

THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009

Advance Ruling No. KAR ADRG 45/ 2021

Dated: 30-07-2021

Present:

1. **Dr. Ravi Prasad M.P.**

Additional Commissioner of Commercial Taxes Member (State)

2. **Sri. Mashhood Ur RehmanFarooqui,**

Joint Commissioner of Customs & Indirect Taxes Member(Central)

1.	Name and address of the applicant	Sri Madivalappa Karveerappa Belwadi, M/s. M.K. BELWADI Plot No.18, Bankers Colony, V S Hublikar Building, Hubli-580 024.
2.	GSTIN or User ID	29AFOPB7951C1ZC
3.	Date of filing of Form GST ARA-01	15-04-2021
4.	Represented by	Sri M.K. Belwadi, Proprietor
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Belagavi GST Commissionerate Hubli Division,(Hubli-A Range)
6.	Jurisdictional Authority - State	ACCT, LGSTO 325, HUBLI
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act& Rs.5,000-00 under SGST Act vide CIN SBIN21022900342320 dated. 22-02-2021



ORDER UNDER SECTION 98(4) OF CGST ACT, 2017
AND UNDER SECTION 98(4) OF KGST ACT, 2017

Sri Madivalappa Karveerappa Belwadi, M/s M.K. Belwadi (called as the 'Applicant' hereafter) Plot No.18, Bankers Colony, V.S.Hublikar Building, Hubli-580024, having GSTIN 29AFOPB7951C1ZC, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Proprietary concern registered under Goods and Services Tax Act, 2017. The applicant has sought advance ruling in respect of the following question:

- i. *Whether the Pure services provided to Zilla Panchayat, City Corporations, Education institutions and Rural Water Supply Divisions are exempted under Article 243G and 243W?*

3. **Admissibility of the application:** The question is about “applicability of a notification issued under the provisions of this Act” and hence is admissible under Section 97(2)(b) of the CGST Act 2017.

BRIEF FACTS OF THE CASE

4. The applicant furnishes some facts relevant to the issue:

4.1 The Applicant is a Contractor providing manpower services to Zilla Panchayat and City Corporation, Educational institutions, Rural Water Supply Divisions. The nature of manpower services provided are in the form of ‘D’ Group, Data Entry Operators, Cooks, Assistant Cooks, Security Guards, cleaning staff and clerical staff.

4.2 The Applicant states that they are providing Manpower Services like Data Entry Operator, Drivers, “D” Group etc. to Zilla Panchayat departments and they are claiming that manpower services provided to them are exempted from GST under Sl.No.3 of Notification No.12/2017-Central Tax (Rate), dated 28th June 2017 as pure services.

4.3 The Applicant contended that they are providing Manpower Services like Drivers and cleaners for solid waste management system to City Corporation / Municipalities. City Corporations / Municipalities are claiming that manpower services provided to them are exempted from GST under Sl.No.3 of Notification No.12/2017-Central Tax (Rate), dated 28th June 2017 as pure services since the activity they are doing is covered under ‘Public Health Sanitation Conservancy and solid waste management’ which is covered under article 243W of the Constitution.

4.4 The Applicant states that they are also providing Manpower Services like cleaning staff, catering staff like cook, assistant cook and watchman to Education Institutions under Zilla Panchayat, like Department of Social Welfare /Department of BCM and the said government departments are claiming that providing manpower services are exempted from GST under Sl.No.66 Heading 9992 of Notification No.12/2017-Central Tax (Rate), dated 28th June 2017.

5. This office had addressed a letter to the Commissioner of Central Tax, Belagavi GST Commissionerate on 17-04-2021 to file comments on the application filed. In response to their e-mail, the Assistant Commissioner of Central Tax, Hubballi has furnished comments as below:

From the documents forwarded by the Deputy Commissioner of Commercial Taxes, Authority on Advance Ruling, Bangalore, it is noticed that taxpayer Shri. Mallivalappa Karveerappa Belwadi M/s. M.K. Belwadi Contractors, Hubli has sought Advance Ruling in respect of the following aspect:

M.K.Belwadi



"He is providing manpower services to Zilla Panchayat and City Corporation Education institutions, Rural Water supply Divisions. The nature of manpower is D Group, Data Entry Operators, Cooks, Asst Cooks, Security's, Clerical Staffs, Zilla Panchayat and City Corporations are denying to pay GST stating that GST on such supply exempted under article 243G and 243W. Kindly clarify whether GST is exempted for above services under article 243G and 243W to the above departments.

The taxpayer has enclosed the following documents to his application:

1. Letter of Zilla Panchayat, Dharwad dated 04-03-2021 addressed to him. In the letter it is informed to the tax payer that –supply of manpower is availed from the taxpayer; that monthly Bills have been sanctioned towards said supply for the period from January to December, 2020; that the payments are made excluding the GST element in compliance to the Audit Report; that in this regard a reference is made to the Dy. Commissioner, Tax Department, Dharwad and based on the information received from him further action will be initiated.

2. Letter of Zilla Panchayat, Gadag dated 08-10-2020 addressed to him. In the letter it is informed to the taxpayer that –with regard to payment of Service Tax and GST for supply of manpower during 2017-18, and 2018-19, the Chief Accounts officer during the Audit on the record has pointed out that same is not correct; that in this regard a reference is made to the revenue department for seeking clarification; that till receipt of clarification the GST part will not be paid him.

3. Letter of Zilla Panchayat, Gadag dated 29.09.2020 addressed to Special Officer (Z.P), and Ex-Officio Deputy Secretary to Government, Finance Department, Bengaluru, contents of the letter are as under:

"Zilla Panchayat, Gadag is hiring the services of Stenographer, Data Entry operator, Drivers and Attenders from an outsourced agency. The agency is adding 18% GST and the same is being paid to the agency after TDS @ 2%. The AG audit team during the compliance audit of the accounts of the Zilla Panchayat, Gadag has observed that the supply of man power services without involving any supply / transfer of goods to panchayat which is entrusted with the functions defined under Article 243G of the constitution shall be treated as supply of "Pure services" and the payment made towards obtaining such services by the agency do not attract levy of service tax with effect from 01-07-2017. As per the section A para made by Senior Audit Officer, Principal Accountant General, Dharwad payment made towards obtaining the man power services by the agency do not attract levy of GST. Further, the Advance Ruling No.GU/GAAR/R/2020/18 in case Dated:19-05-2020, it has been concluded by Gujarat Authority for Advance Ruling, Goods and Service Tax states that the agency supplying man power services is exempted from GST".

In the letter, with the above submission, clarification regarding levy of GST on supply of Manpower is sought.



4. In the instant application the Taxpayer has sought advance ruling as to – whether manpower supply of-Group-D staff, Data Entry Operators, Cooks, Asst Cooks, Secutiy's, leral Staffs to Zilla Panchayat and City Corporations are exempted from GST by treating them as supply towards activity for function to be performed by Panchayat and Municipality which are listed under article 243G and 243W of constitution.

5. The exemption to services provided to Government by way activity entrusted to Panchayat or Municipality is covered under Notification No.12/2017 Central Tax (Rate) dated 28.06.2017. Hence, the Taxpayer's application is seeking ruling on applicability of a notification issued under the provisions of the Central Goods and Services Act, 2017.

Relevant portion of the 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)	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority 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 .	NIL	NIL

Notification No.12/2017-State Tax(Rate) dated 29.06.2017 is similarly worded.

6. In terms of the above Notification-the GST leviable is nil in respect of – Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or relation to any function entrusted to a Municipality under article 243W of the Constitution.



Functions entrusted to Panchayat and Municipality in terms of Article 243G and 243 W are as under:

.....

.....

7. As per the above lists, the Functions the Panchayat or Municipality are exhaustive and all encompassing. However, from the wording of exemption notification 12/2017 CT (Rate) at entry s.no.3 of notification the exemptions covered therein, i.e., supply of service to municipality or Panchayat, is not across the board but restricted to supplies made in respect of functions covered under Article 243G and 243W.

8. Hence, while seeking ruling as to the applicability of exemption under Notification No.12/2017 applicant is required to furnish the relevant documents, agreements, work orders etc. wherein nature of activity undertaken are clearly enunciated so as to ascertain the supply of service towards an activity covered under Functions of Panchayat or Municipality and to examine whether said activity is in the nature of one covered under exemption notification. However, it appears that the Taxpayer has not made available any such records to the Advance Ruling Authority.

9. The Advance Ruling dated 19-05-2020 of Gujarat Authority for Advance Ruling which is referred in the Letter of Zilla Panchayat, Gadag's dated 29-09-2020 while dealing with the application of M/s. A.B. Enterprise, 6, Dharti Complex, Mehsana, seeking Ruling as to applicability of exemption Notification No.12/2017 CT(Rate) regarding supply of Man Power to Coast Guard Region (NW), Collector of Ahmedabad, Bhavnagar, Godhara and Dwarka etc., after going through the each work order has given following Ruling:

10. 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,

But it added a rider that -

(exemption is eligible) **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.

11. Hence, the Authority on the Advance Ruling in its ruling - sounded caution as to adhering to the conditions attached to the Notification i.e., activities are in relation to functions listed under Article 243G and 243W.

12. In the instant case when, such documents are not submitted-Authority may consider to call for the relevant records for examination of functions for which the supply is being made. If the applicant fails to submit the records the Authority may reject the application."



6. This office had addressed a letter to the Assistant Commissioner of Commercial Taxes, LGSTO-320, Hubballi on 17-04-2021 to file comments on the application filed. In response to the same, the said officer has furnished comments as below:

"In case of M/s. Madivalappa Karveerappa Belwadi opinion is sought regarding advance ruling related to 'GST on supply of man power services'. Further, on verification of the cited subject, as per Notification No.12/2017-Central Tax Rate, dated: 28.06.2017 'Pure Services' provided to the State Government, Local Authority, Governmental authority or a Government entity is exempted under article **243G and 243W of the Constitution**. The said exemption is applicable depending on the nature of services and the conditions of the **service contract** and on complete verification of the subject matter. In case if the services involves other facts apart from pure services, then the same is subjected to tax at the rate of 18% under section 9, 9(1) and 15 of the KGST Act, 2017".

PERSONAL HEARING / PROCEEDINGS HELD ON 30-06-2021

7. Sri M.K.Belwadi, Proprietor of the said concern appeared for personal hearing/proceedings held on 30-06-2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issues involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.

10. The applicant is providing manpower services to Zilla Panchayat, City Corporation, Karnataka State Law University and many educational institutions under the Department of Social Welfare. The manpower supplied by the applicant is in the nature of is 'D' Group, Data Entry Operators, Cooks, Assistant Cooks, Security Guards and clerical staff. Also they are providing manpower services like drivers and cleaners for solid waste management system in Corporation/ Municipalities.

11. The applicant states that the recipients of the services that is, Zilla Panchayat, City Corporation/Municipalities are claiming exemption on supply of manpower services as per Sl.No. 3 of Notification No.12/2017 central Tax(R) dated 28.06.2017 and the educational institutions are claiming exemption on supply of manpower services as per Sl.No. 66(Heading 9992) of Notification

M.K.Belwadi



No.12/2017 central Tax(R) dated 28.06.2017

12. Whether the manpower services provided to Zilla Panchayat, City Corporation/Municipalities is exempted under entry no.3 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017, is to be examined and the said entry reads as under:

“Pure Services (excluding works contract service or other composite supplies involving any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.”

13. From the above said entry of the notification it is observed that, in order to claim exemption on supply of man power services two conditions should be satisfied:

- i. *Pure Services (excluding works contract service or other composite supplies involving any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority*
- ii. *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.”*

13.1 Now we examine one by one. The Applicant states that he is providing manpower services to Zilla Panchayat, City Corporation/Municipalities. As per section 2(69) of KGST Act 2017 “Local Authority” means

(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;*

13.2 From the above it is evident that Zilla Panchayat, City Corporation/Municipalities are covered under local authorities and hence the first condition is satisfied.

13.3 243G- Powers, authority and responsibilities of Panchayats subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and 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 Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

- (a) The preparation of plans for economic development and social justice;



(b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

Matters listed in Eleventh schedule are:

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.

13.4 243-W. Powers, authority and responsibilities of Municipalities, etc 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;

There are 18 items in the twelfth schedule of the Constitution which are as below:

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.

13.5 The applicant is providing Manpower Services like Drivers and cleaners for solid waste management system to City Corporation / Municipalities. This is in relation to function entrusted to a municipality under article 243W of the constitution which is covered by 6th entry of twelfth schedule which says 'Public health, sanitation conservancy and solid waste management'.

13.6 The applicant also provides manpower services like Data Entry Operator, Drivers "D" Group etc to Zilla Panchayat departments. But these manpower services are not provided 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. Hence provision of such manpower services is liable to tax at 18% (9% CGST and 9% SGST).

13.7 The Provision of man power services to Zilla Panchayat, City Corporation/Municipalities are exempted only when they are provided 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.

13.8 The Applicant has submitted a copy of work order given by office of Deputy Commissioner of Chikkaballapur which says that the applicant has to provide Manpower Services like clerical staff (FDA,SDA), Typists, cleaning staff, cook, assistant cook, teachers, staff nurse and watchman to district and taluk offices of Social Welfare Department and hostels, residential schools working under Social Welfare Department, Government of Karnataka.

13.9 The Provision of manpower services like cleaning staff, cook, assistant cook, teachers, staff nurse and watchman to hostels and residential schools working under Social welfare department is exempted as it satisfies both the conditions mentioned under entry no.3 of the Notification No.12/2017- Central Tax (Rate) dated 28.06.2017. These manpower services are provided to Social Welfare Department which is a department of State Government. These manpower services are provided to socially backward people, scheduled caste and scheduled tribe which is in relation to function entrusted to a Panchayat under article 243G of the constitution which is covered by 27th entry of eleventh schedule which says 'Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes'.

13.10 The applicant also provides manpower services like clerical staff(FDA, SDA) and Typists to district and taluk offices of Social welfare department. Even though the manpower services are provided to Social Welfare Department which is a Department of State Government the manpower services are not provided 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. Hence provision of such manpower services is liable to tax at 18% (9% CGST and 9% KGST).

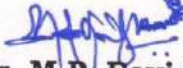
14. In view of the foregoing, we pass the following

RULING

*Supply of manpower services like Drivers and cleaners for solid waste management system to City Corporation/Municipalities/zilla parishads and manpower services like cleaning staff, cook, assistant cook, teachers, staff nurse and watchman to hostels and residential schools working under Social welfare department is **exempted** since the manpower services provided are 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.*

Manpower services like Data Entry Operator, Drivers "D" Group etc to City Corporation/Municipalities/zilla parishads and Manpower Services like clerical staff(FDA,SDA), Typists to Social welfare department are not 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 and hence attracts tax at the rate of 18% (CGST @ 9% and KGST @ 9%).



(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority
Bengaluru - 560 009

Place : Bengaluru,

Date : 30-07-2021



(Mashhood Ur Rehman Farooqui)

Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Belagavai GST Commissionerate Hubli Division, Hubli.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-325, Hubli.
5. Office Folder.