West Bengal, Pin Code-712311

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 Special Commissioner, Large Tax Payers Unit, 14, Beliaghata Road, Kolkata-700015
- (4) The Commissioner of CGST, Howrah Commissionerate, Customs House, M.S. Building, 2nd floor, 15/1, Strand Road, Kolkata-700001
- (5) Office Folder