

THE APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX, UTTAR PRADESH
4, VIBHUTI KHAND, GOMTI NAGAR, LUCKNOW – 226 010.

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax
Act, 2017)

Appeal Order No. 17/AAAR/02/7/2021

Date: 2-07.2021

Before the Bench of:-

- 1. Shri Ajay Dixit,**
Member, Central Tax
- 2. Smt. Ministhy S.,**
Member, State Tax

Legal name of the Appellant	M/s JAYESH ANIL KUMAR DALAL
Trade Name of the Appellant	M/s JAYESH A DALAL
GSTIN Number	09AAVPD9061B1ZK
Registered address/Address provided while obtaining user ID	Shop No. 4, J.S. Market, Suhag Nagar, Firozabad, Uttar Pradesh
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 72/2021 dated 21.01.2021 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s. Jayesh A Dalal, Shop No. 4, J.S. Market, Suhag Nagar, Firozabad, Uttar Pradesh (hereinafter referred to as the “Appellant”) against the Advance Ruling Order No. UP ADRG 71/2021 dated 21.01.2021 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017 and vice versa.

1) M/s Jayesh A Dalal, a proprietorship firm, having registered address at Shop No. 4, J. S. Market, Suhag Nagar, Firozabad, Uttar Pradesh, 283203 (the Appellant) is a registered assessee under GST having GSTN: 09AAVPD9061B1ZK.

2) As per Appellant, there is an agreement between Director, State Urban Development Agency (herein after referred to as "SUDA"), and M/s Jayesh A Dalal, Jalaram Shakti beside Dhavalgiri Apartments, Near Lourdes Convent School, Athwalines, Surat, for Preparation of Detailed Project Report (DPR) for Ghaziabad NN ULB (District - Ghaziabad) in Meerut Cluster No. 14 and providing Project Management Consultancy (PMC) services for Project under Beneficiary Led Construction in 18 Clusters vide work order no. 1190/01/29/HFA/ 2018-19 dated 16/01/2019.

3). Accordingly, the Appellant has submitted an application dated 06.11.2020, before the Authority for Advance Ruling Uttar Pradesh and sought Advance Ruling as follows : -

- (i) Whether the Project Development Service (i.e. Detailed Project Report Service) and Project Management Consultancy services ('PMCS') provided by the applicant to the recipient under the Contract from State Urban Development Authority (herein after referred as "SUDA") and the Project Management Consultancy services ('PMC') under the Contract for PMAY would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?
- (ii) If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended (S. No. 3A) by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding Notifications No. — KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

4). The Authority for Advance Ruling, vide Order No. 72/2021 dated 21.01.2021 ruled that:

(i) Project Development Service provided by the applicant to the State Urban Development Authority and the Project Management Consultancy services ('PMC') under the Contract for PMAY will not qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India.

(ii) As the answer to first question is in negative, question number 2 becomes redundant.

5) Being aggrieved with the Order No. 72/2021 dated 21.01.2021, the Appellant filed this appeal application before us.

Grounds of appeal submitted by the Appellant:-

6) The Appellant made the following grounds for filing of appeal:

6.1) the Authority for Advance Ruling, Lucknow, Uttar Pradesh had passed a non-speaking order without proper analysis of the facts of the case.

6.2) The activities involved in preparation of detailed project report (DPR) and project management consultancy (PMC) services are pure professional consultancy service i.e. consulting engineer. In other words, there is no involvement / supplies of any types of goods or materials in this work order.

6.3) SUDA deducts GST-TDS amount from each and every payment made to the Appellant under section 51 of the CGST Act, 2017 so SUDA is considered here as a Government body for exemption from GST under Sl. No. 3 (Heading 9954) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

6.4) The Appellant also relied upon various Advance Ruling Authority Judgments to vindicate their stand.

7) Following the principle of natural Justice, the appellant was granted personal hearing on 14th June 2021. Sh. Narendra Kumar, Chartered Accountant /Authorised Representative appeared in personal hearing on behalf of the Appellant.

During the course of personal hearing, he reiterated the submissions already made vide appeal application dated 06.04.2021. He has nothing more to add.

DISCUSSION AND FINDING

8) We have gone through the submissions made by the Appellant and examined the detailed explanation submitted by them. We observe that the question before us to decide is whether the services provided by the Appellant to the SUDA would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G and 243W of the Constitution of India and whether these services would qualify as Pure Services or not.

9) Now coming to the first question we observe that as per Sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 "*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*" are exempt from tax.

10). We observe that the Authority for Advance Ruling has observed that SUDA is not covered in the definition of Central Government, State Government, Local Authority, Government Authority or Government Entity. In this regard we observe that SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government and this fact is agreed upon even by the Advance Ruling Authority also. Further, as per the "Memorandum of Association of State Urban Development Agency", it's main objectives shall be-

(a) To identify the urban poor in the state.

(b) To draw up plans and formulate schemes for the upliftment of the urban poor in the state.

(c) To implement schemes for the benefit of the urban poor either directly or through other agencies engaged in this direction, whether private, public or cooperative.

(d) To review the progress of the execution of these activities as well as effectiveness of the benefits directed towards the urban poor.

(e) To set up or establish any specific service such as training facilities, infrastructural etc. in furtherance of the economic interest of the urban poor.

11). As per the Memorandum of Association, the Secretary, Urban Employment & Poverty alleviation Programme, will be the Chairman of the SUDA. Further, as per point no. 33 of Article of Association the accounts of the SUDA shall be

subject to an account audit by the Comptroller and Auditor General of India and as per point no. 43 "Members to receive no profit upon dissolution of the society if after disposal and settlement of the property of the society and its claims and liabilities, there are any surplus assets, such asset shall not be paid to or distributed amongst the member of the society or any of them but shall be disposed off as directed by the Government of India or State Government". Moreover, as per the registration certificate issued by the GST department, SUDA has been defined as "Government Department".

12). Further, as per website of Pradhan Mantri Awas Yojana-Housing for All (Urban), Ministry of Housing and Urban Affairs, the PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private, participation, and affordable Housing in Partnership. As per the detail available on website SUDA is the state level nodal agency for PMAY(U) in the state of Uttar Pradesh.

13). Now coming to the functions entrusted to Panchayats/Municipalities, the matters listed in the 11th and 12th schedule to the constitution (details 243G and 243W, respectively), are inter alia: (a) Safe water for drinking, (b) Maintenance of community assets, (c) Family welfare, (d) Markets and Fairs, (e) Poverty Alleviation Programmes, (f) Regulation of land use and construction of land buildings, (g) Urban planning including the town planning, (h) Planning for economic and social development, (i) Urban poverty alleviation, (j) Slum improvement and up-gradation etc. Further as per the preface to the PMAY, Housing for All (Urban) Scheme Guidelines:-

"The Mission seeks to address the affordable housing requirement in urban areas through following programme verticals:

- *Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource*
- *Promotion of Affordable Housing through Credit Linked Subsidy*
- *Affordable Housing in Partnership with Public & Private sectors*
- *Subsidy for Beneficiary-Led individual house construction /enhancement."*

14). As per Section 51 of the Act,

51. Tax deduction at source.— (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or
(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as –the deductor//),

to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as –the deductee//) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

In this regard we observe that, as per the Registration Certificate issued to SUDA and as per the TDS Credit Received Summary provided by the Appellant, SUDA is deducting GST-TDS amount from each and every payment made by them, in term of section 51 of the Act.

15). In view of forgoing discussions, we are of the opinion that the Consultancy services rendered by the Appellant under the contract with SUDA, and for PMAY are in relation to functions entrusted to Municipalities / Panchayats under Article 243W / 243G of the Constitution of India.

16). Now coming to the second question that whether such services provided by the Appellant would qualify as Pure services, we come to examine the scope of work under different contracts, as provided by the Appellant:-

A. Scope of work under Preparation of DPR:-

- Preparation of detailed Project under vertical IV of PMAY (U). 100% physical verification includes door survey, collection of land documents and consent letters from the beneficiaries as per HFAPOA (Housing for All by 2022- Plan of Action), data collection, data verification and data compilation.
- Inclusion of present status and proposed works of infrastructure details.
- MIS Entry.
- Key stakeholder consultations.
- Preparation of beneficiaries wise detailed Architectural/Engineering designs. Drawing and estimates for all sizes of plots, project structuring under appropriate development and funding mechanism.
- Assistance in obtaining appropriate approvals from concerned agencies/departments.
- Appropriating all necessary data in reference to Slum Free city Plan in the DPR.
- The DPR should be complete in all respect with all report drawings, statements and documents necessary for obtaining the grant from the Government of India.

B. Scope of Work under Project Management Consultancy (PMC):-

- PMC will coordinate, execute and monitor the activities leading to the construction of approved DUs (Dwelling units) by Govt. of India.
- All the activities till the completion of DUs will be taken care of by PMC.
- PMC shall also administer the works by the beneficiaries and ensure that the agreement between the ULBs and beneficiaries whether related to quality or quantities of work are executed in accordance with its provisions.
- PMC shall attach Beneficiaries to the project in PMAY-MIS and also upload Annexure 7A & 7C.
- PMC shall execute all MIS related work of PMAY (U).
- PMC will supervise the construction work to ensure adherence to the drawings, prescribed high standards of quality and timely completion of the project and verify and certify the progress of the work.
- Preparation of Physical and Financial progress and shall submit to respective ULBs and DUDA.
- Preparation of individual files consist of application, copy of Aadhar Card, bank details, land documents, consent letters etc, stage wise photographs for every beneficiaries.
- PMC will assist Beneficiaries at various stages such as Plinth Level, Lintel Level, roof level and final finishing works and assist to get timely installments.
- PMC will make sure that the project/ DUs construction must complete as per the agreement made with the beneficiaries for the successful and timely implementation of the Project.
- PMC will implement GEO tagging of constructions of all the stages.
- Time extension will not be considered except in very exceptional cases without prejudice to levy of penalties. However any approval for extension of time of completion of the works stipulated in the construction, beneficiaries will be without any additional financial implication.
- PMC shall be fully responsible for quality control and shall put in place such measures as are essential for ensuring regular on site quality check.
- PMC shall submit the tentative organization chart for managing the project so that appropriate decisions are taken quickly. However, the actual number of technical and financial personnel to be deployed and the deployment schedule shall be prepared by the PMC and manually agreed upon after award of work.
- Generate and submit to the ULBs time to time progress reports in the agreed formats and the agreed frequency.
- PMC shall also apprise the beneficiaries of the progress or activities of the project on fortnightly/monthly basis.


- Cash flow Chart —Actual and Scheduled & Bar Chart Actual and Scheduled Status of payments of beneficiaries. Photographs of various stages (Before excavation, Foundation, Plinth Level, Lintel Level & Completion) of DUs of each beneficiary, Geo tagging of constructions all the stages Visitors' Site Inspection, Settlement of all accounts of the beneficiaries with the ULBs.
- Provide project completion report/closure report which shall contain all technical and financial information of the project.

17). After examining the agreement and scope of work, we are of the opinion that services mentioned in the contract would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)” as provided in serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017, as amended by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding Notifications No. — KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

RULING

In view of the above discussion, we hold that the Services rendered by the appellant to the State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY, are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India and such services would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods).


(Ajay Dixit)
Member AAAR
CGST


(Ministhy S)
Member AAAR
SGST

To,

M/s Jayesh A Dalal,
Shop No. 4, J.S. Market,
Suhag Nagar, Firozabad,
Uttar Pradesh- 283 203.

APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTAR PRADESH

Copy to –

1. The Additional Commissioner, CGST & Central Excise, Audit Commissionerate, Lucknow, Member, Authority for Advance Ruling.

2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.

3. The Commissioner, CGST & CX, Agra Commissionerate, Uttar Pradesh.

4. Through the Additional Commissioner, Commercial Tax,
(Firezabad), Uttar Pradesh to jurisdictional tax assessing officers.
Zone - Etawah