

**RAJASTHAN AUTHORITY FOR ADVANCE RULING**

**GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR**

**RAJASTHAN HIGH COURT**

**ADVANCE RULING NO. RAJ/AAR/2021-22/11, Dated 06th September, 2021**

**JAIPUR - 302005 (RAJASTHAN)**

J.P.MEENA Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s CONSULTING ENGINEERS GROUP LIMITED. B-11G, 7th Floor, CEG Tower, Malviya Industrial Area, Jaipur, Rajasthan. 302017.
GSTIN of the applicant	:	08AAACC7519B1Z0
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of the Act: (e) determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	25.08.2021
Present for the applicant	:	Ritika Rajvanshi (Authorised Representative).
Date Of Ruling	:	06.09.2021

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

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

The issue raised by M/s CONSULTING ENGINEERS GROUP LIMITED. B-11 G. 7th Floor. CEG Tower, Malviya Industrial Area. Jaipur, Rajasthan. 302017. (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (b) & (e) given as under:-

(b) applicability of a notification issued under the provisions of the Act.

(e) determination of the liability to pay tax on any goods or services or both.

Further, the applicant being a registered person (GSTIN is 08AAACC7519BIZ0 as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

#### A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

Questions on which Advance Ruling is required

1. Whether the 'Project Management Consultancy' services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO) under Rajasthan Secondary Towns Development Sector Project, where Invoice is raised by the Applicant to the Leading Member, who further raise invoice to RUDSICO of complete amount, can be termed as 'Pure Services' as referred in SI. No. 3 - (Chapter 99) of Table mentioned in Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and State Goods & Service Tax.

At the outset, we would like to make it clear that the provisions of both Central Goods & Service Tax Act, 2017 and Rajasthan Goods & Service Tax Act, 2017 (referred to as CGST Act & RGST Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under RGST Act.

#### Exhibit- II

Relevant facts of the case having a bearing on the question raised

1. Consulting Engineers Group Limited (hereinafter referred to as 'CEG' or the 'Applicant ') is a Company registered under the Companies Act, 1956 and registered with Registrar of Companies as "Consulting Engineering Group Limited" vide CIN: U74140RJ1991PLC006329 with its Registered Office at 7th Floor, B-II(G), Industrial Area, Malviya Nagai-, Jaipur- 302017 vide GSTIN 08AAACC7519B1Z0, having its Principle place of Business at 7th Floor, B-II(G), Industrial Area, Malviya Nagar. Jaipur- 302017.

2. Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited (hereinafter referred to as RUDSICO) is a Government Company registered under

Companies Act, 1956, incorporated in Dec., 2004. RUDSICO, a Govt, of Rajasthan undertaking, is the State Level Nodal Agency (SLNA) for Govt, of India financed projects like AMRUT, smart city, UIDSSMT. UIG, Eleven City Sewerage and the state Govt, financed projects like ROB-RUB, Seven Cities Sewerage and Affordable Housing. Earlier it was known by the name of Rajasthan Urban Infrastructure Finance and Development Corporation Limited (RUIFDCO) but after 19th November 2015 its name got changed to RUDSICO.

3. RUDSICO. being a Government Undertaking and headed by the Honorable Minister UDH & LSG (Government of Rajasthan) is mainly responsible:-

- > To give financial assistance to ULBs/Government Agencies/Non Government organization.
- > To give subsidy, aid. assistance of any financial nature to ULBs/Govt. Agencies/Non Govt. Agencies.
- > To arrange or provide consultancy services, technical, financial and other consultancy to Urban Local Bodies (hereinafter referred to as ULBs).
- > To carry out survey for schemes and programme relating to Infrastructure Development.
- > To receive amount as revenue from ULBs.
- > To distribute on behalf of Govt, grant-in-aid and financial assistance to ULBs.
- > To arrange or raise funds from public, institutional investor. Banks or Financial Institutions.
- > To plan and financial monitor all type of project related to development of Urban Areas in Rajasthan.
- > To set up a Central Urban Data Center for collecting and updating of all information relating to urban development and urban Infrastructure for the urban areas of the state.
- > To act as nodal agency for implementation of affordable housing policy/scheme 2009 and as amended from time to time by the Government of Rajasthan.
- > To Plan, design, develop, construct, maintain, and manage the finance and to make or arrange all the works/Jobs/Services including incidental and ancillary for

infrastructure development, housing, public utility services and all other works related to the construction.

4. A contract under Rajasthan Secondary Towns Development Sector Project (RSTDSP). (herein after called "project") has been awarded by RUDSICO - EAP( Eristwhile RUDIP) herein after client and on the other hand a Joint venture consisting of the following entities, each member of which will be jointly and severally liable to the client (i.e. RUDSICO) for all the consultant's obligation under this contract namely Haskoning DHV consulting PVT ltd in joint venture with Haskoning DHV Nederland B. V. and consulting Engineers group Ltd.

5. Rajasthan Secondary Towns Development Sector Project (RSTDSP), (herein after called "project"), with an estimated cost of \$700 million (ADB financing of \$500million). ADB financing will support the on-going efforts of Government of Rajasthan (GOR) towards improving the water and wastewater services in 42 secondary towns, each with population in the range of 50,000 to 1.10,000 with some exceptions for district headquarters (2) and heritage towns (10) which are smaller.

The project will invest in the rehabilitation and expansion of water supply network for reduction of non-revenue water under (NRW).24x7 water supply, rehabilitation and expansion of sewerage network, modernization and new construction of water supply and wastewater treatment plants and wastewater pumping stations, faecal sludge management and decentralized wastewater management systems in the projected towns.

The project will include O&M embedded construction contracts combining design, construction and O&M for water supply and wastewater contracts for a period of 10 years. This will support the municipalities O&M responsibility and improve the quality of service delivery by providing continuity in system operation as well as O&M. Special contract conditions for monitoring NRW reduction will be developed and incorporated in the bidding documents to provide incentives for NRW reduction.

6. The Applicant has agreed to provide Project Management Consultancy Services to RUDSICO for Rajasthan Secondary towns Development Sector Project in Joint Venture with Haskoning DHV Consulting Pvt. Ltd. And Haskoning DHV Nederland B.V.

The objective of the Contract Management & Supervision Consultants (CMSC) i.e. the Applicant is to provide assistance to the Project Implementation Unit (PIU) for day to day contract management and construction supervision of the project towns

of the respective package. The Applicant shall be responsible for effectively leading and taking initiative to manage, execute and implement the project by effective contract management and construction supervision.

7. As stated in the Joint Venture Contract Agreement, the Relationship between the Parties clause 2.1 to the Contract Agreement states the Relationship between the Joint Venture Members as under:

"Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract has complete charge of the Experts and Sub-Consultants, if any performing the services and shall be fully responsible for the Services performed by them or on their behalf hereunder. "

8. As per the Joint Venture Contract Agreement, the taxes and duties on any goods or services shall be paid as per the following clause 43.1 and 43.2:

"Taxes and Duties

The Client shall either pay or reimburse any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client's country (as on date project Services are GST exempted), on the Consultancy contract in respect of:-

(a) Any payment whatsoever made to the Consultant in connection with the carrying out of the services.

(b) Any equipment, materials and supplies brought into the Client's country by the Consultant or Sub-Consultants for the purpose of carrying out the Services and which, after having been brought into such territories will be withdrawn by them.

(c) Any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by Client and which is treated as property of the Client and

(d) Any property brought into the Client's country by the Consultant, any Sub-Consultants or the Experts (other than national or permanent residents of the Client's country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client's country, provided that:-

> If the Consultant, Sub-Consultants and experts shall follow the usual custom procedures of the Client's country in importing property into the Client's country and

> If the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client's country upon which Custom duties and taxes have been Exempted, the Consultant, Sub-consultants or Experts, as the case may be. (a) shall bear such custom duties and taxes in conformity with the regulations of the Client's country, or (b) shall reimburse them to the client if they were paid by the Client at the time the property in question was brought into the Client's country. "

9. RUDISCO has requested the Applicant to provide certain Consulting services as defined in the Contract as under:

Detailed scope of services, Tasks (Components)

Without limiting the scope, the CMSC has to work in close liaison with the PIU and will be responsible for the following tasks:

Contract Management:-

- i. Assisting the PIU's in the overall administration of the Contract and resolution of various Contractual issues
- ii. Preparing, execution and Monitoring of Construction plan and Preparation of monthly progress reports in agreed formats of each sub-project in suitable project monitoring software, including physical and Financial progress, hindrances, reports on variations, time -extensions, problems and issues etc.
- iii. Assist in preparing an overall Program Performance Monitoring System (PPMS) for the program and ensure that the Necessary independent inputs are in place when and where required
- iv. Regularly monitoring physical and financial progress against the milestones as per the contract so as to ensure completion on time.
- v. Monitoring and enforcing as detailed our in the contract QA & QC manuals, the quality or inputs and processes and outputs during all activities of construction to ensure the highest quality of works confirming to the specifications A drawings.
- vi. Scrutinize the Contractor's detailed work program and guide the Contractor in preparation of work plan for each contract package
- vii. Examining the Contractor's claims, variations. additional compensations etc. and recommending appropriate actions decisions.

viii. Providing advice and guidance to the PIU on ADB's procedures and guidelines for project implementation and management in general.

ix. Provide inputs towards enabling the advance preparations of subprojects and assist PMU and PIUs in identifying and preparing subprojects as per the subproject selection criteria and assist PMU in (a) appraising subprojects, (b) preparing subproject appraisals reports and (e) forming bid packages.

#### Construction Supervision:

i) Undertaking necessary surveys investigations as necessary in consultation with PMCBC/PMU (such as CBR, SBC, soil reaction, sulphates, structural investigation etc). Costs of these shall be met from the provisional sum under this contract based on actual costs.

ii) Prepare Construction supervision manual, maintenance manual etc. and submit to PMU/PIU for approval and subsequent adoption updation during the implementation period.

iii) Interpretation of the technical specifications for each contract package

iv) Supervise and monitor construction work of each contract package

v) Verification of survey and design drawings vis-a-vis ground situation and make necessary corrections if required with approval of PMU/PIU

vi) Issue Good for Construction drawings including all revisions and detailed drawings required during execution of the contract

vii) Assist PMU & PIU in operationing the PPMS and in monitoring the physical progress of each subproject to ensure the effective and timely delivery of the program outputs.

viii) Ensure safety of the works including project personnel and general public and avoid disruptions

ix) Establish quality assurance system including verification of source of material and certification

x) Carry out necessary quality control activities and certify that the quality of works confirms to the specifications and drawings

xi) Assist third party Inspections if necessary as decided by client

- xii) Review A- finalise the "as built " drawings submitted by Contractor
- xiii) Inspect the work at appropriate intervals during defective liability period
- xiv) Assist the PIU in other tasks as assigned hr the EAAA

Socials. Gender, Environmental. Archaeological. Occupational Health and Safety-Issues:

Collection of relevant inputs required for preparation of IEE and Rp documents from PMU/PIU and other sources,-

- i) .Collection of raw data and compiled reports from CAPP regarding socio economic survey census survey required for RP preparation and all other relevant surveys conducted by CAPP
- ii) Preparation of safeguard documents and updating them incorporation observations from PMCB in consultation with PH.
- iii) Support PMU & PIU in implementation and monitoring and reporting of GESI activities
- iv) Implementation of GESI action plan activities regular monitoring and reporting of GESI updates along with Projects QPRs
- v) Prepare review and update the Initial Environmental Examination (IEE) in consultation with PMCB and PMU
- vi) Identify any further resettlement requirements and costs that may be required and provide all information required in relation to right-of-way access as well as the relocation of existing utilities
- vii) Monitoring and Validation of baseline surveys environmental management plans and programs, initial environmental impact examinations (IEE) Social Safeguard compliances as may be required
- viii) Review and supervision of Implementation of ADB compliant resettlement plans if any based on the approved resettlement framework
- ix) Support in establishing grievance redress mechanism acceptable to ADB norms under the project



- x) Obtain all necessary permissions and complying with statutory requirements as required for all construction stages such as permissions form Railways. National Highways. Department of Archaeology. Department of Forests and National Parks
- xi) Monitor the Implementation of EMP during construction and pre/post construction phases
- xii) In compliance with the EMP. develop a strategy to overcome the difficulties of construction/traffic management in narrow streets and also prepare detailed plans for detour of traffic during excavation form pipe laying. Purpose for coordination among all stakeholders such as traffic police, rods department, user committees etc for smooth construction execution
- xiii) Lead designs for surveys and investigations required for the protection of archaeological sites heritage areas and prepare Archaeological Impact Assessment or other agreed upon document to be approved by the department of Archaeology for the Archaeologically sensitive areas
- xiv) Ensure that nil bidding documents contain specific measures for working and excavating in Archaeologically sensitive areas
- xv) As part of the EMP, prepare a project focused Occupational Health and Safety plan (OHS) to be adopted by PIU on project work sites
- xvi) As part of the EMP, prepare a project focused Community Occupational Health and Safety plan (OHS) to be adopted by PIU on project work sites
- xvii) Provide awareness training on OHS, environmental impacts and mitigation measures to PIU and Contractors including Contractor's workers

10. As per Schedule 3 to the Joint Venture Agreement, which lays down the financial Administration of the Contract, states that:

#### Schedule A: FINANCIAL ADMINISTRATION

The leading member under the guidance of Steering Committee shall be responsible for the Financial Administration of the Joint Venture in accordance with the Financial Management Policy. The leading Member charges the other Members with a zero % management on all staff inputs supplied.

The Financial Administration of the Joint Venture shall include:

- a) receipt and verification of invoices from the creditors (but not of subcontractors engaged by the other Member individually as opposed to subcontractors engaged by the all members of Joint Venture) and arranging payments to them.
- b) The management and allocation of any shared costs, for clarity any other costs related directly to the employment of experts and their relocation to the project office shall be responsibility of each member (such as but not limited to accommodation, per-diem, flights/trains/transportation) in accordance to the reimbursable cost budget
- c) Preparation and submission of all invoices to the Client, which will be submitted in the name of the Joint Venture and
- d) Receipt and verification of Invoices from the other members for their entitlement under this Agreement and making timely payments of such sums to them.

11. Thus, the Applicant raise Invoice for its Project Management Consultancy Services to the Leading Member DHV, who further raise Invoice for complete amount to RUDSICO. The payment when received by the Lead member, is further disbursed to the Applicant and other members of the Joint Venture.

12. The Applicant further states that its client, RUDSICO is of the view that the Project Management Consultancy services provided by them are exempt from CGST and Rajasthan GST as per of Notification No. 12/2017 Central tax (Rate) dated 28/06/2017.

13. Given the above background, the present application is being preferred before the Hon'ble Authority of Advance Ruling to determine whether the Project Management Consultancy services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation for Rajasthan Secondary Towns Development Sector Project can be termed as 'Pure Services' as referred in SI. No. 3 - (Chapter 99) of Table mentioned in Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and Rajasthan Goods and Service Tax, irrespective of the invoice being raised by the Applicant to the Leading Member and not to the Service receiver i.e. RUDSICO.

#### Exhibit- III

I. Whether the 'Project Management Consultancy' services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO) under Rajasthan Secondary Towns Development Sector Project, where Invoice is raised

by the Applicant to the Leading Member, who further raise invoice to RUDSICO of complete amount, can be termed as 'Pure Services' as referred in SI. No. 3 - (Chapter 99) of Table mentioned in Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and State Goods & Service Tax.

The relevant portion of the Notification No. 12/2017 -Central Tax (Rate) dated 28/06/2017 has been reproduced for interpretation, which is as follows:

.....

"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:-

.....

.....

SI. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per cent.)	Condition
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government. State Government or Union territory or local authority 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 243 W of the Constitution.	Nil	Nil

From the From the abovementioned notification, it can be stated that the services are exempted from the CGST and SGST Tax if the following conditions are satisfied cumulatively:-

> They are rendering Pure services;

> To the Central Government, State Government or Union territory or local authority or a Governmental authority; and

> Such services should be 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.

## I. Interpretation of 'Pure Services'

1.1 The services provided by the Applicant, CEG (GSTIN: 37AAACC7519B1ZZ) may be termed as 'Pure Services', provided they fulfill the following conditions:-

i) It excludes works contract service

ii) It excludes other composite supplies involving supply of any goods

iii) It is supply of services without involving any supply of goods

1.2 The word 'Pure Services' referred in notification has nowhere been defined in the Act, Rules or notification themselves. The Notification also does not specifically name the services which are eligible for exemption and which are excluded. However, CBEC vide FAQs on Government Services, has clarified the scope of Pure Services as under:-

Question 25: What is the scope of 'pure services ' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of pure services. For example, supply of manpower for Cleanliness of roads, public places, architect services, Consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority' awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services which involves only supply of services and not for works contract services.

1.3 The term 'Works Contract' has been defined in Section 2(119) of the CGST Act, 2017 as

"works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property' in goods (whether as goods or in some other form) is involved in the execution of such contract. "

1.4 In the Contract between the Applicant and RUDSICO, there is no component of transfer of property in goods as evident from the contract agreement and is purely a service contract. As per the scope of work mentioned above in Point no. 8 of Exhibit-II, the Applicant is mainly engaged in providing Project Management Consultancy services to the RUDSICO through its professionals and Experts in various fields.

1.5 The scope of work of the Applicant mainly surrounds to services in relation to:-

- (i) Review & verification of the Project DP Rs.
- (ii) Project Management (execution) and Monitoring, and
- (iii) Construction Supervision and Contract Management, including QAC
- (iv) Ensuring that the ESMPs are properly prepared and implemented.

1.6 In addition, the Taxes & Duties clause (Clause 43.1 & Clause 43.2) of the Joint Venture Agreement, as stated in Point 7 of the Exhibit-II, also states that the GST on Consultancy services is exempt.

## II. RUDSICO qualifies to be a Governmental Authority

2.1 Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited (RUDSICO) is a Public incorporated company and is classified as a Stare Government company and is registered at Registrar of Companies, Jaipur. Its authorized share capital is Rs. 500,000,000 and its paid up capital is Rs. 486,699,936.

2.2 The definition of "Governmental Authority" as per the definitions given under Notification no. 11/2017 -Central tax (rate) and Notification no. 12/2017- Central tax (rate) dated 28th June 2017:-

"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 243W of the Constitution or to a Panchayat under Article 243G of the Constitution.

2.3 RUDSICO is a State Government Company where more than 90 percent of the equity or control to carry out any function is owned by the Government of Rajasthan. It functions directly under the Minister of UDH & LSG. Government of Rajasthan as its Chairman.

2.4 Hence. RUDSICO is incorporated as a State Government Undertaking and is controlled by the State Government. Thus. RUDSICO is a Government Authority.

III. Services are in relation to any function entrusted to a Municipality under Article 243W of the Constitution

3.1 .Article 243W of the Constitution has been briefed for reference:-

"243W. Powers. authority and responsibilities of Municipalities, etc. Subject to the provisions of this Constitution, the Legislature of a Stale may by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice:

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule:

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

3.2 The Twelfth Schedule (Article 243W of the Constitution list out the Matters for economic development. The relevant extract of the schedule has been stated hereunder:

" 1. Urban planning including town planning.

.....

.....

5. Water supply for domestic, industrial and commercial purposes.

.....

....."

3.3 RUDSICO, a Govt, of Rajasthan undertaking, is the State Level Nodal Agency (SLNA) for Govt, of India financed projects like AMRUT, smart city, UIDSSMT. UIG, Eleven City-Sewerage and the state Govt, financed projects like ROB-RUB, Seven Cities Sewerage and Affordable Housing. The main objectives of RUDSICO includes:-

> To carry out survey for schemes and programme relating to Infrastructure Development.

> To plan and financial monitor all type of project related to development of Urban Areas in Rajasthan.

> To Plan, design, develop, construct, maintain, and manage the finance and to make or arrange all the works/Jobs/Services including incidental and ancillary for infrastructure development, housing, public utility services and all other works related to the construction.

3.4 As stated, Rajasthan Sector Towns Development Sector Project (RSTDSP) will invest in the rehabilitation and expansion of water supply network, rehabilitation and expansion of sewerage network, modernization and construction of new water supply and wastewater treatment plants. Its main objective is improving the water and wastewater services in 42 secondary towns of Rajasthan.

3.5 Thus, the objectives of RUDSICO and the Project is broadly covered in the items stated in list of Article 243W of the Constitution.

3.6 The RUDSICO has been entrusted for implementing schemes for development of infrastructure and public utilities by providing financial aid and construction.

3.7 Hence, the PMC services provided by the Applicant for Rajasthan Sector Towns Development Sector Project (RSTDSP) are in relation to function entrusted to a Municipality or Committee under Article 243W of the Constitution.

#### IV. Financial Administration of the Joint Venture Agreement

4.1 The project for development of water supply unit and wastewater unit has been allotted to M/s Haskoning DHV Consulting Pvt. Ltd., M/s Haskoning DHV



Nederland B.V. and M/s Consulting Engineers Group Ltd. (Applicant), in a Joint Venture. According to the Joint Venture Agreement, Schedule-2 Financial Administration states the allocation of work as mentioned in Point 9 of Exhibit-II.

4.2 The clause (c) of the Financial Administration schedule states that,-

"The Leading Member shall

(e) Preparation and submissions of all invoices to the Client, which will be submitted in the name of Joint Venture. "

4.3 Hence, the above mentioned clause states the Leading Member is responsible for the preparation and submission of all invoices to the client, which will be submitted in the name of Joint Venture and after that disburse the payments to the Members of the Joint Venture.

4.4 In addition, the Relationship between the Parties clause (clause 2 in JV Agreement), mentioned in Point no. 8 to Exhibit-II there is no relationship of Principal and Agent or Contractor and sub-contractor between the Leading Member DLIV and the Applicant. The Applicant is fully responsible for the services performed by them or on their behalf. Further as Per General Conditions of contract Agreement (Para O) provides that

JV is an association of the client with or without personality distinct from that of its members of more than one entity where one member has the authority to conduct all business for or on behalf of any and all the members of the JV and where the members of the JV are jointly and severally liable to the client for the performance of the contract.

4.5 Thus, the Applicant is providing 'Project Management Consultancy' service to RUDSICO only and just for the purpose of financial administration, the Applicant and other Member of the JV is raising Invoice to the Leading Member, which in turn is raising invoice to RUDSICO of complete amount and later on disburse the payments to the JV Members.

Concluding the above, the Project Management and Consultancy service, being a 'Pure Service', provided by the Applicant to RUDSICO, being a 'Local Authority' would be eligible for exemption under Entry 3 of the notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 as such activity qualify to be in relation to functions entrusted to Committee under Article 243W of the Constitution,

irrespective of the fact that invoice is raised to the Leading Member and not to RUDSICO directly.

## PRAYER IN ADVANCE RULING

Given the facts and circumstances, the Applicant prays before the Hon'ble Authority that:

> The 'Project Management & Consultancy services' provided by the Applicant has no component of supply of goods and is eligible to be a 'Pure Service'.

> Considering the definitions of Governmental Authority and the facts of RUDSICO, RUDSICO qualifies to be a 'Governmental Authority', with more than 90 percent of state government equity.

> The services provided by the Applicant to RUDSICO is Project Management & Consultancy Services is in relation to Rajasthan Sector Towns Development Sector Project (RSTDSP) for rehabilitation and expansion of water supply network, rehabilitation and expansion of sewerage network, modernization and construction of new water supply and wastewater treatment plants which is listed in Twelfth Schedule to Article 243W of the Constitution.

Considering the abovementioned, the PMC services provided by the Applicant to RUDSICO is a 'Pure Service' eligible for exemption under Notification no. 12/2017-Central Tax (rate) dated 28.06.2017, irrespective of the way of raising Invoice as stated in the Joint Venture Agreement.

## B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

Whether the 'Project Management Consultancy' services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO) under Rajasthan Secondary Towns Development Sector Project, where Invoice is raised by the Applicant to the Lead Member, who further raise invoice to RUDSICO of complete amount, can be termed as 'Pure Services' as referred in SI. No. 3 - (Chapter 99) of Table mentioned in Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and State Goods & Service Tax.

## C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 25.08.2021 at Room no. 2.11 NCRB, Statue Circle, Jaipur. Mrs Ritika Rajvanshi (CA), Authorised

Representative of applicant appeared for PH. During the PH, she reiterated the submissions already made in the written application.

#### D. FINDINGS, ANALYSIS & CONCLUSION:

We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

1. At the outset, we would like to state that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the RGST Act.

2. The applicant has contended that "The 'Project Management & Consultancy services' provided by the Applicant has no component of supply of goods and is eligible to be a 'Pure Service'.

Considering the definitions of Governmental Authority and the facts of RUDSICO, RUDSICO qualifies to be a 'Governmental Authority', with more than 90 percent of state government equity.

The services provided by the Applicant to RUDSICO is Project Management & Consultancy Services in relation to Rajasthan Sector Towns Development Sector Project (RSTDSP) for rehabilitation and expansion of water supply network, rehabilitation and expansion of sewerage network, modernization and construction of new water supply and wastewater treatment plants which is listed in Twelfth Schedule to Article 243 W of the Constitution.

Considering the abovementioned, the PMC services provided by the Applicant to RUDSICO is a 'Pure Service' eligible for exemption under Notification no. 12/2017-Central Tax (rate) dated 28.06.2017. irrespective of the way of raising Invoice as stated in the Joint Venture Agreement."

3. Now the issue to be decided is whether the applicant is eligible for exemption under notification 12/2017 central tax rate dated 28.06.2017 or otherwise. The relevant portion of the Notification No. 12/2017 -Central Tax (Rate) dated 28/06/2017 is reproduced as under:

.....

"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

<b>Sl. No.</b>	<b>Chapter, Section, Heading, Group or Service Code (Tariff)</b>	<b>Description of Services</b>	<b>Rate (Per cent.)</b>	<b>Condition</b>
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority 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.	Nil	Nil

(5) of the said Table, namely:-

From the above, it is seen that the following three conditions are to be fulfilled to be eligible for taking the benefit of the exemption from GST under the above notification:-

(i) Pure services are to be provided.

(ii) 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; and

(iii) Service recipient should either be Central Government or State Government or Union territory or Local authority or Governmental authority.

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, then the same would be termed as supply of pure service. Ongoing through the contract agreement submitted by the applicant with regard to services provided to the RUDSICO, it is seen that the services provided are of only consultancy services. The applicant has also declared that PMC services provided by them has no component of supply of goods. Since there is no involvement of supply of goods in the services, the services would be termed as 'pure services'. Hence, the first condition is fulfilled.

Now, we come to second condition. The exemption is available only when pure services 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. We find that under the aforesaid contract, the applicant has to provide Project Management Consultancy services to RUDSICO. The RUDSICO has launched a project under which, they will invest in the rehabilitation and expansion of water supply network for reduction of non-revenue water under (NRW), 24x7 water supply, rehabilitation and expansion of sewerage network, modernization and new construction of water supply and wastewater treatment plants and wastewater pumping stations, faecal sludge management and decentralized wastewater management systems in the projected towns. The project will include O&M embedded construction contracts combining design, construction and O&M for water supply and wastewater contracts for a period of 10 years. This will support the municipalities O&M responsibility and improve the quality of service delivery by providing continuity in system operation

as well as O&M. In view of the above, we conclude that the supply of Consultancy services by the applicant are in relation to function of town planning and water supply.

The Twelfth Schedule (Article 243W) of the Constitution list out the matters for economic development. The relevant extract of the schedule has been stated hereunder:

"1. Urban planning including town planning.

.....

5. Water supply for domestic, industrial and commercial purposes.

In view of the above the service supplied by applicant is in relation to any function entrusted to a municipality under Article 243 W of the Constitution. Thus, the second condition is also fulfilled.

4. The third condition to be satisfied is whether recipient of the service viz. Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited (RUDSICO) qualifies as "Governmental authority".

The definition of "Governmental Authority" as per the definition given under Notification no. 11/2017-Central tax (rate) and Notification no. 12/2017 Central tax (rate) dated 28th June 2017 is as under: -

"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 90 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 or to a Panchayat under Article 243G of the Constitution.

In the instance case, as per the master data submitted by the applicant, we find that the total authorized capital is Rs. 50 crores and the paid up capital is Rs. 48.67 crore. We further find that total paid up capital, wherein, only Rs. 41 crore holding with Government of Rajasthan through H.E. governor of Rajasthan, which is less than 90%, as per the definition given under Notification no. 11/2017-Central tax (rate) and Notification no. 12/2017- Central tax (rate) dated 28th June 2017 as stated above, the recipient of the service viz. Rajasthan Urban Drinking Water Sewerage

& Infrastructure Corporation Limited (RUDSICO) is not a Governmental authority. Therefore, they are not eligible for exemption under notification no. 12/2017 central tax(Rate) dated 28.06.2017.

5. Based as above discussion & findings, we rule as under: -

#### RULING

Q. Whether the 'Project Management Consultancy' services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO) under Rajasthan Secondary Towns Development Sector Project, where Invoice is raised by the Applicant to the Leading Member, who further raise invoice to RUDSICO of complete amount, can be termed as 'Pure Services' as referred in SI. No. 3 - (Chapter 99) of Table mentioned in Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and State Goods & Service

Answer: No.

06/09/2021

(J. P. MEENA)	(M. S. Kavia)
Member	Member
(Central Tax)	(State Tax)

**(Please Note-** Above is not an official Copy of AAR Order. Kindly download Official copy from official website of relevant Authority. )