

TAMILNADU ADVANCE RULING AUTHORITY

PAPJM Buildings, IstFloor, No.1, Greams Road, Chennai-600 006.

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS, Additional Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai.

And

- 2.Thiru KurinjiSelvaan V.S., M.Sc. (Agri.), M.B.A., Joint Commissioner (ST) / Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No.01 /ARA/2020 Dated: 31.01.2020

GSTIN Number, if any / User id		33AAIFP7751M1ZR
Legal Name of Applicant		M/s Padmavathi Hospitality & Facilities Management Service
Trade Name of The applicant		M/s Padmavathi Hospitality & Facilities Management Service
Registered Address / Address provided while obtaining user id		New No.51, Old No.117, 2-B, JVL Towers, 2 nd Floor, Nelson Manickam Road, Aminjekarai, Chennai-600029
Details of Application		36/2019/ARA dated 18.09.2019
Concerned Officer		State : The Assistant Commissioner (ST), Koyembedu Assessment Circle, CMDA Administration Building, 2 nd Floor, Koyambedu, Chennai -107. Centre : Chennai North Commissionerate Division: Purasawalkam
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provision
B	Description (in brief)	The applicant is engaged in providing Housekeeping /cleaning including pest control service and security services.
Issue/s on which advance ruling required		Applicability of Notification
Question(s) on which advance ruling is required		1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we

	<p>conclude that no exemption is available to PHFMS?</p> <p>2. Whether services provided by PHFMS to DME is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?</p> <p>3. Whether Services provided by PHFMS to DME including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services</p> <p>4. Whether services rendered by PHFMS to DME can be classified as pure services or Composite Supplies?</p>
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Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. Padmavathi Hospitality & Facilities Management Services, New No.51, Old No.117, 2-B, JVL Towers, 2nd Floor, Nelson Manickam Road, Aminjekarai, Chennai-600029 (hereinafter referred as 'Applicant') is registered under the GST Act 2017 vide GSTIN No. 33AAIFP7751M1ZR. The applicant is engaged in providing Housekeeping/Cleaning including Pest Control services and Security services as bundled services to Directorate of Medical Education(DME) that includes Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges. The applicant has sought Advance Ruling on the following questions:

1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS?

2. Whether services provided by PHFMS to DME is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?
3. Whether Services provided by PHFMS to DME including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services
4. Whether services rendered by PHFMS to DME can be classified as pure services or Composite Supplies?

The applicant submitted a copy of challan evidencing payment of application fees of Rs.5, 000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they provide Housekeeping/cleaning including pest control services, security services to Directorate of Medical Education (DME) that includes Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges. The applicant provides the above services to 95 Government Hospitals and colleges within Tamil Nadu. They have been providing these services since 2013 by way of 3 year contract that was renewed in 2016 which expires in 2019. The applicant has stated that they now intend to renew the contract by participating in tender for outsourcing of housekeeping and security services in 94 Government Hospitals, Colleges and Schools, Colleges for Nursing under the control of DME. They have made application for tender to DME along with other service providers. They have quoted contract price with GST @18 % for the above services. However, DME has also received alternate quotation from other service provider M/s Krystal Integrated Services (KRYSTAL) who is bidding with no GST. KRYSTAL seems to have participated in the tender with no GST and is also claiming that GST is not applicable for such services to Government hospitals and colleges. The applicant seeks clarification as to whether GST is applicable for the above services to Government Medical Colleges and Hospitals.

2.2 As per the applicant's opinion, GST @18% will be applicable to housekeeping/cleaning, pest control and security services provided as bundled service to Government hospitals and colleges due to the reasons cited below:

- i. As per the exemption Notification 12/2017 Central Tax(Rate) dated 28.06.2017 under chapter 99 read with amendment issued on 25.01.2018 Both refers to services provided "to the Central Government, State

Government or Union Territory or Local Authority or Government Authority by way of any activity in relation to any function entrusted to Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of Constitution.

ii. The applicant has stated that their services are not falling under the above categories of Article 243G and 243 W of Indian Constitution and so GST exemption is not available in this instance.

iii. Sanitation and similar services are classified under SAC 99945. The applicant has referred to the Advance Ruling order of West Bengal , wherein it is ruled that “..... It includes sweeping and cleaning, but only with reference cleaning of road/street. Cleaning of hospital premises is not therefore classified under sanitation or similar service. The service, the applicant bundled under the description ‘Scavenging Services’ are therefore not exempt under S.No.3 of exemption notification.”

3.1 The applicant was given an opportunity to be personally heard and was heard on 26.09.2019. The applicant appeared and stated that they have filed a W.P. No.24412 of 2019 & WMP No. 24145 of 2019 on the same issue against TamilNadu Medical Services Corporation & Directorate of Medical Education and against the Department. The State Jurisdiction officer also appeared for the hearing and submitted that the WP was filed in Hon’ble High Court and gave a written submission stating that the applicant is not eligible for exemption at Sl.No. 3 of Notification No. 12/2017 as they provide only Manpower services. The applicant was informed that as per Section 98(2) of CGST Act 2017, as the question raised is already pending in Hon’ble High Court, this authority cannot rule on the issues raised. They informed that they will file copy of Writ Petition. The applicant furnished written submissions during the hearing

3.2 The State Jurisdictional Authority in the written submission has stated that the applicant has filed writ in the High Court of judicature at Madras for the same subject sought in the advance ruling and has furnished the comments raised on the question as given below:

i. Whether services rendered by Padmavathy hospitality & Facility Management services is falling under Pure services?

The Goods and service tax act 2017 defines “services” in Section 2(102). It means anything other than goods money and securities but includes

activities relating to the use of money or its conversion by cash or by any other mode from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Definition for the term "pure services" is not described either in GST act or in the Notification No.12/2017-central tax (rate) dated 28.06.2017. In such cases any supply which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. Section 2(52) of the goods and service tax act 2017 defines "goods" as a kind of movable property which are agreed to be severed before supply or under a contract of supply. The supply of services offered to the government involves not only of manpower but also goods and consumables like cleaning chemicals and liquid soaps. Further there is no possibilities for matching the kind of service offered by Padmavathy hospitality & Facility management services with the schedule-II (Activities or transactions to be treated as supply of goods or supply of services). Therefore the above category of services cannot be treated as Pure services.

ii. Whether services rendered by Padmavathy hospitality & Facility management services is exempted under S.No 3 of Notification No.12/2017-central tax (rate) dated 28.06.2017?

The notification no 12/2017 dated 28.06.2017 is provided to services involves only supply of services ie., pure services and not for services involving both goods and services no exemption can be granted to these kinds of services. Further the exemption is granted only when pure services are related 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. The security services are neither enlisted in Article 243G nor in Article 243W of the Constitution. The hospital services are listed in Article 243G and in Article 243W of the Constitution (Health and sanitation including hospitals Primary health centres and dispensaries). The concerned matter deals with the tender floated by the Directorate of medical education which involves hospital and security services to hospitals, medical colleges, college of nursing and school of nursing. Though DME is falling under State government the hospital and security services in DME are not related to functions entrusted to Panchayat/Municipality under Articles 243G & 243W.

iii. Whether services rendered by Padmavathy hospitality & Facility

management services to DME are liable for GST?

Yes, the services are to be taxed at the rate of 18% for both security and cleaning services.

3.3 In the written submission furnished by the applicant during the PH held on 26.09.2019, they inter-alia stated that

- PHFMS is a partnership firm formed in the year 2012. They are primarily into the business of providing Housekeeping services, Pest Control Services, Supply of Manpower services, Security services and Services under works Contract basis to their clients in three states namely Tamil Nadu, Andhra Pradesh and Telangana . Some of their major customers are Directorate of Medical Education, TCS, Venkateshwara University, works contract services to Railways (Tirupati & Renigunta) ETC. One of the Major Customer to whom they provide Housekeeping, Pest Control, Security Services & Biomedical Waste Management is The Directorate of Medical Education, Tamil Nadu (DME) under whom all the State Government Medical Colleges are functioning.
- They provide Housekeeping, Pest Control Security, Security Services & Biomedical Waste Management as bundled services to 95 institutions including Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges within Tamil Nadu that is functioning under DME. They have been providing these services to DME since 2013 by way of 3 year Tender contract.
- PHFMS bagged the tender which they applied to DME in the year 2016. This tender contract period is for a period of three years expiring in the year 2019. PHFMS has now along with other bidders have participated in an open tender for provision of housekeeping and security services It has quoted contract price with GST @ 18% for the above services. However, DME has also received alternative quotation from other service provider and one service bidder among others has given their bidding with No GST. KRYSTAL seems to have participated in the tender with NO GST and is also claiming that GST is fully exempt for such services provided to Government Hospitals and colleges under Notification No 12/2017 — CT (Rate) dated 28/06/2017 read along with amendment dated 25/01/2018.
- In the Tender application itself, it states for inclusion of GST for the services provided and the tender contract amount will be inclusive of taxes applicable

for the services rendered. Hence, PHFMS even under the earlier service tax regime, have charged service tax on the services provided to DME as these services were taxable and PHFMS was collecting and paying service tax under the old regime. And even under the GST regime, PHFMS has collected and paid GST from DME from 01.07.2017 to till date. PHFMS used to raise Tax Invoice to DME for the above mentioned services rendered inclusive of GST and even the DME were Clearing the bills including GST, Now that the old tender contract period has expired and they had to apply afresh for the new tender contract to DME, they had made an application for the open Tender floated by DME on 19/02/2019 for providing housekeeping, Security Services, Pest Control & Bio Medical Waste Management Services in 95 government medical institutions under the control of Director of Medical Education Tamilnadu. PHFMS has quoted the bid value of tender including the GST applicable for the services rendered.

- However DME is of the opinion that the services provided to them is exempt from GST under exemption notification No 12/2017 - Central Tax (Rate) dt 28/06/2017 read along with amendment dt 25/01/2018 and the tender should be placed excluding GST. DME has based their opinion on note given by an alternative bidder M/s Krystal Integrated services Private Limited and Independent opinion from a Chartered Accounting Firm Sanjiv Shah & Associates. Furthermore, the alternative bidder namely M/s Krystal Integrated services Private limited had given their quote for contract price exclusive of GST based on the above Government notification stating that the services rendered are fully exempt under Notification No 12/2017 read along with amendment dated 25/01/2018 that the services provided to Central Government, State Government or Local Authority or a Governmental Authority by way of activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to Municipality under Article 243W.
- M/s Krystal Integrated services Private limited in their bid had quoted that as per serial no 3 Of the notification No 12/2017-CT (Rate) dated 28/06/2017, GST is exempted for Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to 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.

- Further as per serial number (3A) of the Notification No 12/2017 C T (Rate) dated 28/06/2017 GST is exempted for Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to 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.
- Further DME is of the opinion that the services provided to DME, Tamilnadu Medical Services Corporation limited are nothing but performing functions entrusted to a panchayat under article 243G of the Constitution or functions entrusted to the Municipality under article 243W of the constitutions based on the following reasons:
 1. One of the functions listed in twelfth schedule under article 243W of the constitution is "Public Health Sanitation, conservancy and solid waste management".
 2. Some of the functions listed in the eleventh schedule under article 243G of the constitution are "Health and sanitation, including Hospitals, Primary Health centres and dispensaries"
- DME view on the above said points is based on section 39 of the Tamil Nadu District Municipalities Act, 1920 wherein they have relied on the objects of Expenditure connected with public health stating that expenditure towards public health includes "(a) the construction and maintenance of hospitals and dispensaries and temporary places of reception within the municipality or without the municipality for treatment of infectious diseases occurring in the municipality; building hospitals, dispensaries or places of reception for the sick in general"
- Hence DME is of the opinion that all the 95 government hospitals coming under the said DME falls under the Municipality and that the functions entrusted to the municipality under article 243W of the constitutions is "Public Health Sanitation, conservancy and solid waste management".
- The applicant has stated that the original notification 12/2017 read along with amendment 2/2018 issued on 25.012018 refers to "any activity in

relation to any function entrusted to Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution". They are of the opinion that all the 95 government hospitals falling under the DME comes under Municipality and not Panchayat and the notification specifically states activities entrusted to a municipality or panchayat. Hence it is very clear that this exemption notification applies to panchayat and municipalities only and does not attract to services provided by a private party to any state government hospitals.

- Under article 243G of the Constitution, activities in relation to any function entrusted to Panchayat is clearly listed out in the eleventh schedule. From the list of function specified, the function relevant to PHFMS is "health and sanitation including hospitals, primary health centres and dispensaries". Hence it is clear that health and sanitation services including hospitals falling under panchayat and primary health centres are exempt and the hospitals which are covered under DME falls under municipality and not panchayat.
- Further, from the list of functions entrusted to a Municipality under Twelfth Schedule to Article 243W of Constitution the services as specified under clause (f) viz "Public Health Sanitation, Conservancy and Solid Waste Management....." is relevant to PHFMS. Hence it is very clear that the functions entrusted to Municipalities under article 243W which are relevant to PHFMS is only Public Health Sanitation, Conservancy and Solid Waste Management.....". However PFHMS is providing housekeeping services to Hospitals falling under Municipalities and not public health sanitation services.
- The dictionary meaning of the term public health sanitation is "Sanitation refers to public health conditions related to clean drinking water and adequate treatment and disposal of human excreta and sewage Sanitation systems aim to protect human health by providing a clean environment that will stop the transmission of disease, especially through the fecal—oral route,"
- The term public health sanitation services as stated in twelfth schedule means sanitation and similar services which are classified under SAC99945 which includes sweeping and cleaning but only with reference to cleaning of roads and street and cleaning of hospital premises is not covered under

sanitation or similar services.

➤ Their argument is based on one of the very recent advance ruling passed by west Bengal authority dt 09/09/2019 vide order no 21/WBAAR/2019—20 in the case of Altabur Rahman Mollah carrying business in the trade name of M/s Reliable Hospitality service. The said Reliable Hospitality services provides services similar to the services provided by PHFMS namely

1. Mechanised and automated cleaning of the Hospital premises including the toilets.

2. Mechanised and automated cleaning of the different parts of the academic and hostel area including the toilets

3. Manual cleaning of different parts of the campus of the institute. The applicant also supplies cleaning materials incidental or auxiliary to provisioning the cleaning services.

4. Security services etc

All the above said services are provided to state government run hospitals which are located in the municipalities. As per the advance ruling authority order in the above said case the activities, functions and services mentioned as per the applicant does not fall under any of the activities covered either under eleventh schedule or twelfth schedule of the constitution As per the order of advance ruling the applicant is not providing health services to any hospitals and that the scope of sanitation and similar services as classified under SAC 99945 includes the words cleaning and sweeping but these services are limited to cleaning and sweeping of roads and streets and not hospitals. Hence the services provided by the said applicant are not to be treated as sanitation services under the GST Act. Hence the supplies by the applicant is not qualified for exemption under SL no 3/3A Of the exemption notification 12/2017 read along with amendment made in 2/2018. Further the Advance ruling authority has stated that the exemption is extended to panchayat and municipalities and not to private parties. Here the applicant is a private party and does not qualify for the exemption.

➤ As per West Bengal advance ruling order no 21/WBAAR/2019—20 dated 09/09/2019 the services provided PHFMS does not fall under 3/3A of the exemption notification under GST.

➤ As per Haryana advance ruling order No HAR/HAAR/R/2018-19/01 Man power services to hospitals cum general medical colleges do not qualify for exemption under Sr No 66 of the notification 12/2017 — Central tax (Rate)

dt 28/06/2011.

- As per the advanced ruling order No 38/WBAAR/2018-19, dated 28.01.2019, benefit of exemption from the payment of GST is not available under Notification 12/2017-CT (Rate), dated 28062017 and WB Government Gazette Notification - 1136FT, dated 28th June, 2017 as amended for the supply of security services and the bundle of service described as "Scavenging Services".
- In view of the above facts the nature and scope of services provided by PHFMS to DME neither falls under 243G nor 243W for exemption.

3.4 The applicant submitted the copy of WP 24412 of 2019 on 15.10.2019, wherein they have prayed the Hon'ble High Court to pass an order of interim injunction restraining the Tamil Nadu Medical Service Corporation from initiating or taking any further steps in finalizing the tender pending disposal of the main writ petition. The authorised representative of the applicant, while furnishing the WP, has stated that

- The Writ petition was filed not for clarification of applicability of GST on the services provided by them to Govt. Hospitals
- The writ petition was on the following grounds:
 - The procedure which has been adopted by TNMSC is contrary to Rule 29(d) of the Tamilnadu Tender Transparency Rules 2000 read with Section 10 of the Tender Transparency Act. It is a well settled law that all the bidders should be placed in a same position and a level playing field must be provided to all the bidders and any discrimination would fall foul of Article 14 of the Constitution of India. Hence they moved this petition under Article 226 of the Constitution of India 1949 seeking for justice as there is an imminent threat to the fundamental rights which are guaranteed under the Constitution of India
 - An interim injunction be passed restraining the TNMSC from finalizing the tender in Tender No. 432/outsourcing/DME/TNMSC/ENGG/ 2019 dated 19/02/2019 pending disposal of the Main writ petition and render justice
 - The Hon'ble Court may be pleased to issue a writ in the nature of a WRIT of MANDAMUS or any form of writ, order or direction in the nature of WRIT of MANDAMUS to direct the TNMSC to awards the

tender contract to PHFMS, who has given the lowest price bid

- The issue pending before the Hon'ble High Court is the incorrect tender process and procedure adopted by TNMSC. The said Writ Petition filed by them has never asked for clarification of the applicability of GST on the services provided by them, but has only asked the Hon'ble High Court for interim injunction to stop the Entire tender process since the TNMSC has violated the procedure which has to be adopted by TNMSC in contrary to Rule 29(d) of the Tamilnadu Tender Transparency Rules 2000 read with Section 10 of the Tender Transparency Act.
- As per Section 98 of the GST Act, PHFMS has not raised this subject matter either in the present Writ Petition before the Madras High Court not before any other appellate authority and raised only before the Advance Ruling authority
- They had paid Service Tax for the period till June 2017 and with effect from 01.07.2017, they are paying GST @ 18% after collecting the same from DME
- Their application made before this authority on 15.08.2019 is still a valid application

They requested to take up the application and the written submissions filed by them on 26.09.2019 and give the ruling as there is no bar on the part of the authority to proceed in the subject matter and pass order or give clarification, which is statutorily permissible under Section 98 of GST Law.

4.1 The applicant was heard again on 07.11.2019. The authorised representative appeared before the authority and stated that prayer in the WP does not mention the GST though para 12 of the WP mentions GST authorities as 3rd respondent to decide the applicability of GST. They further stated that they are going to file an affidavit before Hon'ble High Court to remove the GST authorities as 3rd respondent. They stated that they will submit copy of withdrawal order after which they requested for another hearing.

4.2 Further to the hearing held on 07.11.2019 the applicant submitted the order copy of Madras High Court dated 14/11/2019 for the WP 24412 of 2019 and WMP No.24145 of 2019 vide their letter dated 27.11.2019 and requested for a further hearing. It is seen from the submissions that the Advance Ruling Authority is made a party to the writ filed along with the State Jurisdictional Officers. Hon'ble Court admitted inclusion of the new respondents. Further the Court in Para 3 and Para 4

of the Order have ordered as under:

3. Learned Senior Counsel appearing for the petitioner submits that the Petitioner had made an application for advance ruling on the applicability of Goods and Service Tax in respect of the tender, which forms the subject of this writ petition, before the sixth respondent, and in view of the first proviso to Section 98(2) of the Central Goods and Services Tax Act, 2017, seeks a clarification from this Court for enabling the Sixth Respondent to pass orders in that application.

4. Having regard to the facts involved in this case, and in particular, the Counter Affidavit dated 12.11.2019 filed by the Third Respondent, the pendency of this Writ Petition shall not preclude the Sixth Respondent from deciding the aforesaid application for advance ruling said to have been made by the petitioner.

5.1 The applicant accordingly was extended another opportunity to be heard in person on 11.12.2019. The authorised representative appeared for the hearing. They submitted copies of order passed by the Hon'ble Judge in WMP No.32267 of 2019 in W.P No.24412 of 2019 where the Advance Ruling Authority and SGST authorities have been made as respondent. In the order, it was directed by the Hon'ble Judge that the views of advance ruling authority in the GST issue of the applicability has a bearing in the W.P. In the W.P. filed, the applicant has stated in para 12 that they are making GST authorities as 3rd respondent as the issue of applicability is to be decided. The representative has stated that they did not file for any withdrawal of the 3rd respondent, GST authorities before Hon'ble High Court. The applicant stated that they will submit the tender, bid documents, quotations, advertisement for contract within 2 days. They stated that they have submitted the application online on 15/08/2019 and WP on 19.08.2019 but had submitted the copy on 18.09.2019 to the Advance Ruling Authority. They stated that Advance Ruling Authority should pass an order on merits as the WP in High Court is not regarding GST applicability.

5.2 The applicant submitted the following documents on 13.12.2019:

- i. webcopy of Hon'ble High Court Order copy dated 14.11.2019
- ii. Copy of the newspaper ad for the tender, Tender Technical application; financial bid made by them, copy of evaluation of tender result; price bid

- opening document;
- iii. letter of communication dt 9.7.2019 made by PHFMS to TNMSCL stating that their bid inclusive of GST is the lowest for zone 5 and for zone 1 to 4 KRYSTAL has quoted lowest prices without inclusive of gst which is in violation of tender condition
 - iv. representation of PHFMS to TNMSCL dt 11.7.2019 stating that price quoted by KRYSTAL without GST is to be disqualified as GST is applicable to the services in question quoting CBIC Circular no 51/25/2018 dt 31.7.2018 and Advance ruling in case of Ex-service man resettlement society on similar issue and stating that the services sought in the tender are not pure services and are not in relation to functions entrusted to panchayat or municipality under Article 243G and 243W.
 - v. letter correspondences of TNMSCL dt. 10/8/2019 revising their bid for zone 5;
 - vi. TNMSCL letter dt 14.8.2019 to applicant stating that GST is not applicable as per Notification No 12/2017 dt 28.6.2017 and hence, KRYSTAL is the L1 for Zone 1 to 4 and to confirm for negotiation of price for Zone 5 without GST;
 - vii. Reply letter to TNMSCL dated 16/8/2019 reiterating that GST is applicable for the services in question as they are ineligible for the exemption under Notification no 12/2017
 - viii. letter dt 17.8.2019 from TNMSCL rejecting their request
 - ix. Screen shot of Advance Ruling application made by the client in the GST portal, Screen shot of page wherein the attachments made to the application is displayed

5.3 The applicant again vide their letter dated 06th January 2020 has inter-alia stated that the issue before the members is the services offered as per tender by PHFMS to DME is mainly Supply of Man power supply services (such as Managerial , Supervisors, House keeping staff, attenders and security staff) which comes around 75% for all 3 shifts to 95 Hospitals and medical colleges covered under DME and the material portion comes to 10% and the mechanised cleaning service by using automated machines comes around 5% and the remaining 10% goes for PHFMS service charges. This factual position can be examined from the copies of financial bid as submitted by PHFMS for the TNMSCL Tender. They requested the AAR Bench to pass appropriate orders at the earliest in this regard.

6. We have considered the written and oral submissions of the applicant, the Writ Petition No. 24412 dated 19/08/2019 and the related Miscellaneous petitions and the Orders of the Hon'ble High Court of Madras. We find that the applicant is a partnership firm primarily into the business of providing Housekeeping services, Pest Control Services, Supply of Manpower services, Security services and Services under works Contract basis to their clients in three states namely Tamil Nadu, Andhra Pradesh and Telangana . One of the Major Customer to whom they provide Housekeeping, Pest Control, Security Services & Biomedical Waste Management is The Directorate of Medical Education, Tamil Nadu (DME) under whom all the State Government Medical Colleges are functioning. The applicant provide Housekeeping, Pest Control Security, Security Services & Biomedical Waste Management as bundled services to 95 institutions including Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges within Tamil Nadu that is functioning under DME since 2013 and the present tender contract period is expiring in the year 2019. They have collected and paid GST from DME from 01.07.2017 to till date, which was paid by DME to them. They had participated in an open tender for provision of housekeeping and security services, quoting contract price with GST @ 18% for the above services from 01.01.2020. However, DME has also received alternative quotation from other service providers and one service bidder among others has given their bidding with No GST. KRYSTAL seems to have participated in the tender with NO GST and is also claiming that GST is fully exempt for such services provided to Government Hospitals and colleges under Notification No 12/2017 — CT (Rate) dated 28/06/2017 read along with amendment dated 25/01/2018. The applicant has filed this application seeking advance ruling on the following questions:

1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS?
2. Whether services provided by PHFMS to DME is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?

3. Whether Services provided by PHFMS to DME including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services
4. Whether services rendered by PHFMS to DME can be classified as pure services or Composite Supplies?

7.1 The Hon'ble High Court has gave an order dated 14/11/2019 for the WP 24412 of 2019 and WMP No.24145 of 2019 that "*the pendency of this Writ Petition shall not preclude the Sixth Respondent from deciding the aforesaid application for advance ruling said to have been made by the petitioner.*" Accordingly, this application is taken up by this authority.

The question before this authority is the applicability of GST on the services for which Tender No. 432/outsourcing/DME/TNMSC/ ENGG/ 2019 dated 19/02/2019 for 'outsourcing of housekeeping and security services in 94 government hospitals, colleges and school & colleges for nursing under the control of Directorate of Medical Education' has been called by Tamil Nadu Medical Services Corporation Limited. It is seen from the tender that the services covered are: Housekeeping/cleaning including Biomedical Waste Management & Pest Control Services and Security Services specifying the requirement of man power at various levels, equipment and machinery and consumables at each of the institutions. It is seen that the institutions are all Hospitals or medical or nursing colleges.

7.2 Section 98(2) of the GST ACT 2017, states as follows:

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

Accordingly, the admissibility of the application before this authority is first taken up. From the various submissions, it is seen that the applicant has filed the application seeking advance ruling on the applicability of GST to the services

covered in the tender through the online portal on 15.08.2019 but has filed the hardcopy of the application with the Tamilnadu State Advance Ruling Authority only on 18.09.2019.

Rule 107A of CGST Rules 2017 effective from 15.11.2017, states as follows:

Manual filing and processing. –Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

CBIC has issued Circular No. 25/2017 dated 21st December 2017 under the provisions of Section 168(1) of the GST Act 2017, on the Manual filing of applications for Advance Ruling is prescribed. In the Circular, it is stated that,

“2. Therefore, in exercise of the powers conferred by sub-section (1) of section 168 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act’) on the recommendations of the Council and for the purpose of ensuring uniformity in the processing of such manual applications till the advance ruling module is made available on the common portal, the following conditions and procedure are prescribed for the manual filing and processing of the applications. Form and Manner of Application to the Authority for Advance Ruling

3. An application for obtaining an advance ruling under sub-section (1) of section 97 of the CGST Act and the rules made thereunder, shall be made in quadruplicate, in FORM GST ARA-01. The application shall clearly state the question on which the advance ruling is sought. The application shall be accompanied by a fee of five thousand rupees which is to be deposited online by the applicant, in the manner specified under section 49 of the CGST Act. It is reiterated that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the CGST Act.

9. The application for advance ruling or the appeal before the Appellate Authority shall be filed in the jurisdictional office of the respective State Authority for Advance Ruling or the State Appellate Authority for Advance Ruling respectively.”

It is seen that an applicant shall file the Advance Ruling Application online along

with payment of the fees on the GSTN portal. Further, the applicant is also required to file the with the office of the State Authority for Advance Ruling as the back-end interface for the officers of the Advance Ruling Authority is not operational yet. In this case, the applicant filed the application on 18.09.2019 with the office of the respective State Authority for Advance Ruling.

7.3 The jurisdictional state officer has informed in a written submission that the applicant had already filed a Writ Petition No. 24412 dated 19/08/2019 before the Hon'ble High Court of Madras, wherein the Tamilnadu Medical Service Corporation(TNMSC), Director of Medical Education(DME), Assistant Commissioner GST and M/s. Krystal Integrated Services Ltd are the respondents. This writ petition is filed praying an order of Interim Injunction restraining TNMSC from initiating or taking any steps in finalizing the tender pending disposal of the main application.

7.4 We find that the applicant contends that the issue pending before the Hon'ble High Court is the incorrect tender process and procedure adopted by TNMSC and the said Writ Petition filed by them has never asked for clarification of the applicability of GST on the services provided by them, but has only asked the Hon'ble High Court for interim injunction to stop the Entire tender process since the TNMSC has violated the procedure which has to be adopted by TNMSC in contrary to of the Tamilnadu Tender Transparency Rules 2000 read with Tender Transparency Act. It is seen from the Writ Petition filed by the applicant that :

- Para 1 states that Tamilnadu Medical Service Corporation has floated a tender for outsourcing of house keeping and security services in which the applicant has participated.
- Para 4 &5 states that KRYSTAL , a bidder to the said tender has submitted their bid by stating GST as "Zero" and emerged as the successful bidder in respect of Zone 1 to Zone 4 and that the applicant would have been the successful bidder after including GST and that KRSTAL had taken a calculated risk in submitting their bid without GST and subsequently cannot amend their bid which is contrary to Transparency in Tenders Act 1988. Non inclusion of GST indicated that the level playing field was not adopted.
- Para 6 states that Form F of the tender document reveals that when the bid is submitted, the applicable taxes would also have to be included while submitting the bids and in the instant case GST would be applicable on the

services in the tender.

- Para 7 states that TNMSC responded to their representation with letter dt 14.8.2019 stating that as GST is not applicable in the tender, the bid of KRYSTAL was the lowest.
- Para 8 states that the applicant vide their letter 16.8.2019 it was not fair on the part of TNMSC to consider the bid of KRYSTAL without GST and the issue of applicability of GST was to be considered.
- Para 10 states that the applicant was asked by TNMSC vide their letter dt 17.8.2019 to negotiate on the applicants lowest bid for Zone 5 considering the applicability of GST
- Para 12 states that GST is very much applicable to the case and hence, the bid of KRYSTAL is illegal and should have been disqualified .For efficacious adjudication of the writ they implead Assistant Commissioner GST, Chennai North Commissionerate as a proper and necessary party to clearly decide as regards the applicability of GST.
- Para 13 states that even if TNMSC proceed on finalizing the tender on the basis that no GST is applicable, the Assistant Commissioner GST may proceed to levy GST

The applicant has prayed for interim injunction of the tender process and also issue a writ of mandamus to direct TNMSC to reject the bid of KRYSTAL and award the tender to the applicant in all Zones.

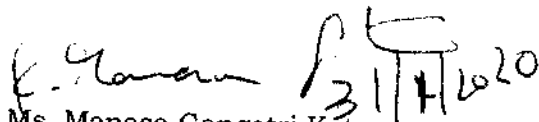
7.5 It is seen from the writ petition filed by the applicant that the applicant has submitted before the Hon'ble High Court that KRYSTAL, a bidder to the said tender has submitted their bid by stating GST as "Zero" and emerged as the successful bidder in respect of Zone 1 to Zone 4 and that the applicant would have been the successful bidder after including GST and that KRYSTAL had taken a calculated risk in submitting their bid without GST. The applicant had also made a representation to TNMSCL dt 11.7.2019 stating that price quoted by KRYSTAL without GST is to be disqualified as GST is applicable to the services involved in the tender. To this, TNMSCL vide letter dt 14.8.2019 had replied that GST is not applicable as per Notification No 12/2017 dt 28.6.2017 and hence, KRYSTAL is the L1 for Zone 1 to 4 as they had the lowest bid with zero GST. In the writ petition, the applicant has repeatedly stressed that KRYSTAL has made the successful bid only because they quoted zero GST whereas in reality GST is chargeable for the services covered in the tender. With GST added, the applicant would have been the lowest

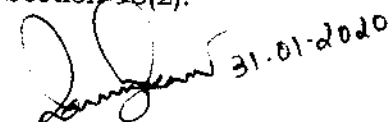
bidder for zone 1 to 4 and they would not have been asked to lower their bid for zone 5 without including GST. The applicant himself has stated in the writ petition and in the communication with TNMSCL that the applicability of GST is essential to be decided before the tender is finalized. The contention of the applicant in the writ petition that the proper procedure was not followed and level playing field, as required under Tender Transparency Act and Rules, was not provided is based on the fact that KRYSTAL had quoted their bid without GST which was wrongly accepted by TNSMCL. The contention of the applicant that they would have been the lowest bidder if GST is held applicable which is reflected in their prayer before Hon'ble High Court that a writ of mandamus maybe given to direct TNMSCL to award the contract to the applicant and not KRYSTAL. Hence, the stand of the applicant that the issue of applicability of GST is not the issue in the writ petition is not correct. The decision of the Hon'ble High Court on the writ will be applicable on the GST authorities who are also the respondents in the writ. This Authority functions within the limitations prescribed under Section 97 and 98 of the GST Act 2017. In as much as the State/Center Jurisdiction authorities are respondents to the Petition before Hon'ble High Court and the subject matter revolves on the leviability of GST, we find that the application cannot be admitted as per Proviso to Section 98(2) of the CGST /TNGST ACT as the question raised is already pending in the Hon'ble Madras High Court.

8. In view of the above, we rule as under:

RULING

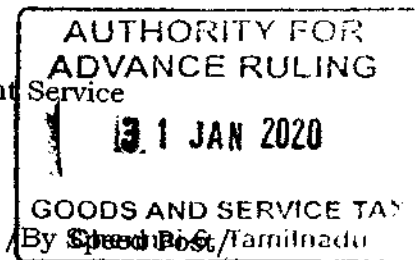
The application filed by M/s. Padmavathi Hospitality & Facilities Management Service is rejected under Proviso to Section 98(2).


Ms. Manasa Gangotri Kata,
Member, CGST


Shri Kurinji Selvaan V.S.,
Member, TNGST

To

M/s Padmavathi Hospitality & Facilities Management Service
New No.51, Old No.117, 2-B, JVL Towers,
2nd Floor, Nelson Manickam Road,
Aminjekarai, Chennai-600029.



Copy submitted to :-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & C.Ex., North Commissionerate.
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai- 600 034.
2. The Assistant Commissioner (ST),
Koyembedu Assessment Circle,
CMDA Administration Building,
2nd Floor, Koyambedu, Chennai -107.
3. Master File/ Spare – 2.

