

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, Senior Joint 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 there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	SWAPNA PRINTING WORKS PVT LTD
Address	52, RAJA RAMMOHAN ROY SARANI, KOLKATA-700009
GSTIN	19AADCS8593E1ZW
Case Number	WBAAR 19 of 2023
ARN	AD1907230061285
Date of application	July,21, 2023
Jurisdictional Authority (State)	Maniktala Charge
Jurisdictional Authority (Central)	Barasat Division, Kolkata North Commissionerate
Order number and date	28 /WBAAR/2023-24 dated 20.12.2023
Applicant's representative heard	Mr. Indranil Das, FCA

1.1 At the outset, we would like to make it clear that 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 Swapna Printing Works Pvt Ltd is stated to be engaged in the business of printing books and other items. The applicant submits that Jharkhand Council of Educational Research and Training, Ranchi (the JCERT, for short) has awarded contracts to him for printing and supply of text books under State Plan for academic session 2023-24 on the basis of content provided by the JCERT, printing and supply of Atlas, Dictionary, Grammar and General Knowledge Book. It is submitted that the applicant will have temporary copyright over the content of the text books against consideration to be paid in the form of royalty. The applicant has also received contracts for printing and supply of Notebooks under School Kit Scheme of State Government for 2023-24 and printing and supply of Bilingual Parental Calendar from Jharkhand Education Project Council. Another contract for printing and supply of Pupils Comprehensive Report Progress Card has been awarded to the applicant by the Office of the Mission Director, Axom Sarba Siksha Abhiyan Mission, Assam.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01 as to:

- (i) Whether the items supplied will be considered as a supply of goods or services in terms of the Circular 11/11/2017 dated 20.10.2017?
- (ii) Whether the printing activities undertaken by them are eligible for exemption under Serial No. 3,3A of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended?

1.4 The aforesaid questions on which the advance ruling is sought for are found to be covered under clause (a), (b) and (e) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

Submission of the Applicant

2.1 The applicant submits that he is responsible for printing books for JCERT as part of the Jharkhand Government curriculum. These books are subsequently distributed directly to the students by the Government of Jharkhand. The applicant has additionally paid an upfront fee or royalty to JCERT in order to obtain a temporary license or rights and thus engaged in printing of books in accordance with the specifications and designs provided by JCERT. In addition to this, the applicant undertakes supplies of student calendar and note book as follows:

- (a) Student Calendar – It is an integral component of JCERT's curriculum and directly benefits of school students through distribution.
- (b) Note book which are supplied to Jharkhand government- It is a fundamental element of JCERT's curriculum, directly benefiting students, and featuring all the designs and logos of the Jharkhand government.
- (c) Note book which are supplied to Assam government- It is similar to the notebook which is supplied to JCERT. It is an integral part of Assam government's curriculum, providing direct benefits to students. Furthermore, it prominently displays the designs and logos of the Assam Government. Additionally, the phrase 'NOT FOR SALE' is clearly stated in the notebook, signifying that the notebook is exclusively intended for students and not for commercial sale in the open market.

2.2 According to the agreement between the applicant and JCERT, the applicant have acquired the temporary copyright over the content of the books. By virtue of the copyright, the applicant shall be authorized to print and supply books meant for Free Distribution (that will be purchased by JCERT under the contract). Further, in case of excess sale of books, additional amount of royalty will be deposited by the applicant.

2.3 The applicant has relied on the judgement of Hon'ble Supreme Court in the case of Tata Consultancy Service v. State of Andhra Pradesh, (2005) 1 SCC 308 wherein it was held that once the copyrighted material, is put on an physical media such as books, floppies, CDs, etc., it acquires the nature of goods and transfer of such goods, amount to

sale of goods inviting sales tax. Relevant portion of the order is as follows:

“In our view, the term "goods" as used in Article 366(12) of the Constitution of India and as defined under the said Act are very wide and include all types of movable properties, whether those properties be tangible or intangible. Even intellectual property, once it is put on to a media, whether it be in the form of books or canvas (In case of painting) or computer discs or cassettes, and marketed would become "goods". We see no difference between a sale of a software programme on a CD/floppy disc from a sale of music on a cassette/CD or a sale of a film on a video cassette/CD. In all such cases, the intellectual property has been incorporated on a media for purposes of transfer. Sale is not just of the media which by itself has very little value. The software and the media cannot be split up. What the buyer purchases and pays for is not the disc or the CD. As in the case of paintings or books or music or films the buyer is purchasing the intellectual property and not the media i.e., the paper or cassette or disc or CD. Thus, a transaction sale of computer software is clearly a sale of "goods" within the meaning of the term as defined in the said Act.”

2.4 The applicant submits that the activity of printing of books pursuant to the agreement would be considered as supply of goods. The applicant thus has placed his arguments as follows:

- “Goods” has been defined, under the GST Act, 2017, as every kind of movable property. The books supplied by the applicant are distinct, movable property. Para 4 of the Circular No 11/11/2017 dated 20.10.2017 issued by the CBIC indicates that the person who owns the copyright and the person who undertakes the printing activities are separate persons. However, in the instant case the applicant, being the sole person, owns the usage rights as well as prints and supplies books. The applicant, therefore, does not satisfy the conditions envisaged in para 4 of the circular.
- The applicant has referred to point no 1(a) of Schedule II of the GST Act, 2017 along with clarification mentioned in Circular dated 04.01.2018 to argue that any transfer of the title in goods is a “supply of goods” and if the supplier owns the books and has legal right to sell the same on its own account, such supply would tantamount to supply of goods. Here, the applicant possess title of books and has the legal right to sell the books on his own account as per agreement with JCERT.
- Further, referring section 14 of the Copyright Act 1957, the applicant asserts that permission to print and publish pre-determined quantity of books awarded by the

Government which retains ownership of the copyright at all times and represents a temporary transfer of copyright. Furthermore, it is submitted by the applicant that as per section 19 of the Copyright Act 1957, temporary copyright holder can avail all such rights such as printing, publishing of copyright works which are available to the copyright owner, if they have been granted such rights pursuant to the assignment/agreement.

- According to the agreement, title of the books printed out of the copyrighted material would automatically stand transferred to the Government. Moreover, it is agreed between both the parties that the title to the books printed out of such copyrighted work, lies with the applicant only. Such title is transferred only pursuant to a sale by the applicant. Even though the sale price is pre-decided, no transfer of title happens without such sale.
- The applicant is not inclined to define its activity of printing books as job work, defined under section 2(68) of the GST Act, 2017 as it is not performing any treatment or process on goods belonging to another registered person. The content, paper, ink and any other material required for the supply, is belonging to the applicant.
- The applicant differentiates its activity as supply of goods from supply of service as indicated in 5(c) of Schedule II of the GST Act 2017 where permission is given by the owner of intellectual property to someone else. In the instant case JCERT comes to play the role of permitting temporary usage of copyright and for that JCERT could be considered to be supplying a service to the applicant, in terms of Entry 5(c).

2.5 The applicant undertakes the activity of printing books, under HSN 4901 10 10 (Printed Books) which falls under residual Entry 453 under Schedule III of Rate Notification inviting GST rate of 18%. But, HSN 4901(Printed books, including Braille books) is exempted vide Notification No. 2/2017 Central Tax (Rate) dated 28.06.2017.

2.6 The applicant places reliance on the case of Macro Media Digital Imaging Pvt Ltd, Tamil Nadu Authority of Advance Ruling which held that for the supply to be treated as sale of goods, the seller should have “property in the wholly produced product” supplied by them. The applicant’s case here is a corollary since the applicant in this case possesses the copyright.

2.7 The applicant contends that in case of printing of Comprehensive Progress Report Card of Students of Assam Government, there is no transfer of temporary copyright on payment of royalty. The content is owned and supplied by the Government of Assam. The applicant has relied on the advance ruling given by the Telangana Authority for Advance Ruling in the case

of M/s. Y S Hitech Secure Print Private Limited and submits to consider this impugned supply to Assam Government as exempt from payment of GST as per Sr. No. 66(b)(iv) of Notification No. 12/2017-CT(R) dated 28.06.2017.

Submission of the Revenue

3.1 The officer concerned from the revenue has not expressed any view in this regard.

Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorized representative of the applicant during the course of personal hearing.

4.2 We first take the issue to decide whether the activities being undertaken by the applicant for printing and supply of text books would be considered as supply of goods or the same would be treated as supply of services. The applicant has submitted that JCERT has awarded contract to him for printing and supply of text books under State Plan for academic session 2023-24. As per the agreement between the applicant and the JCERT, there will be a temporary transfer of copyright of the content by JCERT for which royalty is to be paid by the applicant. The relevant part of the agreement is reproduced herein under: *'The printer will have temporary copyright over the content of the text books to be printed by him under this contract. By virtue of this copyright, the printer shall be authorized to print and supply books meant for Free Distribution (that will be purchased by JCERT under this contract). This supply/ sale shall be made by the printer on his own account to JCERT. This copyright shall only be valid for Academic Year 2023-24.*

In consideration of the copyright, the printer is depositing royalty as per details mentioned below:

5% royalty on Free Distribution Books'

4.3 The applicant submits that as per the agreement, printing is to be carried out strictly adhering to the standards, quality, design, syllabus and content stipulated in the tender. Stitching, binding, packeting, packing etc. is also to be carried out strictly as specified in the bid document. The production quality of printing, colour, illustrations, lay out, font size etc. should be conforming strictly to NCERT standards as well as similar to the matter provided in CD. According to the applicant, the books supplied by him to JCERT are distinct, movable property. The applicant is supplying printed books against payment and temporary possession of copyright. Moreover, the applicant has the right to sell the books in the open market against payment of additional amount of royalty. Corrigendum to Para

1.7 of the Bid Document may be reproduced here for reference:

- *The successful bidders will have to submit the minimum admissible royalty @5% (i.e. 5% of the total contract value + 20% commission) * 5% in form of demand draft in the name of Director, JCERT payable at Ranchi at the time of agreement. In case of excess sale of books, additional amount of royalty at the noted rate will be deposited by the applicant.*

4.4 The applicant contends that the corrigendum stresses on the fact that the intention of JCERT is to not only confer temporary copyright for acquisition of books but also for the printing and sale of excess books (if any) by the applicant on payment of additional amount royalty as stated above. Hence, the essence of the contract lies on the transfer of temporary copyright and not solely on the process of printing and delivering of books to JCERT or on the instruction of JCERT. The applicant has also submitted that entry 5(c) of Schedule II which classifies 'temporary transfer or permitting the use or enjoyment of any intellectual property right' as supply of services, is applicable in his case where the JCERT has permitted the temporary usage of copyright by the applicant for printing books out of the copyrighted material. According to the applicant, such temporary transfer of copyright could be considered to be a supply of services by JCERT to the applicant in terms of aforesaid entry 5 (c) of Schedule II. Thus, the agreement between the applicant and JCERT involves two distinct supplies out of which, the applicant is liable to pay tax under reverse charge mechanism in respect of supplies made by JCERT for temporary transfer of copyright.

4.5 The applicant has also drawn attention to clarification given in para 4 of Circular No. 11/11/2017-GST dated 20.10.2017 issued by the Tax Research Unit, Department of Revenue, Ministry of Finance which reads as follows:

“ In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.”

4.6 In this context, we are in agreement with the view taken by the applicant that the aforesaid clarification denotes that the person who owns copyright and the person who prints are separate persons. However, in the case in our hand, by virtue of temporary

transfer of copyright by JCERT against payment of royalty which enables the applicant to supply books on his own account, the applicant plays the role of copyright holder as well as the printer. Therefore the activities being undertaken by the applicant cannot be classified in the manner as clarified in para 4 of the said circular.

4.7 On due consideration of the submissions made by the authorized representative of the applicant along with documents produced before us, we observe that that the applicant, being engaged in printing of books, supplies such books to JCERT on his own account. Printing of books using the inputs purchased by the applicant and subsequent delivery of the same as involved in the instant case cannot be treated as supply of services on the ground that the applicant, for the stipulated period under the contract, also holds the copyright of the contents of the books. We are therefore of the view that the instant supply is to be treated as supply of goods being "printed books".

4.8 The next issue is to decide the taxability of printing and supply of 'Bilingual Parental Calendar' as awarded by Jharkhand Education Project Council (JEPC, for short). The applicant submits that it is not an ordinary calendar but a Self Learning Calendar which not only indicates dates but also includes relevant study material and activities to be performed and matters relevant for the students. The intention is for the students to study/perform the stated activities within the given dates. The outcome of such activities would then be evaluated in examination. The authorized representative of the applicant has produced before us a copy of such calendar as sample to contend that the item itself is an educational material for the children as part of their curriculum and is essentially a booklet designed with knowledge content/ activity schedule and the corresponding dates are just ancillary data to make the former more tenable. Hence the primary nature of the calendar is that of a Printed Book in the form of a Booklet for the learning of the school pupils.

4.9 As per Wikipedia, 'a calendar is a system of organizing days. This is done by giving names to periods of time, typically days, weeks, months and years. A date is the designation of a single and specific day within such a system. A calendar is also a physical record (often paper) of such a system. A calendar can also mean a list of planned events, such as a court calendar, or a partly or fully chronological list of documents, such as a calendar of wills.' As per Cambridge Dictionary, 'calendar' inter alia means a list of events and dates within a particular year that are important for an organization or for the people involved in a particular activity. It therefore appears that if a calendar is designed for a specific purpose e.g., showing the activities to be undertaken on different dates, still it bears the basic characteristic of a calendar. From the specimen copy of the calendar

produced before us in course of personal hearing, we find that the calendar aims to provide parents with a simple and easy to access repository of resources and daily activity plans to promote meaningful and sustained engagements between parents and children. Undisputedly this calendar is meant for a specific group of people. But this very purpose cannot qualify the calendar to be a booklet, as contended by the applicant.

4.10 It has been clarified in para 2 of Circular No. 11/11/2017-GST dated 20.10.2017 supra that *“supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.”* Here the recipient namely JEPC provides the content for printing and the applicant undertakes the printing work using the paper and ink purchased by him and thereafter supplies the calendar to the recipient. We thus find the supply to be a composite supply where predominant element is printing of the calendar. The supply of the material of printing is only ancillary to the main supply. As we find that supply of printing services is the principal supply, the same is classifiable under Tariff Code 998912 being ‘Printing and reproduction services of recorded media, on a fee or contract basis’.

4.11 The applicant also undertakes printing of comprehensive progress report card. To carry out the job, the applicant has entered into an agreement with the Government of Assam under the Sarba Siksha Abhijaan of the Government of India. The applicant submits that unlike printing of text books as in the case of JCERT, there is no transfer of temporary copyright on payment of royalty. The content is owned and supplied by the Government of Assam. In regard to taxability of such supply, the applicant has relied on the advance ruling given by the Telangana Authority for Advance Ruling in the case of M/s. Y S Hitech Secure Print Private Limited and submits to consider this impugned supply to Assam Government as exempt from payment of GST as per Sr. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

4.12 The aforesaid entry exempts services provided to an educational institution, by way of services relating to admission to, or conduct of examination by such institution. The definition of 'educational institution' as provided under the said notification is reproduced below:

"educational institution" means an institution providing services by way of,

- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course;*

Further, following explanation has been inserted vide Notification No.14/2018-Central Tax (Rate) dated 26.07.2018 [corresponding West Bengal State Notification No. 1030 F.T. dated 27.07.2018]:

For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

4.13 The process of conducting examination includes pre-examination works, the examination itself and post-examination works and for that purpose, printing of comprehensive report progress card may be treated as services relating to conduct of examination. However, in the instant case, the supply is provided to Education Department, Government of Assam and not to an educational institution. We are therefore of the opinion that the instant supply shall not be covered under the aforesaid entry for exemption.

4.14 In regard to supply of notebooks, the applicant submits that it is a fundamental element of JCERT's curriculum, directly benefiting students, and featuring all the designs and logos of the Jharkhand Government. From the documents as produced, we find that the applicant has been awarded a contract by Jharkhand Education Project Council for printing/supply of 80 pages notebooks (including cover) for the academic session 2023-24. The notebooks are meant for free distribution among the children under School Kit Scheme of State Government. The acceptance letter issued by JEPC speaks that the multicolour matter for printing on inner and front cover pages of the notebooks will be provided at the time of work order in soft copies. On due consideration of the nature of contract, we hold that in the instant supply, *'predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.'*

4.15 Finally we take the issue to decide whether the printing activities undertaken by the applicant are eligible for exemption under Serial No. 3/ 3A of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, as amended. Since the issue is related to entry

number 3 & 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, we find it relevant to reproduce the latest position of the aforesaid entries:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3	Chapter 99	Pure Services (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 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	NIL	NIL
3A	Chapter 99	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 provided to the Central Government, State Government or Union territory or local 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.	NIL	NIL

4.16 The term 'pure services' has not been defined under the Act. However, a bare reading of the description of services as specified in serial number 3 above denotes that supply of services which does not involve any supply of goods can be regarded as pure services. The said entry serial, therefore, specifically excludes works contract services or other composite supplies involving supply of any goods. On the other hand, to qualify to be a supply under serial number 3A above, a composite supply, subject to fulfilment of other conditions as specified in the said entry, would be such that the maximum value of involvement of goods is less than 25% of the total value of the said composite supply.

4.17 As the supplies of printed text books, notebooks, activity calendar and comprehensive progress report card involves supply of paper, ink, binding and packing materials etc., such supplies would not come under serial number 3 of the notification supra. Further, the applicant has not furnished any documents wherefrom the value of goods involved in the supply can be ascertained. We, therefore, refrain to pronounce any ruling on this issue.

In view of above, we rule as under:

RULING

The items supplied by the applicant shall be treated as follows:

- (i) Printing and supply of text book to JCERT shall be treated as supply of goods.
- (ii) Printing and supply of 'Bilingual Parental Calendar' to JEPC would be treated as supply of services.
- (iii) Printing and supply of notebook would be treated as supply of goods.
- (iv) Printing and supply of Comprehensive Report Progress Card to the Education Department, Government of Assam would be treated as supply of services.

(Dr.TANISHA DUTTA)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 20th December, 2023

To,
SWAPNA PRINTING WORKS PVT LTD
52, RAJA RAMMOHAN ROY SARANI, AMHERST STREET,
KOLKATA-700009

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector, Kolkata-700107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Joint Commissioner, Maniktola Charge, Jalasampad Bhavan, Block DF, Sector I, Saltlake, Kolkata-700091
- (4) The Commissioner, Kolkata North Commissionerate, CGST & CX, 1st Floor, 180, Shantipally, R.B.Connector, Kolkata-700107
- (5) Office folder