

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

**BEFORE THE BENCH OF**

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax  
(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	27AACCR7446Q1ZM	
Legal Name of Applicant	Reliance Infrastructure Limited	
Registered Address/Address provided while obtaining user id	CTS NO.407-A, Reliance Energy R/S, Devidas Lane, Borivali West, Mumbai Suburban, Maharashtra, 400103	
Details of application	GST-ARA, Application No. 11 Dated 22.12.2017	
Concerned officer	Central GST, Range- V, Div-IV, Thane.	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	Determination of liability to pay GST on charges paid to Municipal Authorities towards restoration of roads.	
A	Category	Service Provision
B	Description (in brief)	The present application is being filed to determine the applicability of GST on charges paid to Municipal Authorities towards restoration of roads.
Issue/s on which advance ruling required	(v) determination of the liability to pay tax on any goods or services or both.	
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.	

**PROCEEDINGS**

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Reliance Infrastructure Limited, the applicant, seeking an advance ruling in respect of the following :

- i. Whether reinstatement charges paid to Municipal Authorities would be liable to GST?
- ii. Whether access charges paid to Municipal Authorities would be liable to GST?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

**FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

"ANNEXURE I - STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

2. M/s. Reliance Infrastructure Limited ('the Applicant') is *inter alia* engaged in the business of generation, transmission and distribution of electricity and is registered under Goods and Services Tax Act ('GST') bearing Registration No. 27AACCR7446Q1ZM.



3. The Applicant has obtained a license under Section 14 of the Central Electricity Act, 2003 ('Electricity Act') to distribute electricity as a distribution licensee. Accordingly, the Applicant is operating and maintaining a robust distribution system for supplying electricity to the consumers in the authorized areas ('area of supply'), in terms of his license to supply electricity. The distribution system made up of wires and associated facilities between the delivery points on the transmission lines, generating station connection and the point of connection to the installation of its consumers in Suburban Mumbai.
4. The Applicant's distribution network is spread across its North Division (Borivali to Bhayender), East Division (Chunabhatti to Vikhroli and Mankhurd) Central Division (Goregaon to Kandivali), South Central Division (Andheri, MIDC, Marol and SEEPZ, Jogeshwari) and South Division (Bandra to Vile Parle).
5. In terms of Section 42 of the Electricity Act, every distribution licensee is entrusted with the responsibility to develop, operate and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply uninterrupted electricity to his consumers. Further, in terms of Section 67 of the Electricity Act, every licensee may, from time to time but subject to the terms and conditions of his license, within his area of supply lay down or place electric supply lines and carry out following works:
  - i) to open and break up the soil and pavement of any street, railway or tramway;
  - ii) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
  - iii) to alter the position of any line or works or pipes, other than a main sewer pipe;
  - iv) to lay down and place electric lines, electrical plant and other works;
  - v) to repair, alter or remove the same;
  - vi) to do all other acts necessary for supply of electricity.
6. Section 67 of the Electricity Act confers power on the appropriate Government to prescribe procedure to enable the licensee to carry out the specified works. This Section *inter alia* lays down that in order to carry out the aforesaid works, the licensee would be required to obtain consent / permission from the appropriate Government, local authority, owner or occupier, as the case may be. Further, the licensee would be liable to pay compensation or rent to the parties affected by such works. Alternatively, Section 67 of the Electricity Act also allows the owner or occupier to undertake works and be reimbursed the expenditure incurred in connection therewith.
7. Section 67 also empowers the appropriate Government to lay down rules prescribing the manner of restoration of property affected by such works and maintenance thereof and also the procedure for deposit of compensation payable by the licensee and furnishing of security in respect thereto.
8. The Government of Maharashtra has formulated the Maharashtra Electricity Work of Licensee Rules, 2012 ("Electricity Work Rules") for *inter alia* setting out the procedure to be followed by the licensee for the purpose of carrying out the works given under Section 67 of the Electricity Act. It also lays down the procedure for fencing, guarding and other safety measures relating to the works and the immediate reinstatement of the affected areas and manner of restoration and the payment of the cost of reinstatement to the authority etc. The key provisions laid down in this connection are summarized hereunder:
  - Rule 11 of the Electricity Work Rules provides that licensee shall be liable to deposit an amount for restoration and maintenance of the affected areas.
  - Rule 12 of the Electricity Work Rules provides that the distribution licensee shall carry out the restoration and maintenance of the property affected by the works carried out by the distribution licensee.
  - Proviso to the Rule 12 of the Electricity Work Rules provides that where the restoration work is carried out by the concerned local authority, payment may be recovered by the local authority from the distribution licensees.
  - Rule 13 of the Electricity Work Rules provides that any amount of compensation payable by the licensee under these rules shall be deposited by means of demand draft.
9. In the instant case, in respect of the area of supply, Municipal Corporation of Greater Mumbai ('Municipal Authority') is the concerned authority set up under the Mumbai Municipal Corporation Act, 1988 ("MMC Act"). Further, Municipal Authority has issued the Policy Guidelines No. AMC/ES/7725/II dated 18.12.2014 (hereinafter referred to as 'MCGM Trenching Policy') for granting trench excavation permissions to underground service provider utility agencies such as distribution licensees and for collection of the following charges in respect of excavation activity carried out for the distribution licensees:
  - i) Reinstatement Charges: For the reinstatement of trenches arising out of the excavation work done by the distribution licensees, reinstatement charges is payable by the licensee to MCGM. The relevant extract of the MCGM Trenching Policy have been provided below:

**"6. Reinstatement Charges:**  
*Flat rates applicable for arriving at reinstatement charges for various road surface based on prevailing Unified Schedule of Rates as well as charges for using existing duct will be as per Annexure-A. These rates have been worked out considering the width of trench as 0.9M, average depth of 0.9M and 0.55M width of affected area of road on each side; i.e. the total width of road to be improved will be 2.0M as against 2.4M as per previous practice."*

In case, the excavation proposed by the distribution licensee is not included in the Annual Plan submitted with the Municipal Authorities, the distribution licensee is liable to pay Additional Reinstatement Charges at the rate of 7% of the normal Reinstatement Charges. The relevant extract of the MCGM Trenching Policy have been provided below:

**"6. Reinstatement Charges:**  
*Along with reinstatement charges; 50% additional amount shall be obtained from the utility agency as security deposit which can be utilized to recover penalties for various lapses, additional reinstatement charges in case the utility agency exceeds the excavation than length allowed in permit etc. Such deposit which has to be deposited with MCGM with each and every permit can be waived; if the utility agency deposits certain fixed amount of standing security deposit with MCGM for the purpose stated hereinabove. The Asst Commissioner of respective ward shall decide the amount of such standing security deposit which in his opinion will be sufficient to meet the recoveries from the utility agency. If the utility agency deposits such standing security deposit with the respective ward then no separate security deposit shall be insisted along with demand note."*



- ii) Access Charges: In addition to the payment of the reinstatement charges, the licensee is also liable to pay access charges to the Municipal Authorities for giving right of way to the distribution licensee to carry out the excavation work for laying of underground electric supply lines. The relevant extract of the MCGM Trenching Policy have been provided below:

**"6A. Access Charges (Right of way charges):**

In addition to the regular RI charges; access charges for right of way will be recovered by MCGM from all utilities which lay underground services below MCGM roads. Presently these charges will be recovered at the rate of Rs100/- Per Meter length of the cables/conduits/ducts Per Year. The Access charges will be enhanced as and when it is felt expedient to MCGM. On demand from MCGM or rather proactively; the access charges shall be deposited year by year by the Utility agencies. The access charges will be applicable to all types of trenching works i.e. open cut trenching, HDD & Micro trenching. Applicable access charges in individual case shall be informed to the applicant utility agency through demand note along with the reinstatement charges."

10. Therefore, every distribution licensee would be required to make payment of reinstatement charges and access charges to the Municipal Authorities to carry out the excavation of roads for laying, repair and maintenance of electric supply lines. Such charges are levied based on the dimensions of the trench, nature of surface etc. For the purposes of understanding, the entire transaction along with the process and the documents involved is depicted hereunder:

- The Applicant makes an application for excavation of roads to MCGM. Copy of the application is enclosed as **Exhibit A**.
- On receipt of such application, the Municipal Authorities inspect the site on which such excavation activity is proposed to be undertaken and provide an in-principle approval subject to the deposit of security deposit, reinstatement charges and access charges. Copy of the in-principle approval given by Municipal Authorities is enclosed as **Exhibit B**.
- Further, in the event, the excavation proposed by the distribution licensee is not included in the Annual Plan submitted with the Municipal Authorities at the beginning of the year, the distribution licensees would also be charged Additional Reinstatement Charge of 7% over and above the normal Reinstatement Charges, access charges and security deposit. Copy of the in-principle approval wherein the Municipal Authorities have charged reinstatement charges, access charges and additional reinstatement charges is enclosed as **Exhibit C**.
- Further, whenever the security deposit made by the Applicant gets exhausted (either as adjustment against penalties or against the reinstatement charges), the Municipal Authorities issues letters directing the Applicant to make additional security deposit. Copy of the letter issued by Municipal Authorities is enclosed as **Exhibit D**.

11. It is to be noted that that the Applicant has made similar payments of reinstatement charges and access charges to other authorities namely Mumbai Metropolitan Region Development Authority (MMRDA) and Mira Bhayandar Municipal Corporation.

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

**2. SUBMISSIONS OF APPLICANT**

**GST is not payable on Reinstatement charges paid to Municipal Authorities**

- 2.1 In terms of Entry 4 to Notification No. 12/2017 –Central Tax (Rate) dated 28.06.2017 ('NN 12/2017'), services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution are exempt from levy of GST. The relevant extract of NN 12/2017

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
4	Chapter 99	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Nil	Nil

- 2.2 From a perusal of NN 12/2017, it is clear that the following conditions should be cumulatively fulfilled:

- There should be service (**Condition I**)
- Service should be provided by Central Government, State Government, Union territory, local authority or governmental authority (**Condition II**)
- Service should be by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution (**Condition III**)

**Condition I**

- 2.3 The reinstatement charges are collected by the Municipal Authorities towards the activity of restoration of roads which includes activities such as construction, alteration, repair and maintenance of roads. It is pertinent to understand whether the activity undertaken by the Municipal Authorities would constitute 'works contract' and thereby 'services'.

- 2.4 In terms of Section 2(119) of the CGST Act, works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, 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. Thus, the activity of restoration of roads will be considered as works contract in terms of Section 2(119) of the CGST Act.

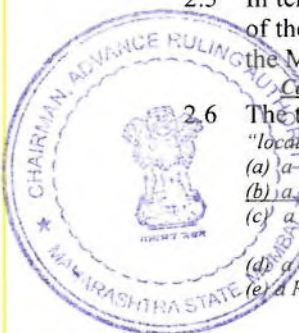
- 2.5 In terms of clause (a) of Entry 6 of Schedule II to the CGST Act, works contract as defined in Section 2(119) of the CGST Act has to be treated as supply of service. Therefore, activity of restoration of roads provided by the Municipal Authorities would constitute 'service'. Hence, Condition I stands satisfied in the instant case.

**Condition II**

- 2.6 The term 'local authority' has been defined under Section 2(69) of the CGST Act as under:

"local authority" means—

- a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- a Cantonment Board as defined in section 3 of the Cantonments Act 2006;
- a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;



- (f) a Development Board constituted under article 371 of the Constitution; or  
(g) a Regional Council constituted under article 371A of the Constitution;

2.7 In terms of Article 243P read with 243S of the Constitution of India, a Nagar Panchayat, Municipal Council or a Municipal Corporation would constitute 'Municipality'. Thus, Condition II in Entry 4 to NN 12/2017 stands fulfilled as the MCGM, MMRDA and Mira Bhayandar Municipal Corporation would be treated as local authority

**Condition III**

2.8 The Condition III requires that the services should be by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2.9 It is a settled position in law<sup>1</sup> that the term "in relation to" is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context.

2.10 Further, the functions entrusted to a Municipality under Article 243W of the Constitution is reproduced hereunder:

*"Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow*

- a) *the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to*
- i. *the preparation of plans for economic development and social justice;*
  - ii. *the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*
- b) *the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule"*

2.11 The relevant entry of Twelfth Schedule of the Constitution of India is reproduced hereunder:

*"(1)...*

*(4) Roads and Bridges; ..."*

2.12 As the services provided by the Municipal Authorities is towards restoration or reinstatement of the affected roads, bridges, etc. Condition III stands fulfilled.

2.13 Therefore, in view of the above, service of restoration of roads can be said to be provided by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution and accordingly, reinstatement charges for restoration of roads collected by the Municipal Authorities can be said to be exempt from the applicability of GST.

**Access charges (right of way) is exempt from levy of GST**

2.14 In addition to the reinstatement charges, the Municipal Authorities also recover access charges for providing right of way to carry out the excavation work of laying, repair and maintenance of underground electric cables. It is to be noted that in the instant case, the access charges for access of roads are payable in conjunction with the reinstatement charges. Therefore, whenever the Applicant is required to carry out the excavation of roads for laying, repairing and maintaining of electric cables, it is necessary for the Applicant to make payment of access charges for the purpose of right of way over roads to carry out work and reinstatement charges for restoration of roads affected by the excavation work.

2.15 It is important to examine whether the instant case involves a 'composite supply' as defined under Section 2(30) of the CGST Act as under:

*"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;*

2.16 Further, in terms of Section 8 of the CGST Act, the tax liability of a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

2.17 In the present case, the Municipal Authorities provide services of restoration of roads and also right of way to carry out excavation work. The services of giving right of way and restoration of roads are naturally bundled and are supplied in conjunction with each other in the ordinary course of business of granting permission to the licensee for carrying out the excavation works. Thus, it can be said that it would constitute a composite supply in terms of Section 2(30) of the CGST Act wherein the service of restoration of roads would be the principal supply.

2.18 As discussed above, in terms of Section 8 of the CGST Act, the composite supply shall be treated as supply of principal supply and GST would be applicable based on such principal supply. In the instant case, principal supply is the supply of service for restoration of roads which is exempt from the levy of GST in terms of NN 12/2017. Therefore, GST would not be applicable on the access charges collected by the Municipal Authorities.

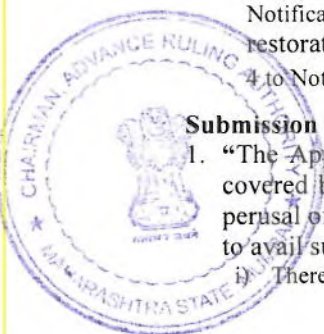
3. SUMMARY OF SUBMISSIONS

In the light of the above, it can be said that no GST is leviable on reinstatement charges in terms of Entry 4 to Notification No. 12/2017 –Central Tax (Rate) dated 28.06.2017. Further, as the services of giving right of way and restoration of roads constitute 'composite supply', no GST would be leviable on access charges in terms of Entry 4 to Notification No. 12/2017 –Central Tax (Rate) dated 28.06.2017."

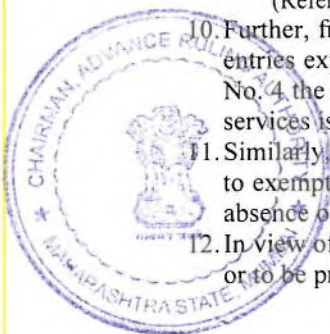
**Submission dt.06.03.2018 received on 14.03.2018**

1. "The Applicant submits that the activity of restoration of roads by Municipal Authorities would be squarely covered by the Entry 4 to the Notification No. 12/2017 –Central Tax (Rate) dated 28.06.2017 ('NN 12/2017'). From a perusal of Entry 4 to NN 12/2017, it is clear that the following conditions should be cumulatively fulfilled in order to avail such exemption:

- i) There should be service (**Condition I**)



- ii) Service should be provided by Central Government, State Government, Union territory, local authority or governmental authority (**Condition II**)
- iii) Service should be by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution (**Condition III**)
2. Relying on the discussion and deliberations during the course of the hearing, we understand that it is undeniable that the Condition I and Condition II are fulfilled in the instant case. The only doubts raised by Your Honour during the course of the hearing was whether the services provided by the Municipal Corporation ('local authority') can be said to constitute an activity in relation to any function entrusted to a municipality under article 243 W of the Constitution of India.
3. In this connection, the Applicant wishes to submit that Article 243W of the Constitution inter alia empowers the Municipalities in order to enable them to carry out the responsibilities conferred upon them including in relation to the subject matters listed in Twelfth Schedule to the Constitution. Out of the several matters listed in Twelfth Schedule to the Constitution, some of the entries under which the activity of road reinstatement may fall are reproduced hereunder:  
"1. Urban Planning including town planning and  
4. Roads and Bridges  
17. Public amenities including street lighting, parking lots, bus stops and public conveniences..."
4. The activity of restoration of roads which includes activities such as construction, alteration, repair and maintenance of roads, can be related to any of the above relevant entry and more particularly the entry in respect of "roads and bridges".
5. It is a settled position in law that the term "in relation to" is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. The Applicant has placed reliance on the following judicial precedents:
- Doypack Systems Pvt Ltd vs. Union of India [1988 (36) ELT 201 (SC)]
  - Home Solution Retail India Ltd vs. Union of India [2009 (237) ELT 209 (Del.)]
6. The Applicant submits that no activities or functions are explicitly specified as regards the subject matters listed under the Twelfth Schedule of the Constitution of India. Further, the functions entrusted to the municipality in relation to roads and bridges have not been defined anywhere in the Constitution of India or CGST Act, 2017 or any other Act. Thus, any activity carried out in relation to roads and bridges would be covered under the Twelfth Schedule of the Constitution.
7. In view of this, one cannot limit the nature of activities or functions of Municipalities to construction, maintenance or upkeep of roads and bridges. However, such activities shall be interpreted to cover all activities or functions carried out by the Municipalities in relation to roads and bridges. It is submitted that the Applicant is a utility company and the distribution of power is considered as one of the basic necessities of modern society. The distribution of power is not possible without laying the cables which lead to reinstatement of roads. No urban planning is possible in absence of requisite attachment to the facility of power being made available to people at large. Thus, the activity of road reinstatement after the laying of cables has close connection with the objectives specified under article 243W. Thus, the activity of reinstatement / restoration of roads carried out by the local authority would also be covered by Entry 4 to NN 12/2017 and exemption should be allowed.
8. Further, as regards the argument that the functions or activities entrusted to Municipalities cannot be carried out for commercial purposes or business entities does not hold water. In this connection, the Applicant wishes to draw your attention to Entry 5 of the Twelfth Schedule to the Constitution of India which provides "*water supply for domestic, industrial and commercial purposes*". Thus, from a perusal of the said entry, it is clear that the functions listed under the Twelfth Schedule are not restricted to be provided to public at large but it can also be provided for commercial purposes or industrial purposes to business entities. Hence, the services of the restoration of roads carried out for the Applicant would also get covered under the Twelfth Schedule to the Constitution of India.
9. Further, the Applicant also wishes to draw attention to the fact that the entries under NN 12/2017 can be classified under the following categories:
- (i) Where the service is exempted from GST without any reference to the service provider or service recipient (refer Entries 2, 9B, 25, 12, etc.)
  - (ii) Where the service is exempted from GST when provided by the specified persons without any reference to the service recipient (Refer 1, 4, 5, etc.)
  - (iii) Where the service is exempted from GST when received by the specified persons without any reference to the service provider (Refer 16, 40, etc.)
  - (iv) Where the service is exempted from GST when received by the specified persons and provided by the specified persons (Refer 8, 11A, etc.)
10. Further, from a perusal of the Entries 13, 17 and 76 to NN 12/2017, it is clear that the NN 12/2017 has in these entries explicitly restricted the exemption to specified services for use by general public. However, under Entry No. 4 the specified service has not been circumscribed by any expression which denotes that exemption on such services is to be restricted to be used by general public at large.
11. Similarly, from a perusal of Entries covered by (iii) and (iv) above, it is clear that wherever the legislature wanted to exempt services provided to particular class of recipients, it has made explicit provisions to that effect. In the absence of such provisions in Entry 4, exemption cannot be denied in the instant case.
12. In view of the above, it is clear that wherever the legislature wanted to exempt services for use by general public or to be provided to some particular class of service recipient, it has made explicit provisions to that effect. In the



absence of such provisions, exemption cannot be denied in the instant case. Thus, the exemption cannot be said to be available only when provided to public at large and the benefit of exemption is available even if the service is provided to particular business entity.

13. The Applicant also places reliance on the decision of *M/s B.R. Enterprises vs. State of U.P. & Ors – MANU/SC/0330/1999* wherein the Hon'ble Supreme Court has *inter alia* held that the different use of words in the two provisions / clauses is for a purpose, if the field of two provisions / clauses are to be the same, the same words would have been used. The relevant extract of the judgment is reproduced below:

*"77. This brings us back to Article 298 to see whether there is any significant difference between the words used under Article 298 and Article 301. This difference could indicate the scope and periphery of the field of operation of these two Articles. Relevant portion of Article 298 is quoted hereunder*

*In difference, we find that the words used under this Article is "trade, commerce and intercourse." We find Article 301 is confined to trade and commerce while Article 298 refers to trade and business and to the making of contracts for any purpose. The use of the words 'business' and 'contracts for any purpose' and its title "...trade, etc." makes the field of Article 298 wider than Article 301. Significantly, the different use of words in the two Articles is for a purpose, if the field of two Articles are to be the same, the same words would have been used. It is true, as submitted, that since 'trade' is used both in Article 298 and 301, the same meaning should be given. To this extent, we accept it to so but when the two Articles use different words, in a different set of words conversely, the different words used could only be to convey different meaning. If different meaning is given then the field of the two Articles would be different. So, when instead of the words 'trade and commerce' in Article 301, the words 'trade or business' is used it necessarily has different and wider connotation than merely 'trade and commerce'. 'Business' may be of varying activities, may or not be for profit, but it necessarily includes within its ambit 'trade and commerce' so sometime it may be synonymous but its field stretches beyond 'trade and commerce'."*

14. In support of the above contention, reference may also be made to the following judgements wherein, in the absence of any specific definition of the term 'railways' under the Finance Act, 1994 or any similar restriction limiting the benefit of exemption only to government railways or railways used for public carriage of goods or passengers, it was held *inter alia* held that benefit of exemption shall also be available to railways constructed for use by private entities:

- Steadfast Corporation Ltd 2016(45) STR 583 (AAR)
- SMS Infrastructure Ltd vs. CCEX & Cus. Nagpur 2017 (47) STR 17 (Tri-Mumbai)
- Afcons Infrastructure Ltd. v. CCEX, Mumbai-II 2015 (38) STR 194 (Tri-Mumbai)
- ETA Engineering Pvt. Ltd. Vs. CST, New Delhi 2016 (43) S.T.R. 547 (Tri. - Del.)

15. The Applicant further submits that it is a settled law that the wordings of an exemption notification when clear, plain language of notification be given effect to and the Authorities cannot add or substitute any word while construing notification either to grant or deny exemption. In this connection, reliance is placed on the Apex Court decision of *Saraswati Sugar Mills Versus Commissioner Of C. Ex., Delhi-III - 2011 (270) E.L.T. 465 (S.C.)*.

16. In view of the above, it is clear that the benefit of exemption should be available to road restoration services provided by local authority to the Applicant.

#### **Exemption Notifications should be construed strictly**

17. The Applicant also states that the Exemption Notifications are beneficial Notifications intended to benefit the industry and public at large and the same cannot be interpreted in a manner which renders the purpose of the Notification futile. It is a settled position of law that beneficial legislations should be interpreted liberally in order to extend the benefit of the statute to the assessee. In this connection, the Applicant places reliance on the case of *Commissioner Of Customs (Prev.), Mumbai Versus M. Ambalal & Co. 2010 (260) E.L.T. 487 (S.C.) wherein the Apex Court held as under:*

*"10. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgements emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgments at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."*

18. The Applicant also relies on the case of *Commissioner Of Central Excise, Surat-I Versus Favourite Industries 2012 (278) E.L.T. 145 (S.C.)*, wherein the Apex Court held as under:

*"31. Moreover, a liberal construction requires to be given to a beneficial notification. This Court in Commissioner of Customs (Preventive) Mumbai v. M. Ambalal and Company, (2011) 2 SCC 74 = 2010 (260) E.L.T. 487 (S.C.), (in which one of us was the party) has observed that the beneficial notification providing the levy of duty at a concessional rate should be given a liberal interpretation...."*

*25. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous."*

19. In view of the aforesaid, judicial precedents, it is clear that the Exemption Notifications are beneficial one and the same has to be interpreted liberally in order to grant the benefit to the industry, business entities and public at large. Therefore, the Entry 4 to NN 12/2017 is very wide and it would include within its ambit all the activities of service which are in relation to function entrusted to a municipality under Article 243 W of the Constitution. Hence, the service of restoration of roads would fall under the Entry 4 to the NN 12/2017 and thus, exempt from the applicability of GST.

#### **Access charges cannot be subject to GST**

20. The Applicant further submits that the Municipal Authorities also recover access charges for the purpose of right of way over the road to carry out excavation work. It is pertinent to note that the access charges for access of roads are payable in conjunction with reinstatement charges to carry out the excavation work.



21. In terms of Section 2(30) of the CGST Act, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Further, in terms of Section 8 of the CGST Act, the tax liability of a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
22. In the present case, the Municipal Authorities provide services of restoration of roads and also right of way to carry out excavation work. The services of giving right of way and restoration of roads are naturally bundled and are supplied in conjunction with each other in the ordinary course of business of granting permission to the licensee for carrying out the excavation works. Thus, it can be said that it would constitute a composite supply in terms of Section 2(30) of the CGST Act wherein the service of restoration of roads would be the principal supply.
23. As discussed above, in terms of Section 8 of the CGST Act, the composite supply shall be treated as supply of principal supply and GST would be applicable based on such principal supply. In the instant case, principal supply is the supply of service for restoration of roads which is exempt from the levy of GST in terms of NN 12/2017. Therefore, GST would not be applicable on the access charges collected by the Municipal Authorities.
- In view of the above submissions, no GST would be leviable on reinstatement charges and access charges recovered by the Municipal Authorities."

### 03. CONTENTION – AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

"It appears from the application that M/s. RIL, a private company engaged in business of generation, transmission and distribution of electricity claimed that "reinstatement charges" and "access charges paid to Municipality for restoration work of roads damaged by excavation work undertaken by the applicant are exempted from GST in terms of entry no. 4 of the Notification No. 12/2017- Central Tax (rate) dated 28.06.2017.

In support of their contention, they have argued that since such services provided by a governmental authority (Municipality) fall under the function entrusted to a municipality under article 243W of the Constitution, qualify for exemption in terms of entry no. 4 of the Notification No. 12/2017- Central Tax (rate) dated 28.06.2017.

Notification No. 12/2017- Central Tax (rate) dated 28.06.2017 provides NIL rate of duty on the service provided by the Municipality (local authority) by way of an activity in relation to a function entrusted under article 243W of the Constitution and that includes the activities as mentioned in Twelfth Schedule of Article 243W. Entry no. 4 of the Twelfth Schedule mentions "Roads and Bridges".

The local authorities, here the Municipality, are bestowed with powers and responsibilities for the activities mentioned in the Twelfth Schedule towards economic development and social justice of the people of their jurisdictional locality.

Such authorities also build roads and bridges among other activities as mentioned in the Twelfth Schedule for the development and social justice of the locality. Such authorities also undertake the activities of restoration, repair, etc of the damaged roads caused by natural wear and tear in the interest of local public utility.

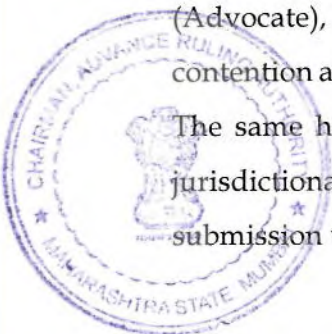
In the instant case, the service provided by the Municipality towards restoration of damaged roads caused by excavation work done by M/s. RIL is purely for commercial purpose, upon consideration, doesn't come under purview of Article 243 W of the Constitution and hence not exempted in terms of Notification No. 12/2017- Central Tax (rate) dated 28.06.2017. This service of restoration work is being provided by the local authority to the assessee for furtherance of their business and hence attracts GST.

In terms of entry no. 5 of the Notification No. 13/2017- Central Tax (rate) dated 28.06.2017, the leviable GST is payable by the recipient i.e. M/s. RIL on reverse charge basis."

### 04. HEARING

The case was taken up for preliminary hearing on dt.31.01.2018 when Sh. Gopal Mundhra (Advocate) attended alongwith Sh. Thomas. K. D (DGM). On dt.28.02.2018, Sh. Gopal Mundhra (Advocate), Ms. Ginita Bodani (Advocate) and Sh. Thomas. K. D (DGM) and reiterated the contention as made in the written submission. A request was made to make a further submission.

The same has been tendered. Ms. Sapna Makhija, Superintendent attended on behalf of the jurisdictional officer from the Central Tax Office. She also requested time to make a written submission which has been tendered.



05. **OBSERVATIONS**

We have gone through the facts of the case. The questions raised in the application are as under -

1. *Whether reinstatement charges paid to Municipal Authorities would be liable to GST?*
2. *Whether access charges paid to Municipal Authorities would be liable to GST?*

The first thing that we notice from a perusal of the questions posed as well as from the documents submitted on record shows thus -

- a. The questions are raised by the recipient and not by the supplier.
- b. The supplier has issued a receipt to the applicant showing details thus -

Municipal Corporation of Greater Mumbai

Receipt No. : 2000009002  
Date : 07.11.2017  
Received From : Reliance Infrastructure Ltd  
MCGM GST Number : 27AAALM0042L3Z4

Sr. No.	SAC / Activity Code	Description of Activity	Amount
1		RI FOR RELIANCE ENERGY LTD	63690.00
2	997212	ACCESS CHARGES FOR POWER CABLES	1000.00
Net Amount		CGST (9%)	SGST (9%)
64690.00		90.00	90.00
			Gross Amount
			64870.00

- c. There is also a Demand Note No.783184406 dt.16.10.2017 which informs the applicant in response to their application to undertake excavation in trench. The aforesaid amount has been informed. It is categorically mentioned that payment of reinstatement charges do not guarantee the grant of permission.
- d. The Permit issued for the location of the trench as specified therein states that simultaneous work order for reinstatement is issued to Ward Contractor and further that he will take up the work on the date of completion of the applicant's work mentioned in the permit or in phases as per clause no.10 of the Permit.

The applicant before us is Reliance Infrastructure Limited and the supply would be by the Municipal authorities. We may refer to the GST Act to understand the mechanism of an Advance Ruling. Clause (a) of Section 95 says thus -

“95. In this Chapter, unless the context otherwise requires,—

(a) “advance ruling” means a **decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;**

As can be seen the present ruling is in respect of the supply undertaken or proposed to be undertaken by the Municipal authorities. However, if we look at sub-section (3) of section 9 of the GST Act, it states thus -

**(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.**

The notification issued under the above sub-section has an entry thus -

**Notification No. 13/2017- Central / State Tax (Rate)**

In exercise of the powers conferred by sub-section (3) of section 9 of the Central / Maharashtra Goods and Services Tax Act, 2017, the Central / State Government on the recommendations of the Council hereby notifies that on **categories of**





supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central / state tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Table

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

As can be seen when the services are supplied by the local authority, the GST Act has cast the duty on the recipient of service to pay the tax on reverse charge basis as if he is the person liable to pay the tax in relation to the supply. In the present case, it is informed that the service would be provided by the Municipal authorities. Therefore, in view of the above entry in the notification issued for the purposes of section 9(3) of the GST Act, the applicant would be liable to pay tax in respect of the services received from the Municipal authorities. And therefore, the questions would have to be entertained. We begin to discuss the facts and the questions posed.

**Question 1**

**Whether reinstatement charges paid to Municipal Authorities would be liable to GST?**

We deal with the question by looking at the arguments of the applicant. It has been contended that the service falls under entry 4 of Notification No. 12/2017 -Central / State Tax (Rate) dated 28.06.2017. We shall reproduce the said entry thus -

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (per cent.) [CGST + MGST = IGST]	Condition
4	Chapter 99	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution	Nil	Nil

The entry covers services provided by a local authority. However, it has been specifically mentioned that the service has to be by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution. Article 243 W of the Constitution says-

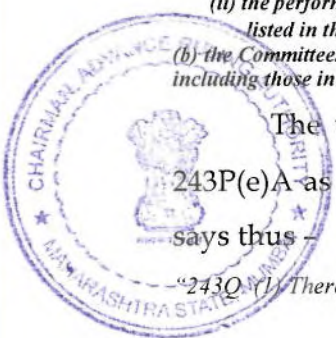
*"243W. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—  
(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—*

- (i) the preparation of plans for economic development and social justice;*
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

*(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."*

The word "Municipality" is defined in the Constitution in the definitions in Article 243P(e)A as "Municipality" means an institution of self-government constituted under article 243Q;". Article 243Q says thus -

*"243Q. (1) There shall be constituted in every State,—*



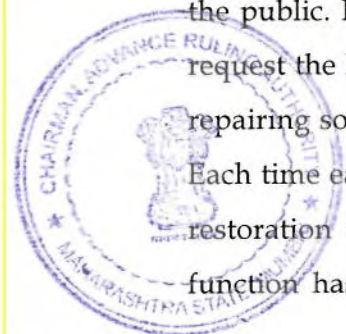
(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;  
(b) a Municipal Council for a smaller urban area; and  
(c) a Municipal Corporation for a larger urban area,  
in accordance with the provisions of this Part:

Since there is a reference to the Twelfth Schedule, we also refer to the same thus –

**TWELFTH SCHEDULE (Article 243W)**

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. **Roads and bridges.**
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

As can be seen, 'Roads' is a matter listed in the Twelfth Schedule. So there is a function of a Municipality in relation to 'Roads'. We have seen above that the Constitution defines "Municipality" as an institution of self-government. The function as entrusted by the Constitution in relation to 'Roads' is the construction of roads for the use by the general public. These are sovereign functions. The applicant is *inter alia* engaged in the business of generation, transmission and distribution of electricity. This calls for laying and maintenance of the power lines and other incidental work which requires the digging up of trenches. The Municipal Authorities grant the needful permissions. However, these permissions come with charges for restoring the street or pavement which has been dug up. Thus, the activity in the present case is the charges recovered by the Municipal Authorities to restore that portion of the street or pavement which has been dug up. It does not amount to construction of the entire road, as such. The copies of the application for undertaking excavation work reveal that the permission was sought and was granted for a trench of length/are of 10 mtrs. The function in relation to 'Roads' as entrusted by the Constitution does not entitle the Municipality, as the one performing the function, to receive any charges from anyone for doing the said work. It is by nature a sovereign function done for the community at large. These are governmental functions which are legislated to be performed by the Municipalities. Such functions are in the nature of performing works for the public. In the present case, the business entities while performing their business activities request the Municipal Authorities to be allowed to dig up trenches for works such as laying or repairing some cables or pipes. There are so many such entities such as the telephone, gas, etc. Each time each one of them digs up the road and there is restoration required to be done. This restoration work would not result in performing of the sovereign function. The sovereign function has already been performed by constructing the road or undertaking maintenance



works of the roads. The restoration work can be equated neither to construction work nor to maintenance work as *suo-motu* undertaken by the Municipal Authorities. The restoration charges are also not in the nature that the Municipal Authorities are performing any job of construction for the applicant. The street or pavement or road that is dug up is a general road. In view of all above, we are of the firm view that it should not be disputed that the recovering of charges for restoring the patches which have been dug up by business entities of the nature as the applicant cannot be equated to performing a sovereign function as envisaged under article 243 W of the Constitution.

Further, we find that there is specific entry in Notification No. 12/2017 -Central / State Tax (Rate) dated 28.06.2017 which reads as under -

Sl No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (per cent.) [CGST + MGST = IGST]	Condition
6	Chapter 99	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.	Nil	Nil

In the above entry, it is very clear that if any services, including the three services excluded in clauses (a) to (c) of the above entry, are provided by the Government or local authority to any business entity, they would not be eligible for any exemption under GST.

We find that the applicant has made a whole lot of arguments to hold that the recovering of charges for the restoration of the street or pavements amounts to a service activity in relation to a function entrusted to a municipality under article 243 W of the Constitution. However, we find that the arguments fail to make a point. As regards the case laws, we only observe that the facts and provisions aren't in *pari materia* with those in the present case.

We find that there is no other entry in the Schedule contained in the Notification No.12/2017-Central/State Tax (Rate) for services exempted from GST which would cover the impugned transaction. Neither is a specific entry for the impugned transaction in the Notification No.11/2017-Central/State Tax (Rate) for services taxable to GST at various rates. In view thereof, the residuary entry no.35 of the Notification No.11/2017-Central/State Tax (Rate) covering "services nowhere else classified" and attracting GST @18% [9% each of CGST and MGST] would be applicable.

**Question 2**

**Whether access charges paid to Municipal Authorities would be liable to GST?**

The reinstatement charges apply towards restoration of excavation work on the roads carried out by the various business entities providing services such as gas, telephone, electricity, etc. The



Guidelines for Trenching activity-2015 [No:AMC/ES/7725/II Dated 18.12.2014 - policy guidelines for granting trench excavation permissions to underground service provider Utility agencies and Municipal agencies & the reinstatement of trenches] as provided by the applicant state that in addition to the regular RI charges, access charges for right of way will be recovered by MCGM from all utilities which lay underground services below MCGM roads. This statement helps to understand the position as respects MCGM [Municipal Corporation of Greater Mumbai]. That these charges would be exigible to GST is not doubtful even to the applicant and we agree with the same. However, the applicant has made a general query as regards access charges paid to Municipal Authorities. We have no further information than the receipt raised and the policy guidelines of MCGM. To determine whether it is a composite supply by Municipal Authorities, the available information is insufficient as the question posed is in respect of Municipal authorities in general and not any specific Municipal Authority with complete details and therefore is not answered.

06. In view of the detailed deliberations held hereinabove, it is ordered thus -

**ORDER**

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-11/2017/B- 14

Mumbai, dt. 21.3.2018

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1 Whether reinstatement charges paid to Municipal Authorities would be liable to GST?

Question 2 Whether access charges paid to Municipal Authorities would be liable to GST?

Answer Both the questions are answered in the affirmative.



sd  
**B. V. BORHADE**  
(MEMBER)

sd  
**PANKAJ KUMAR**  
(MEMBER)

**CERTIFIED TRUE COPY**

**Copy to:-**

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai