



# #GSTCASE-91-NO TDS LIABLE TO BE DEDUCTED U/SEC 51 OF CGST ACT, 2017 ON EXEMPT SUPPLY OF GOODS OR SERVICES OR BOTH

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Category: [GST Caselaw](#)

## #GSTCase-91-No TDS liable to be deducted U/Sec 51 of CGST Act, 2017 on Exempt Supply of goods or services or both

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### 1. Query

Whether supply of providing conservancy/solid waste management service to Conservancy Department of the Howrah Municipal Corporation is exempted in terms of Sl. No. 3 or 3A of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-2017, as amended from time to time, and if so, whether the notifications regarding TDS are applicable in this case?

### 2. Facts

Applicant is providing conservancy/solid waste management service to Conservancy Department of Howrah Municipal Corporation. Howrah Municipal Corporation is however deducting TDS while paying consideration for the above supply in terms of Notification No. 50/2018 - Central Tax dated 13-9-2018.

### 3. Contention by Appellant

The Applicant submits that the recipient, being a municipal corporation, is a local authority. He submits copies of the work orders issued, specification and terms and conditions of the work etc. to establish that he supplies pure service and, therefore, the exemption under Sl. No. 3 of the Exemption Notification applies to his supplies.

### 4. Observation by AAR

#### • Scope of Entry No. 3 and 3A of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-2017

Sl. No. 3 of the Exemption Notification exempts from payment of GST any "pure service" (excluding works contract service 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 or a Government Entity 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. Sl. No. 3A of the Exemption Notification extends it to a "composite supply of goods and services" in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

These functions are in the nature of public welfare service that the governments on their own, and sometimes through governmental authorities/entities, do provide to the citizens. When the activity is in relation to any such function, the supply to the governments or governmental authorities/entities or local authorities is exempt from paying GST under Sl. No. 3 or 3A of the Exemption Notification, provided it is

either a pure service or a composite supply, where supply of goods does not constitute more than 25% of the value.

- **Applicant's service to HMC, therefore, is exempt under Sl. No. 3 of the Exemption Notification.**

**Condition 1:-Recipient is Local Authority:** The recipient is a municipal corporation, which is a local authority as defined under section 2(69) of the GST Act.

**Condition 2:- Nature of Work is pure Service-**In Work Orders issued to Applicant, recipient describes nature of work as lifting and removing of daily garbage etc. accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area. In the Specification and Terms and Conditions of Work it is further specified that the Applicant must provide vehicles suitable for removal of garbage including payloaders with drivers, labours, unloading equipment, machinery, fuel/lubricants etc. and shall be responsible for repair and maintenance of the vehicles. There is, however, no reference to any supply of goods in the course of executing the work. The vehicles used and the fuel consumed and the machinery used do not result in any transfer of property in goods to HMC. The consideration to be paid measures the work only in terms of the quantity of the garbage lifted and removed. Based on the above documents, it may, therefore, be concluded that the Applicant's supply to HMC is a pure service.

**Condition 3:- Activity Falls under the Scope of Article 243W of Constitution-** Article 243W of the Constitution that discusses the powers, authority and responsibilities of a Municipality, refers to the functions listed under the Twelfth Schedule as may be entrusted to the above authority. Sl. No. 6 of the Twelfth Schedule refers to public health, sanitation, conservancy and solid waste management. The Applicant's supply to HMC is a function mentioned under Sl. No. 6 of the Twelfth Schedule.

- **Since Applicant Service is Exempt from GST, therefore no TDS is liable to be deducted under Section 51 of CGST Act, 2017**

Section 51(1) of the Act provides that the Government may mandate inter alia a local authority to deduct TDS while making payment to a supplier of *taxable* goods or services or both. As the Applicant is making an exempt supply to HMC the provisions of section 51 and, for that matter, the TDS Notifications do not apply to his supply.

## 5. Held

Applicant's supply to Howrah Municipal Corporation, is exempt from the payment of GST under Sl. No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-2017 as amended from time to time.

As Applicant is making an exempt supply, the provisions of section 51 and, for that matter, Notification No. 50/2018 - Central Tax dated 13-9-2018, to the extent they mandate and deal with the mechanism of TDS, do not apply to his supply.

## 6. Comment

The Judgement lays down the fact clearly that no TDS is liable to be deducted on exempt supply. TDS is required to be deducted only on supply of taxable goods or services or both.

