


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/24
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/07
Dated: 18/04/2022

Name and address of the applicant	:	M/s. Tirupati Construction, 240, 2 nd floor, Laxmi Enclave, Opposite Laxmi Residency, Gajera School Road, Katargam, Surat-395004.
GSTIN of the applicant	:	24AAHFM7064K1ZO
Date of application	:	05-02-2022
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, under which the question(s) raised.	:	(a)
Date of Personal Hearing	:	22-03-2022
Present for the applicant	:	Shri Purvin Shah, C.A.

Brief Facts

The applicant M/s. Tirupati Construction, have been awarded a works contract for Construction of Fire Station and Staff Quarters AT T.P.S NO- 42 (Bhimrad), F.P NO-65 , in SWZ(A) the Surat Municipal Corporation vide Work Order-North Zone/Out/879 dated : 26.02.2019. The applicant submits that said construction contract is labour plus material basis. The Construction of said Fire Station and Staff Quarters AT T.P.S NO- 42 (Bhimrad), F.P NO-65 , in SWZ(A) involves the following stages such as: (a) “A” Type Admin Building (b) “A” Type Fire Station (c) “B” Type Building (d) C- Type Building – Officers’ Quarters (f) Site Development Works (g) V.D.S. Roads (h) Compound Wall (i) Watchman and Pump Room. It is submitted that this is an ongoing activity as on the date of filing this advance ruling application.

2. The applicant submits as follows:

- (i) The activity of Construction of Fire Station and Staff Quarters AT T.P.S NO- 42 (Bhimrad), F.P NO-65 , in SWZ(A) is a supply of service within the meaning of Section 7(1)(a) of the CGST Act,2017 read with Section 2(102) of the said Act.
- (ii) There is a charge of CGST and SGST on the said supply of service under Section 9 of the CGST Act, 2017 and Section 9 of the SGST Act, 2017 since the said supply is an intra-state supply within the meaning of Section 8(2) of the IGST Act, 2017.
- (iii) Section 2(119) of the CGST Act, 2017 defines ‘Works Contract’ as follows:

(119) “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;

- (iv) The Central Government, in exercise of the powers conferred under Section 9(1) of the CGST Act, 2017 has issued Notification No.11/2017-Central Tax(Rate) dated 28.06.2017, specifying and notifying the rates of CGST on various services. Similar notification has also been issued by the State Government for levying SGST on the said services. Entry at Sr.No.3(vi) of the said Notification reads as under:

“(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than items covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or
(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

“Explanation. - For the purposes of this item, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.”

- (v) The service of Composite Supply of Works Contract as defined in Section 2(119) of the CGST Act, 2017, by way of construction of a civil structure in the nature of a fire station and staff quarters meant predominantly for use other than for commerce, industry, or any other business or profession, provided to the Central Government, State Government, Union Territory, a local authority or Governmental Authority or a Government Entity, shall be subjected to CGST @ 6% & 6% SGST.
- (vi) The said activity of Construction of Fire Station and Staff Quarters AT T.P.S NO- 42 (Bhimrad), F.P NO-65, in SWZ(A) at Bhimrad, Surat is being provided to Surat Municipal Corporation which is a local authority within the meaning of Section 2 (69) of the CGST Act,2017 and of the Gujarat SGST Act,2017. Local Authority is defined as :

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 ¹[and article 371J] of the Constitution; or
(g) a Regional Council constituted under article 371A of the Constitution

- (vii) Surat Municipal Corporation is a municipality within the meaning of Article 243P of the Constitution of India read with Article 243Q(c) thereof.

- (viii) The said contract for the construction of Fire Station and Staff Quarters AT T.P.S NO- 42 (Bhimrad), F.P No-65 , in SWZ(A) at Bhimrad, Surat involves supply of goods along with labour on the part of the applicant and is thus a works contract within the meaning of Section 2(119) of the CGST Act, 2017.
- (ix) Since, (a) Surat Municipal Corporation is engaged as a public authority in so far as the said Construction of Fire Station And Staff Quarters at T.P.S NO - 42 (Bhimrad), F.P No-65, in SWZ(A) at Bhimrad, Surat is concerned since fire services is one of the functions entrusted to a local authority at point 7 of the Twelfth Schedule to the Constitution of India read with Article 243 thereof and also (b) No commercial or business activity is involved in so far as the said Fire Station And Staff Quarters at T.P.S NO - 42 (Bhimrad),F.P NO-65, in SWZ(A), at Bhimrad, Surat as the fire station is meant for safety of citizens at large.

3. The applicant has submitted that in their opinion, the said service of Construction of Fire Station And Staff Quarters at T.P.S NO - 42 (Bhimrad), F.P NO-65, in SWZ(A) at Bhimrad, Surat, for the Surat Municipal Corporation, merits classification under the said Entry at Serial Number 3 (vi)(a) of the said Notification and the applicable rate is 12% (6% CGST+ 6 % SGST).

4. Question on which Advance Ruling sought:

Whether the activity of composite supply of works contract service by way of construction of Construction of Fire Station And Staff Quarters at T.P.S NO - 42 (BHIMRAD),F.P NO-65, in SWZ(A) at Bhimrad, Surat, for the Surat Municipal Corporation and as detailed in Work Order-North Zone/Out/879 dated 26.02.2019 entered in to by the applicant supplier and the said local authority recipient i.e. Surat Municipal Corporation, merits classification at Serial Number 3(vi)(a) of Notification Number 11/2017 – Central Tax(Rate) dated : 28.06.2017 (hereinafter referred to as the said NT) , as amended from time to time and last amended by Notification Number 21/2012-Central Tax(Rate) dated 31.12.2021 w.e.f. 01.01.2022?

Personal Hearing:

5. Virtual hearing granted on 22-3-22 was attended by Shri Purvin Shah, CA and he reiterated the submission.

Revenue Submission:

6. Central Revenue vide letter dated 11-3-22 submitted as follows:

(i) The relevant provision under para 3(vi)(a)of Notification No.11/2017-Central Tax dated 28.06.2017 is as under:

<p>(a) a civil structure or any other original work meant predominantly for use other than for commerce (industry) or any other business or profession; (b)..... (c)..... Explanation: For the purpose of</p>				<p>Provided that where the services are supplied to Government Entity, they should have been procured by the said entity in relation to work entrusted to it by the Central Government, State Government, Union</p>
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this item term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.				territory or local authority as the case may be.
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(ii) The application is silent on the uses of proposed civil structure (to be constructed under composite supply of works contract to local authority) i.e. Fire Station And Staff Quarters at T.P.S NO - 42 (Bhimrad), F.P No-65, in SWZ(A). As per the provision mentioned above, it is mandatory condition that the said civil structure is meant for use other than for commerce, industry or any other business or profession. The said civil structure may be utilized for commerce or business purpose. Hence, the said provision is not applicable in this case.

Findings:

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST 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 GGST Act.

8. We have carefully considered all the submissions. We hold that for subject to find entry at 3(vi)(a) of said NT, the following criteria is to be satisfied:

- a. Supply shall be Composite supply of Works Contract.
- b. Service Recipient shall be Central/State Government, the Union Territory, a local authority, a Government Authority or a Government Entity.
- c. The Civil Structure/ Original Works must be predominantly meant for use other than for commerce, industry or any other business or profession.

9. We find that the subject contract is for the construction of immovable property wherein transfer of property in goods is involved in the execution of subject contract. We hold that subject supply is works contract service. The supply comprises supply of the following: A type Fire station; A type Admin building; B type building; C type officers quarters; site development works; VDS roads; compound wall; watchman and Pump room. We hold subject supply is a composite supply of works contract service. We find that the service recipient is Surat Municipal Corporation, which we hold is a local authority.

10. We note that vide Explanation to Serial No 3(vi) of said NT, 'business' shall not include any activity or transaction undertaken by a local authority in which they are engaged as public authorities. We note that fire services is a matter listed in twelfth schedule of our Constitution and thereby a function of the Municipal Corporation. **Thereby we find this activity undertaken by Surat Municipal Corporation out of the purview of business**, as described at sr no 3(vi)(a) of Said NT. Also, supply of Staff Quarters is covered at 3(vi)(c) of said NT.

11. We note Revenue's submission that said civil structure may be used for commerce or business. We hold that a fire station will be used for fire services function as envisaged in schedule twelfth of our Constitution and cannot be considered a commercial building. Further, as already discussed, with the explanation of term business incorporated into Sr. No 3(vi) of said NT as discussed in previous para and nothing of contrary vide a specific intelligence

report submitted by Revenue that the structure supplied is for business/commerce purpose, we find no merit in Revenue's submission.

12. We pass the Ruling:

Ruling

The subject Supply merits entry at Sr No. 3(vi)(a) of said NT.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad

Date: **18/04/2022**