


<b>GUJARAT AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING NO. GUJ/GAAR/R/2020/18

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/40)

**Date: 19.05.2020**

Name and address of the applicant	:	M/s. A.B.Enterprise, 6, Dharti Complex, Visnagar Road, Opp-G.E.B., Mehsana.
GSTIN of the applicant	:	24AAQFA3638J1Z9
Date of application	:	21.08.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of this Act. (e) determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	19.03.2020
Present for the applicant	:	Shri Rashmin S Vaja C.A

## BRIEF FACTS

The applicant vide their application for Advance Ruling has submitted that they are a partnership firm registered under GST and having it's principle place of business at Mehsana, Gujarat and is engaged in the business of providing manpower services to Government as well as Non-Government entities and has been providing such services for the past several years; that the aforesaid supply of services includes manpower supply for housekeeping, cleaning, security, data entry operators etc. at various positions in such Government departments; that the firm has been awarded contract from various Government departments on successful bidding of tenders floated by respective Government departments/organizations; that they provide works contract service as well which is supplied along with goods; that however in case of man power supply service, supply is only for service and there is no supply of goods along with it in execution of such man power supply service contract; that after introduction of GST, they have provided man power supply service to the following entities as detailed below:

Sr.No.	Name of party	Amount (Rs.)	Constitution of party
1.	Coast Guard Region (NW)	72,00204/-	Central Government
2.	Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka	1,03,70,590/-	Gujarat State Government
3.	Bhavnagar Forest Department	48,689/-	Gujarat State Government
4.	Jilla Panchayat, Mehsana	1,60,983/-	Local Authority
5.	Chief Officer of Ahmedabad and Mehsana Municipal Corporation	11,60,992/-	Local Authority
6.	Industrial Extension Bureau, Gujarat	3,60,248/-	Governmental Authority
7.	SardarSarovar Nigam limited	65,62,501/-	Governmental Authority

8.	Gujarat State Nagrikpurvatha limited	1,63,574/-	Governmental Authority
9.	Chief Engineer, PGVCL	2,64,00,693/-	Limited company
10.	Mahi Milk Producer Company limited	1,25,554/-	Producer Company
11.	N.G.PatelFinlease private limited	1,68,710/-	Private Limited Company

2. The applicant has submitted that they are providing man power supply service to Central Government, State Government and various entities including government entities; that they also provide such services to private organizations/corporate on which GST is collected and discharged in appropriate manner. The applicant has submitted the relevant portions of Notifications issued by the Central GST and State GST as under:

Relevant portion of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 reads as under:

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
3.	Heading 9954 (Construction services)	<b>Pure services</b> (excluding works contract service or other composite supplies involving supply of any goods) provided to the <b>Central Government, State Government</b> or Union territory or <b>local authority</b> or a <b>Governmental authority</b> or a <b>Government entity</b> by way of any activity in relation to any function entrusted to a Panchayat under article <b>243G of the Constitution</b> or in relation to any function entrusted to a Municipality under article <b>243W of the Constitution.</b>	NIL	NIL

Relevant portion of Notification No.12/2017-State Tax(Rate) dated 30.06.2017 reads as under:

No.(GHN-41)GSR-2017/S.11(1)(7)-TH- In exercise of the powers conferred by sub-section (1) of section 11 of the Gujarat Goods and Services Tax Act, 2017 (Guj.25 of 2017), the Government of Gujarat, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the state tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in

column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
3.	Chapter 99	<b>Pure services</b> (excluding works contract service or other composite supplies involving supply of any goods) provided to the <b>Central Government, State Government</b> or Union territory or <b>local authority</b> or a <b>Governmental authority</b> or a <b>Government entity</b> by way of any activity in relation to any function entrusted to a Panchayat under article <b>243G of the Constitution</b> or in relation to any function entrusted to a Municipality under article <b>243W of the Constitution</b> .	NIL	NIL

3. The applicant has submitted that the pre-requisite for claiming exemption under the above entry is that it is necessary to provide pure service 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 the Constitution; that definition of 'Pure service' has not been given anywhere so that we can refer it; that hence, the term is construed by the applicant in general meaning as: "Pure Service" means any supply for consideration in which goods are not supplied along with services to construe the same as composite supply, hence if a person provides only service to any person for a consideration without involvement of supply of goods along with the supply of services then the said supply of service can be termed as supply of service. The applicant has also given definitions of Central Government, State Government, local authority, governmental authority, government entity in his submission.

4. The applicant has further submitted that the crux of the above exemption entry can be summarized for taking benefit of the said exemption as under:

- (i) Pure services are provided.
- (ii) Service recipient is either Central Government or State Government or Local authority or Government entity: and
- (iii) Such services are provided to the specified recipients to perform functions as mentioned under Article 243G or under Article 243W of the Constitution.

5. As per the applicant's submission, 243G of the Constitution of India has entrusted the following functions to the panchayats:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.

12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

**6.** As per the applicant, 243W of the Constitution of India has entrusted the following functions to the municipalities:

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.

**7.** The applicant has submitted that since the definition of 'pure service' is not given in GST law and hence applicant have to construe its definition in general meaning i.e. 'pure service' means any supply for consideration in which no goods element is there during the provision of service, hence if a person provides only service to any person for a consideration without involvement of supply of goods then the said supply of service can be termed as supply of 'Pure service'.

**8.** The applicant have further submitted that they are providing man power supply service to the Coast Guard Region (NW) for which they have submitted copy of work order; that the applicant is providing man power supply service for peon, computer operators, drivers, security guards, sweepers and office boys to various district collectors and jilla panchayats i.e. state governments like (i) Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka & (ii) Bhavnagar Forest Department for which they have submitted work orders; the applicant has submitted a copy of one order received from Additional Collector, Morbi which states GST shall not be applicable on the supply of manpower provided to them by the applicant; that the applicant is providing man power supply for computer operators, sweepers,

housekeepers etc. to various Municipality Corporations like Ahmedabad Municipal Corporation and Mehsana Municipal Corporation and that as per definition given in section 2(69) of the CGST Act, 2017, such municipal corporations shall be termed as Local authorities; that they have submitted copies of work orders in respect of Chief Officer of Ahmedabad and Mehsana municipal corporations and Jilla Panchayat, Mehsana; that they have submitted copies of work orders in respect of service provided to Industrial Extension Bureau, Gujarat, SardarSarovar Nigam limited, Gujarat State NagrikPurvatha Limited and Chief Engineer, PGVCL; that Gujarat PaniPurvatha Board (GPPB) has issued a letter stating that they are covered under the definition of 'Government Authority' and hence GST shall not be applicable to the pure service provided to them as per Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

9. The applicant has submitted that they have provided man power supply service to these entities who are engaged in activities specified in Article 243W or Article 243G of the Constitution of India and has given a summary of the nature of work and activities carried out by various government entities along with relevant entry of Article 243W or 243G for which exemption is sought:

Sr.No.	Name of party	Constitution of party
1.	Coast Guard Region (NW)	Security at Indian Coast.
2.	Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka	Administration of District and preservice of assets of government
3.	Bhavnagar Forest Department	Protection and maintenance of forest and bringing out awareness about it.
4.	Jilla Panchayat, Mehsana	Administration of district and provision of necessary infrastructure to citizens.
5.	Chief Officer of Ahmedabad and Mehsana Municipal Corporation	Provision of necessary infrastructure to citizens, i.e. water supply, road construction, street lighting, maintenance of public monuments etc.
6.	Industrial Extension Bureau, Gujarat	Promotion of state for commerce and industry
7.	SardarSarovar Nigam limited	Water harvesting and distribution of water and electricity in western india.
8.	Gujarat State Nagrikpurvatha limited	Procurement, storage, distribution of food grains, edible oils, sugar, pulses, refined iodised salt for the requirement of public distribution system.

The applicant has also stated that in case of pure services provided to private corporate and organizations like M/s. Mahi Milk Producer Company Ltd. and M/s. N.G.PatelFinleasepvt.ltd., they are paying GST on services provided and have also submitted copies of work orders.

10. The applicant has concluded his submission by stating that he is of the view that exemption mentioned in Notification No.12/2017-Central Tax (Rate) and Notification No.12/2017-State Tax (Rate) shall be available to the services provided by the applicant on the following work order and GST shall be leviable at NIL rate of tax on supply of pure service made to State Government, Governmental Authority, Governmental Entity and Local Authority.

Sr.No.	Name of party	Amount (Rs.)	Constitution of party
1.	Coast Guard Region (NW)	72,00,204/-	Central Government
2.	Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka	1,03,70,590/-	Gujarat State Government
3.	Bhavnagar Forest Department	48,689/-	Gujarat State Government
4.	Jilla Panchayat, Mehsana	1,60,983/-	Local Authority
5.	Chief Officer of Ahmedabad and Mehsana Municipal Corporation	11,60,992/-	Local Authority
6.	Industrial Extension Bureau, Gujarat	3,60,248/-	Governmental Authority
7.	SardarSarovar Nigam limited	65,62,501/-	Governmental Authority
8.	Gujarat State Nagrikpurvatha limited	1,63,574/-	Governmental Authority
9.	Chief Engineer, PGVCL	2,64,00,693/-	Limited company

## DISCUSSION & FINDINGS

11. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The issue involved in this case is whether applicant is eligible to claim exemption benefit under Sr.No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and Notification No.12/2017-State Tax(Rate) dated 30.06.2017 for pure services (supply of manpower, security service) provided to Central Government, State Government, Local Authorities, Governmental Authorities and Government Entities. As per the submission given by the applicant they are providing services of manpower supply/security services to the following entities:

Sr.No.	Name of party	Amount (Rs.)	Constitution of party
1.	Coast Guard Region (NW)	72,00,204/-	Central Government
2.	Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka	1,03,70,590/-	Gujarat State Government
3.	Bhavnagar Forest Department	48,689/-	Gujarat State Government
4.	Jilla Panchayat, Mehsana	1,60,983/-	Local Authority
5.	Chief Officer of Ahmedabad and Mehsana Municipal Corporation	11,60,992/-	Local Authority
6.	Industrial Extension Bureau, Gujarat	3,60,248/-	Governmental Authority
7.	SardarSarovar Nigam limited	65,62,501/-	Governmental Authority
8.	Gujarat State Nagrikpurvatha limited	1,63,574/-	Governmental Authority
9.	Chief Engineer, PGVCL	2,64,00,693/-	Limited company
10.	Mahi Milk Producer Company limited	1,25,554/-	Producer Company
11.	N.G.Patel Finlease private limited	1,68,710/-	Private Limited Company

The applicant has also stated that in case of pure services provided to private corporate and organization like M/s. Mahi Milk Producer Company Ltd. and M/s. N.G. Patel Finlease Pvt. Ltd., (mentioned at Sr. Nos. 10 & 11 above) they are paying GST on services provided and have also submitted copies of work orders. So, the point to be discussed is with regard to the eligibility of the applicant to claim exemption under Sr.No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and Notification No.12/2017-State Tax(Rate) dated 30.06.2017 and pay NIL rate of GST in respect of the following entities to whom the applicant has provided the services of manpower supply/security services:

Sr.No.	Name of party	Amount (Rs.)	Constitution of party
1.	Coast Guard Region (NW)	72,00,204/-	Central Government
2.	Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka	1,03,70,590/-	Gujarat State Government
3.	Bhavnagar Forest Department	48,689/-	Gujarat State Government
4.	Jilla Panchayat, Mehsana	1,60,983/-	Local Authority
5.	Chief Officer of Ahmedabad and Mehsana Municipal Corporation	11,60,992/-	Local Authority
6.	Industrial Extension Bureau, Gujarat	3,60,248/-	Governmental Authority
7.	SardarSarovar Nigam limited	65,62,501/-	Governmental Authority
8.	Gujarat State Nagrikpurvatha limited	1,63,574/-	Governmental Authority
9.	Chief Engineer, PGVCL	2,64,00,693/-	Limited company

The applicant has asked the following question on which advance ruling is sought:

***Whether the applicant is eligible to claim exemption benefit under Sr.No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 for Pure services (supply of manpower, security service) provided to Central Government, State Government, Local Authorities, Governmental Authorities, Government Entities as submitted in Annexure-A to the application?***

12. The relevant portions of the aforementioned Notifications issued by the Central GST and State GST read as under:

Relevant portion of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 reads as under:

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
3.	Chapter 99	<b>Pure services</b> (excluding works contract service or other composite supplies involving supply of any goods) provided to the <b>Central Government, State Government</b> or Union territory or <b>local authority</b> or a <b>Governmental authority</b> or a <b>Government entity</b> by way of any activity in relation to any function entrusted to a Panchayat under article <b>243G of the Constitution</b> or in relation to any function entrusted to a Municipality under article <b>243W of the Constitution.</b>	NIL	NIL

Relevant portion of Notification No.12/2017-State Tax(Rate) dated 30.06.2017 reads as under:

No.(GHN-41)GSR-2017/S.11(1)(7)-TH- In exercise of the powers conferred by sub-section (1) of section 11 of the Gujarat Goods and Services Tax Act, 2017 (Guj.25 of 2017), the Government of Gujarat, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the state tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl.No.	Chapter	Description of Service	Rate	Condition
3.	Chapter 99	<b>Pure services</b> (excluding works contract service or other composite supplies involving supply of any goods) provided to the <b>Central Government, State Government</b> or Union territory or <b>local authority</b> or a <b>Governmental authority</b> or a <b>Government entity</b> by way of any activity in relation to any function entrusted to a Panchayat under article <b>243G of the Constitution</b> or in relation to any function entrusted to a Municipality under article <b>243W of the Constitution.</b>	NIL	NIL

**13.** Therefore, the conditions to be fulfilled to be eligible for taking the benefit of the exemption from GST under the above notifications, is as under:

(i) Pure services are to be provided.

(ii) Service recipient should either be Central Government or State Government or Union territory or Local authority or Governmental authority or Government entity: and

(iii) Such services provided should be **by way of any activity in relation to any function entrusted** to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.

**13.1** So, the first condition to be discussed is as to what is meant by pure service? Since '**pure service**' has not been defined under GST, the same can be construed in general terms as 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. However, as per the notification, works contract services or other composite supplies involving supply of any goods are not covered in serial no.3. In other words, if a person provides only service to any person without involvement of supply of goods along with supply of services, then the same would be termed as supply of pure service. On going through the work orders submitted by the applicant with regard to services provided to the entities mentioned in para 11 above, it is seen that the services provided are of only manpower supply or security services and since there is no involvement of supply of goods in these services, the services would be called 'pure services' Hence the first condition is fulfilled.



**13.2** The second condition to be verified is as to whether the entities mentioned at para-11 above are Central Government or State Government or Local authority or Governmental authority or Government entity. In this regard, definitions of the same as per the CGST Act, 2017 are as under:

- (i) As per Section-2(53) of the CGST, Act, 2017, “Government” means the Central Government.
- (ii) As per Section-2(53) of the Gujarat GST, Act, 2017, “Government” means the State Government.
- (iii) “local authority” means—
  - (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
  - (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
  - (c) 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;
  - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
  - (e) 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;

As per clause(zf) of paragraph-2 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, “governmental authority” has the same meaning as assigned to it in the explanation to clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017). Clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017) reads as under:

Explanation.—For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 was further amended by Notification No.32/2017-Central Tax (Rate) dated 13.10.2017 wherein it is mentioned as under:

in paragraph 2, for clause (zf),the following shall be substituted, namely: -

- (zf) “Governmental Authority” means an authority or a board or any other body, -(i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(zfa) “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”.

On examination of the details submitted by the applicant as well as taking into consideration the definitions mentioned above and the data available online, we reach the following conclusion:

Sr.No.	Name of party	Whether Central Government or State Government or Union territory or Local authority or Governmental authority or Government entity.
1.	Coast Guard Region (NW)	Central Government
2.	Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka	Gujarat State Government
3.	Bhavnagar Forest Department	Gujarat State Government

4.	Jilla Panchayat, Mehsana	Local Authority
5.	Chief Officer of Ahmedabad and Mehsana Municipal Corporation	Local Authority
6.	Industrial Extension Bureau, Gujarat	Governmental Authority
7.	Sardar Sarovar Nigam Limited	Governmental Authority
8.	Gujarat State Nagrik Purvatha Limited	Governmental Authority
9.	Chief Engineer, PGVCL	Governmental Authority

**13.3** The third condition to be verified is whether the services provided to these entities mentioned above are services provided by way of **any activity in relation to any function** entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.

The functions entrusted to the panchayats by Article 243G of the Constitution of India are listed hereunder:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

The functions entrusted to the municipalities under 243W of the Constitution of India are listed hereunder:

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.

**13.4.** We find that during the course of discharge of various functions by various entities, different work orders are issued according to which services are provided by the applicant. Since the applicant, at various stages, enters into different agreements with various authorities for provision of services, it is not practical to examine at this stage, each contract, he has entered into with the recipients of services. Further, during the course of providing services, the applicant would also enter into further agreements with the service recipients. It is not possible to foresee the nature of all these agreements at present. Further, there could also be modifications/ amendments in the existing agreements and the nature of service could be subsequently altered. Therefore, the reply to the query raised by the applicant cannot be answered in plain 'no' or 'yes'. Therefore, we hold that the nature of these agreements and the services provided by the applicant would determine whether the third condition as discussed above has been met or otherwise. We hold that applicant shall be eligible for the exemption under the Notification No.12/2017-State Tax (Rate) dated 28.06.2017 *only if the services in question are provided by way of any activity in relation to any function* entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.

**13.5** However, we have gone through some of the work orders, submitted by the applicant during the personal hearing, in respect of the above entities. We have also gone through the list of functions entrusted to: (i) the panchayats under Article 243G of the Constitution of India & (ii) the municipalities under Article 243W of the Constitution of India. Eligibility of exemption in respect of these work orders in terms of fulfilment of this third condition can be discussed as below:

- a. The Work Order no. Napuni/BK/mkm/outsourcing/computer operator/varg-4/seval agency nimnuk/hukm/02/2018 dated 27.02.2018 has been awarded to the applicant by **Gujarat State Nagarik Purvatha Nigam Limited**, for providing personnel for computer data operator and watchmen at its godowns. Primary objective of the Civil Supply Corporation is procurement, storage, distribution of food grains, edible oils, sugar, pulses, refined iodised salt for the requirement of public distribution system. We find that the said service is provided by the applicant in relation of discharge of functions covered under Sr. No. 28 (*Public Distribution System*) of Article 243G of the Constitution of India.
- b. The Tender No. PGCVL/Projects/Manpower/2016/58 was floated by M/s **PGCVL** to seek the services of Manpower (Engineers) & Manpower (Electrical Assistant) on contract basis to carry out RE related activities under various Sub-Divisions of PGCVL with detailed functioning of engineers and electrical assistants. We find that the said service is provided by the applicant in

relation of discharge of functions covered under Sr. No. 14 [*Rural electrification, including distribution of electricity*] of Article 243G of the Constitution of India.

- c. Similarly, the Work Order no. Ja. N. O. S./2016/2017-18 dated 29.08.2017 has been awarded to the applicant by **Mehsana Municipality** to provide manpower for security and maintenance of municipality owned assets. We find that the said service is provided by the applicant in relation of discharge of functions covered under Sr. No. 29 (*Maintenance of community assets*) of Article 243G of the Constitution of India and Sr. No. 12 (*Provision of urban amenities and facilities such as parks, gardens, playgrounds*) and Sr. No. 17 (*Public amenities including street lighting, parking lots, bus stops and public conveniences*) of Article 243W of the Constitution of India.
- d. Likewise, **Ahmedabad Municipal Corporation** vide letter dated 08.10.2016 with reference to Standing Committee Resolution no. 798 dated 29.09.2016 awarded letter of acceptance for manual and mechanised housekeeping work at Kankaria Lake Front and Kids City. We find that the said service is provided by the applicant in relation of discharge of functions covered under Sr. No. 12 (*Provision of urban amenities and facilities such as parks, gardens, playgrounds*) of Article 243W of the Constitution of India.
- e. The letter of acceptance no. NPCDn.4/5/AB/TC/Security & Operation of Gate-2014/JBC/Distr/1670 dated 29.10.2014 has been awarded to the applicant by **Sardar Sarovar Narmada Nigam Limited** for providing service for security and operation of gates of on regulating structures of Branch Canal and distributory. We find that the said service is provided by the applicant in relation of discharge of functions covered under Article 243G [*Minor irrigation, water management and watershed development, Drinking water*] and Article 243W [*Water supply for domestic, industrial and commercial purposes*] of the Constitution of India.
- f. Similarly, **Bhavnagar Forest Department, Government of Gujarat** issued letter no. Mhk/T-10/outsourse/2017 dated 29.07.2017, appointing the applicant as manpower outsource agency for the work of forest department. We find that the said service is provided by the applicant in relation of discharge of various responsibilities cast upon the forest department covered under Article 243G [*Social forestry and farm forestry, Minor forest produce*] and Article 243W [*Urban forestry, protection of the environment and promotion of ecological aspects*] of the Constitution of India.
- g. Likewise, **Bhavnagar Collector Office**, issued letter no. Mkm-1/vshi/Tender/2613/2017 dated 26.12.2017, appointing the applicant as manpower outsource agency for the work of pattawallah/driver/data entry operator to help in the fundamental works entrusted upon their offices. We find that the said service is provided by the applicant in relation to discharge of various responsibilities cast upon the collector's office covered under Article 243G and Article 243W of the Constitution of India.

**Therefore, the exemption sought by the applicant will depend upon the nature of services provided by them in terms of specific contracts entered by them with respective service recipients.**

**14.** In view of the above facts, we come to the conclusion that the applicant is eligible to claim exemption benefit under Sr.No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 for pure services (supply of manpower, security service) provided to Central Government, State

Government, Local Authorities, Governmental Authorities, Government Entities as detailed above *subject to the condition* that the services provided to these entities mentioned above are provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.

15. In view of the foregoing, we rule as under –

#### **R U L I N G**

*The applicant is eligible to claim exemption benefit under Sr.No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 for pure services (supply of manpower, security service) provided to Central Government, State Government, Local Authorities, Governmental Authorities, Government Entities as detailed above for the reasons discussed hereinabove **subject to the condition** that the services provided to these entities mentioned above are **services provided by way of any activity in relation to any function entrusted** to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.*

**(SANJAY SAXENA)**

**(MOHIT AGRAWAL)**

**MEMBER**

**MEMBER**

Place: Ahmedabad

Date: 19.05.2020.