
 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017 before the Bench of:-

1. Shri Mahendra Ranga, Member (Central Tax)
2. Dr. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/04/2023-24 DATED .12.2023

Name and address of the Appellant	M/s Lakhlan and Qureshi Construction Co. 4 th floor, Office No. 402, Diamond Tower, Purani Chungi, Ajmer Road, Jaipur-Rajasthan-302021
GSTIN/ UID of the appellant	08AAAF9525H1Z7
Issues under Appeal	<p>1. Whether the service recipient viz. M/s Jaipur Smart City Limited are a Government Authority as defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017?</p> <p>2. Whether Item number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 is applicable in respect of all payments related to work order for Fire Fighting System installation at contracted area between applicant (now appellant) and M/s Jaipur Smart City Limited?</p> <p>3. What will be the GST rate for the work undertaken by applicant (now appellant) for M/s Jaipur Smart City Limited under Bid Reference No. JSCL/Works/02/2020-21?</p> <p>4. Whether the applicant (now appellant) is liable to pay GST under RCM in respect of road cutting charges paid by them to Jaipur Nagar Nigam (JNN) on behalf of M/s. Jaipur Smart City Limited in relation to such contract? If the answer to the same is in affirmative, what will be the GST rate for such payment under RCM?</p> <p>5. Whether recovery of such road cutting charges by the applicant (now appellant) from M/s. Jaipur Smart City Limited is liable to</p>



		GST? If the answer is affirmative, what will be the GST rate?
Date of Personal Hearing	:	16.08.2023, 24.08.2023 & 31.10.2023
Present for the appellant	:	Shri Siddharth Ranka, Advocate (appeared in all the three PHs held), Shri Vipin Khandelwal, Advocate (appeared on 31.10.2023) Authorized representatives of the appellant.
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/01/2022-23 against Advance Ruling No. RAJ/AAR/2021-22/31 dated 15.12.2021

At the outset, we would like to make it clear that the provisions of both Central Goods and Services Tax Act, 2017 and Rajasthan Goods and Services Tax Act, 2017 are same, barring a few exceptions. Therefore, unless a mention is specifically made to such dissimilar provisions, in this order, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the corresponding provisions of Rajasthan Goods and Services Tax Act, 2017.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan Goods and Services Tax Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s Lakhlan & Qureshi Construction Co., Purani Chungi, Ajmer Road, Jaipur-Rajasthan-302021 (**hereinafter also referred to as the 'appellant'**) against the Advance Ruling No. RAJ/AAR/2021-22/31 dated 15.12.2021

BRIEF FACTS OF THE CASE

3. M/s Lakhlan & Qureshi Construction Co. (GSTIN - 08AAAF19525H1Z7) have filed an appeal (on the portal) on 30.03.2022 against the Ruling issued by the Authority for Advance Ruling, Rajasthan vide order No. RAJ/AAR/2001-22/31 dated 15.12.2021. The requisite fee of CGST Rs. 10000/- and SGST Rs. 10000/- has been paid vide Challan dated 12.01.2022. The appellant in GST ARA-02 mentioned that this appeal has been filed within limitation period in pursuance to Hon'ble Supreme Court Judgment dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020.



3.1. The appellant are a partnership firm and a civil contractor engaged in construction of roads, buildings, civil structures or various other civil works as awarded from various Governmental and non-Governmental organizations.

3.2. As per the appellant, M/s Jaipur Smart City Limited (hereinafter referred to as "M/s JSCL"), are a Government of Rajasthan Undertaking (as mentioned in their charter) floated for development of Jaipur as a Smart City and are controlled by the Rajasthan State Government. As per the appellant, Jaipur Nagar Nigam is also incorporated, controlled and managed by Rajasthan State Government and is governed by the board of directors who are answerable to Rajasthan State Government.

3.3. M/s JSCL had invited tenders for the work of installation of "Fire fighting system with pump house in ABD Area & Purohit ji ka Katla, including 5 years O&M" in Jaipur City and the said project/work was awarded to the appellant.

3.4. The Appellant sought Advance Ruling from the Authority for Advance Ruling, Rajasthan on various questions. Rajasthan Authority for Advance Ruling vide Order No. RAJ /AAR / 2021-22/ 31 dated 15.12.2021 pronounced the following ruling:-

3.4.1. M/s JSCL are not a "Governmental Authority" as defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017. To fulfill the requirement for falling under definition of Governmental Authority, 90% or more participation by way of equity or control is required by Government. Government of Rajasthan holds only 50% shareholding in M/s JSCL, and balance shareholding is held by Jaipur Municipal Corporation which is not a Government. Therefore, M/s JSCL are not satisfying the definition of Governmental Authority.

3.4.2. Item number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017 is not applicable in respect of all payments related to work order for Fire Fighting System installation at contracted area between the appellant and M/s JSCL. As services provided by the appellant to M/s JSCL are not covered in item number (vi) rather it is covered under item number (xii) in column (3) of serial number 3 of Notification No. 11/2017- Central Tax (rate) dated 28.06.2017 as amended from time to time.

3.4.3. GST rate shall be 18% (i.e., 9% CGST and 9% SGST) for the work undertaken by the appellant for M/s JSCL under Bid Reference no. JSCL/Works/02/2020-21.



3.4.4. The Appellant are liable to pay GST at the rate 18% (i.e., 9% CGST and 9% SGST) under RCM in respect of road cutting charges paid by them to JNN on behalf of M/s JSCL in relation to such contract. The activity of granting of permission for road cutting is not covered under the list of works mentioned under Article 243 W of the Constitution as entrusted to a Municipality. Thus, clause (b) of sub-section (2) of Section 7 of CGST Act, 2017 read with Notification No. 14/2017 Central Tax (Rate) as amended by Notification No. 16/2018 of Central Tax (Rate) is not applicable for services provided by JNN to appellant.

3.4.5. Recovery of such road cutting charges by the Appellant from M/s JSCL is liable to GST at the rate 18% (i.e., 9% CGST and 9% SGST). As per clause (c) of sub-section (2) of Section 15 of CGST Act, 2017, any incidental expenses charged by the supplier to the recipient shall be included in the value of supply. Only exclusion to that is reimbursement of expenses done by the service provider in the capacity of pure agent. In the present case, the appellant does not satisfy the conditions for qualifying as a pure agent and therefore the recovery of road cutting charges from M/s JSCL shall be included in transaction value and liable to GST.

4. Aggrieved by the impugned Ruling, the appellant filed the present appeal before this authority on following grounds :

4.1 As per the appellant, item number (vi) in column no. (3) of serial no. 3 (Construction Services) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017 - Central Tax (Rate) dated 21.09.2017 is applicable in their case. According to the appellant, the services provided by them to M/s JSCL fall within the scope of clause (a) of item number (vi) i.e. works contract services provided to the Central Government, State Government, Union Territory, a local Authority or **a Governmental Authority** by way of construction, erection, commissioning, **installation**, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or **any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.**

4.2 That the term "Governmental Authority" has been defined through an explanation to Section 2(16) of IGST Act, 2017, which reads 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 ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under Article 243G or to a municipality under Article 243W of the Constitution.

4.3 That the functions entrusted to a Municipality under the Twelfth Schedule to Article 243W of the Constitution are as under: -

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.**
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.**
- (h).....

4.4 As per the appellant, according to the definition of Governmental Authority, it can be understood that participation of the Government can be in the form of "equity" or "control" or a combination of both. That both conditions are not required to be satisfied and only one of the conditions is required to be satisfied, i.e., either equity ownership of Government or control of Government is above 90%. Hon'ble Supreme Court in the case of *Star Co. Ltd. v. CIT* (1970) 3 SCC 864 has held that Positive conditions separated by "or" are to be read in the alternative.

4.5 According to the appellant, the Authority of Advance Ruling has erred in holding that since Government of Rajasthan holds only 50% shareholding in M/s JSCL and balance shareholding is held by Jaipur Nagar Nigam (hereinafter also referred to as JNN) which is not a Government. Therefore, M/s JSCL are not a "Governmental Authority" as defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017 **only on the basis of equity**. As per the AAR, M/s JSCL are not satisfying the definition of Governmental Authority.

4.6 As per the appellant, M/s JSCL are a Government of Rajasthan undertaking as mentioned in their charter and as per the master data records of Ministry of Corporate affairs (MCA) M/s JSCL are registered as a State Government company.

4.7 According to the appellant, Jaipur Nagar Nigam is a Municipal Corporation incorporated by Rajasthan State Government under "The Rajasthan Municipalities



Act, 2009. The officials working as Director, Deputy Director etc., are also appointed by Rajasthan State Government. Therefore, Jaipur Nagar Nigam is controlled and managed by Rajasthan State Government.

4.8 As per the appellant, the State Government controls the decision-making power by directly appointing Directors in the board in M/s JSCL and through the officials of Jaipur Nagar Nigam who are also appointed by the state Government. The State Government has complete influence on the operating decisions of M/s JSCL along with appointment, transfer & posting of the employees. Therefore, the condition of ninety per cent or more participation by way of control is satisfied and it can be said that M/s JSCL are a Governmental Authority. The appellant added that this fact can also be established through the copy of minutes prepared during board meetings where the governing directors are State Government officials.

4.9 As per the appellant, the functions performed by M/s JSCL are squarely covered under Article 243 W (g) of the Constitution of India. They added that the opinion received by the Authority for Advance Ruling from jurisdictional officer also states that M/s JSCL have been established by the Government and is a SPV formed on 12.03.2016, to operate as a nodal agency to take up works under Smart City Mission. Further, they submitted that M/s JSCL are required to carry out the functions entrusted to Jaipur Nagar Nigam which in the present case is installation of fire fighting system which falls under the activities mentioned in Article 243W (g).

4.10 The appellant relied upon AAR, Andhra Pradesh Ruling dated 05.05.2020 in the case of Zigma Global Environment Solutions P Ltd. in which it has been held that TSCCL is a Governmental Authority as defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017. It is in context to Tirupati Smart City Corporation Limited (TSCCL), a special purpose vehicle (SPV) created by the Government of Andhra Pradesh for carrying out objectives of Smart City Mission.

4.11 As per the appellant, the service provided by Jaipur Nagar Nigam to the appellant is not a supply of service and they are not liable to pay GST under RCM for the fees paid for obtaining NOC from JNN for road cutting charges.



4.12 That sub-section (2) of Section 7 of the CGST Act, 2017 states that “Notwithstanding anything contained in sub-section (1)–

- a. activities or transactions specified in Schedule III; or
- b. such activities or transactions undertaken by the Central Government, a State Government or any local Authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.”

4.13 That Notification No. 14/2017 Central Tax (Rate) dated 28.06.2017 states that the following activities or transactions undertaken by the Central Government or State Government or any local Authority in which they are engaged as Public Authority, shall be treated neither as a supply of goods nor a supply of service, namely “*Services by way of any activity in relation to a function entrusted to a Panchayat under Article 243 G of the Constitution.*” Subsequently, the same was amended vide Notification No. 16/2018 - Central Tax (Rate) dated 26.07.2018 to include the following –

- (i) after the words “State Government”, the words “or Union territory” shall be inserted;
- (ii) after the word “Constitution”, the words “or to a Municipality under Article 243W of the Constitution” shall be inserted.

4.14 As per the appellant, the Authority of Advance Ruling, Rajasthan has erred in holding that the appellant are liable to pay GST at the rate 18% (i.e., 9% CGST and 9% SGST) under RCM on road cutting charges paid to JNN on behalf of M/s JSCL for the activity of granting of permission for road cutting. The appellant submitted that the AAR wrongly held that it is not covered under the list of works mentioned under Article 243W of the Constitution as entrusted to a Municipality and that clause (b) of sub-section (2) of Section 7 of CGST Act, 2017 read with Notification No. 14/2017 as amended by Notification No. 16/2018 - Central Tax (Rate) is not applicable for services provided by JNN to Appellant.

4.15 As per the appellant, JNN is a Municipality for Jaipur city having which works in capacity of a Public Authority. That the service of granting permission for road cutting, provided by JNN, is in relation to function entrusted to the Municipality under Article 243W of the Constitution i.e., functions enumerated under clause (d) – roads and bridges and clause (g) – Fire Services of Schedule XII of Article 243W of the Constitution of India.



4.16 In the appellant's opinion, the transaction between Jaipur Nagar Nigam and the appellant regarding payment of fees for road cutting rights for obtaining NOC, is neither supply of goods nor supply of services. Therefore, GST is not applicable on the said transactions.

4.17 According to the appellant, the Authority of Advance Ruling, Rajasthan has grossly erred in holding that recovery of such road cutting charges by the Appellant from M/s JSCL are liable to GST at the rate 18% (i.e., 9% CGST and 9% SGST) holding that the appellant does not satisfy the conditions for qualifying as pure agent.

4.18 That definition of pure agent as per Rule 33 of CGST Rules, 2017

“Rule 33. Value of supply of services in case of pure agent. -

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation:- For the purposes of this rule, the expression “pure agent” means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.”

4.19 The appellant are of the view that, in respect of road cutting charges paid to JNN by them on behalf of M/s JSCL, all the conditions required for the service to qualify as a pure agent service are satisfied, namely-



- (a) LQCC is authorized by M/s JSCL to obtain NOC from Jaipur Nagar Nigam (JNN) for cutting of roads to install pipelines for firefighting system upon payment of certain fees firstly from their own pocket and then the same shall be reimbursed by M/s JSCL to them upon submitting invoices. It is established from clause no. (viii) of point no. 1 of the general scope of work as mentioned under heading 5.3 of Section V – Procuring Entity’s Requirements of RFP.
- (b) The payment made by the LQCC to JNN on behalf of M/s JSCL has been separately reported in the invoices issued by LQCC to M/s JSCL.
- (c) The supplies i.e. obtaining NOC from JNN upon payment of road cutting charges by LQCC as a pure agent of the M/s JSCL is in addition to the services LQCC supplies on their own account to M/s JSCL.
- (d) LQCC is into contractual agreement with M/s JSCL to acts as their pure agent to incur cost or expenditure in the course of supply of services i.e. installation of fire fighting systems in contracted area.
- (e) LQCC does not hold any title to the NOC procured from JNN and have acted only on behalf of M/s JSCL.
- (f) LQCC have not used the NOC procured from JNN for their own interest and have acted only on behalf of M/s JSCL.
- (g) LQCC shall receive only the actual amount incurred to procure such NOC in addition to the amount received for the supply they provide on their own account.

4.20 According to the appellant, as per serial number 3 of Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017 as amended by Notification No. 02/2018 - Central Tax (Rate) dated 25th January 2018, pure services provided to the Central Government, State Government or Union Territory or local Authority or a Governmental Authority or a Government Entity by any activity in relation to a function entrusted to them through Article 243G or 243W of the Constitution attracts nil rate of tax. Thus, reimbursement of amount by M/s JSCL to the appellant for the NOC fees paid is in the nature of pure services provided in relation to activities mentioned in Article 243W of the Constitution and therefore its reimbursement received from M/s JSCL attracts nil rate of tax.



5. The Authorized Representative of the appellant vide email dated 01.08.2023 furnished additional submissions which were mostly reiterations of their previous submissions. The supplemental points in the submissions are as below:-

5.1 The appellant added that the term Control is not defined under the GST Acts. The term 'Control' has been defined under Section 2(17) of the Companies Act, 2013, Regulation 2(d) of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Regulation 2(1)(c) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, Section 2(g) of Securities and Exchange Board of India Act, 1992. As per Black's Law Dictionary "Control" is the direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or Authority to manage, direct, or oversee. The appellant submitted the certain Rulings/judgments in their favor. The relevant portions of the judgments are as under :

- a) Hon'ble Supreme Court in **Arcelor Mittal India Private Limited v. Satish Kumar Gupta & Ors 2018 (10) TMI 312** held : *The expression "control" is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be "in control". A management decision is a decision to be taken as to how the corporate body is to be run in its day-to-day affairs. A policy decision would be a decision that would be beyond running day to day affairs, i.e., long term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist.*
- b) Hon'ble Supreme Court in **Corpn. of Nagpur City v. Ramchandra (1981) 2 SCC 714** has held: *the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the Authority concerned.*
- c) Hon'ble Supreme Court in **Shamrao Vithal Cooperative Bank Ltd. v. Kasargode Panduranga Maliya (1972) 4 SCC 600** has held: *the word "control" is synonymous with superintendence, management or Authority to direct, restrict or regulate. Control is exercised by a superior Authority in exercise of its supervisory power.*



- d) Hon'ble Supreme Court in **State of Mysore v. Allum Karibasappa**(1974) 2 SCC 498 has held: *The word "control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action.*
- e) Hon'ble Patna High Court in **Shapoorji Paloongi & Company Pvt. Ltd. Versus Commissioner, Customs Central Excise And Service Tax And Others** (2016) 3 TMI 832 has held: *"The Authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution.*
- f) The AAR, Telangana in the matter of **SRICO Projects Pvt. Ltd.** vide their order dated 07.07.2022 in reference of work executed for **Greater Warangal Smart City Corporation Limited** held:
- iii. *The work executed for Governmental Authority is taxable @ 6% CGST & SGST each upto 31.12.2021 & at the rate of 9% CGST & SGST from 01.01.2022 onwards as Entry at S.No.3(xii) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.-*
1. *Greater Warangal Smart City Corporation Limited.*
2. *Hyderabad Metropolitan Development Authority.*
- g) The AAR, Maharashtra in the matter of **Auto Cluster Development Research Institute** vide its order dated 25.05.2022 in reference of renting services provided to **Pimpri Chinchwad Smart City Limited (PCSCL)** (where Govt of Maharashtra and Pimpri Chinchwad Municipal Corporation have 50:50 stake in PCSCL) has held that *PCSCL is clearly covered under the definition of 'Government Entity' as can be seen from the definition of a 'Government Entity' mentioned above".*
- h) The AAR, Andhra Pradesh in a similar matter of **Shapoorji Pallonji & Company Private Limited** vide its order dated 25.02.2021 has held that *Greater Visakhapatnam Smart City Corporation Limited (GVSCCL) rightly fits into the definition of the 'Government Entity' as per the said Notification. The functions carried out by the said GVSCCL are the functions which were entrusted by the Central Government, State Government and Local Authority i.e. of Municipal Administration."*
6. The authorized representative of the appellant vide email dated 16.08.2023 furnished additional submissions in continuation of their earlier submission dated 01.08.2023.



6.1 In the additional submissions, the appellant submitted that the Ministry of Urban Development, Government of India in June 2015 came out with Mission Statement and guidelines for SMART CITY, wherein it was decided to identify 100 cities throughout India. To revamp the living standards of citizens, Jaipur Smart City strives for enhancing the city's Infrastructure and Heritage. As part of this scheme, it was mandated that the Special Purpose Vehicle to carry out the activities for Smart City shall be in the form of a limited company incorporated under the Companies Act, 2013 at the city level, in which the State/UT and the ULB (Urban Local Body) will be the promoters having 50:50 equity shareholding. A copy of Smart City Guidelines was also provided by the appellant.

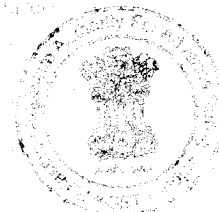
6.2 As per the appellant, on 01.04.2016 vide Order No. 64/2016, the Cabinet of State of Rajasthan has approved setting up of Jaipur Smart City. They have provided a copy of the order passed by the State Cabinet.

6.3 The present composition of Board of Directors of Jaipur Smart City Limited as taken out from their website (<https://JSCLjaipur.in/>) was also supplied by the appellant.

PERSONAL HEARING

7. A virtual hearing in the matter was held on 16.08.2023, Sh. Siddharth Ranka, Advocate & Authorized Representative of the appellant attended the virtual hearing. They reiterated the submissions already made under grounds of appeal and additional submissions made vide their letters dated 01.08.2023 & dated 16.08.2023. However, due to change of Member, AAAR (Central Tax), another personal hearing was held on 24.08.2023, in which Sh. Siddharth Ranka, Advocate & Authorized Representative of the appellant appeared and reiterated the contents of their reply dated 01.08.2023 & dated 16.08.2023. During the hearing, on being asked by the Authority, he stated that he will file additional submissions w.r.t the functional part of the Notification No. 24/2017 dated 21.09.2017. Liberty to seek another personal hearing was allowed.

7.1 The Authorized Representative of the appellant vide their letter dated 15.09.2023 requested for more time to submit the documents as discussed in the personal hearing dated 24.08.2023. It was requested that a personal hearing be granted to them after 20.09.2023 in which they can furnish the said documents.



7.2 They supplied the additional submissions in respect of functional part of Notification No. 24/2017 dated 21.09.2017 vide their letter dated 21.09.2023. According to the appellant's interpretation, their work falls under the Serial No (vi) (a) of the Notification which 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 that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] provided] to the Central Government, State Government, Union territory, 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.*

7.2.1 They further submitted that the term 'Original Work' was defined under the Service Tax Act (Finance Act 1994) in Notification No. 24/2012-ST dated 06.06.2012. The relevant portion of the same is reproduced as under:

2A Determination of value of service portion in the execution of a works contract

Notification No. 24/2012 - Service Tax dated 06.06.2012

G.S.R. (E).- In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 11/2012 - Service Tax, dated the 17 March, 2012, published in the Gazette of India, Extraordinary, vide number G.S.R. 209 (E), dated the 17 March, 2012, the Central Government, hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely :-

(1) These rules may be called the Service Tax Determination of Value) Second Amendment Rules, 2012.

(2)

"2A. Determination of value of service portion in the execution of a works contract.-:-

(i)

(ii)

(A) in case of works contracts entered into for **execution of original works**, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

(B)

(C)

Explanation 1.- For the purposes of this rule,-

(a) "original works" means-



- (i) all new constructions;**
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;**
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;**

The appellant submitted that in their case Original Work would mean

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

7.3 They added that the appellant have executed the work of 'fire fighting system with pump house in ABD Area & Purohitji ka Katla includes 5 years Operating & Maintenance installation'. The appellant executed the installation work, along with construction of pump houses along with installation of pump house, includes accessories, in short; Supply, Installation, Testing and Commissioning. According to them this work is in the nature of erection, commissioning or installation of machinery, or equipment or structures and clearly falls under the term "work contract". Therefore, the awarder i.e. M/s JSCL deducted the GST TDS @ 2% on the work classified as Work Contract.

7.4 In the submissions, they have also furnished a certificate of completion of work dated 04.09.2023 issued by Jaipur Smart City Limited against the work order JSCL/XEN-III/2020-21/1852 assigned to M/s LQCC. It certifies that the appellant M/s Lakhlan & Qureshi Construction Co. has completed the works project "Fire Fighting System With Pump House in ABD Area, Jaipur on 11.11.2022 It mentioned that the scope of works contract was supply, laying and installation of pipelines, fire hydrants and pumps including all necessary accessories. The certificate also mentioned that the contract price was Rs. 5,14,74,250/- excluding GST and that the entire GST cost was borne by M/s JSCL themselves.

7.5 They submitted that the work allotted by M/s JSCL to the appellant was an infrastructural work and it also does not qualify to be termed as predominantly for use other than for commerce industry, or any other business or profession. In this respect they submitted the Memorandum and Articles of Association of M/s Jaipur Smart City Limited. Reliance placed upon the judgment of Hon'ble Supreme Court in the case of Mansarovar Commerical Pvt. Ltd vs CIT 2023 (4) TMI 419.



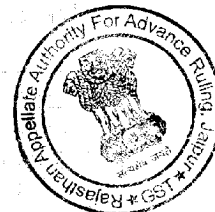
In this judgment, the apex court has held that the determinate test of control of a company is where the sole right to manage and control of the company lies.

7.6 Another opportunity for personal hearing was also sought in the above additional submissions. Accordingly, a personal hearing was fixed on 11.10.2023 but the appellant vide their email dated 10.10.2023 sought adjournment and requested to re-schedule the personal hearing. Accordingly, the PH was rescheduled for 31.10.2023. The authorized representative of the appellant appeared and reiterated the contents of the submissions made so far. Furthermore, in the hearing they also submitted the judgment dated 13.10.2023 passed by Hon'ble Supreme Court under Civil Appeal No. 3991/2023 and 3992/2023 in the case of Commissioner, CCE & ST Patna v. Shapoorji Pallonji and Company Pvt. Ltd. & ORS and Union of India v. Shapoorji Pallonji and Company Pvt. Ltd.

7.7 During the hearing, the authorized representative of the appellant was requested by the Member, AAAR to provide an executive summary of their case within a week. Consequently, a synopsis of the case was submitted by the appellant vide an email dated 10.11.2023. The contents of the executive summary have already been covered in the brief facts except the following supplemental submissions:

- a. That the Government of India, Ministry of Finance by Notification No. 16/2021- Central Tax (Rate) dated 18.11.2021 has amended the above said Entry No. 3 w.e.f. 01.01.2022 whereby after the words **"a Governmental Authority or a Government Entity"** has been omitted. Thus, there is no dispute with regards to rate of GST w.e.f. 01.01.2022 and the period of dispute is in relation of applicable rate of GST till 31.12.2021.
- b. That the term **'Governmental authority'** and **'Government entity'** is defined vide Notification No. 12/2017-Central Tax (Rate) as here-under:

Governmental Authority	Government Entity
2(zf)"Governmental Authority" means an authority or a board or any other body, -	2(zfa)"Government Entity" means an authority or a board or any other body including a society, trust, corporation,
(i) set up by an Act of Parliament or a State Legislature; or	(i) set up by an Act of Parliament or State Legislature; or
(ii) established by any Government,	(ii) established by any Government,
with 90 per cent. or more participation by way of equity or	with 90 per cent. or more



control , to carry out any function entrusted to a Municipality under <u>article 243W</u> of the <u>Constitution</u> or to a Panchayat under <u>article 243G</u> of the <u>Constitution</u> .	participation by way of equity or control , to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.
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- c. That the term '**original works**' is defined vide Notification No. 12/2017-Central Tax (Rate) as here-under:
2(zs) "original works" means- all new constructions;
(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;
- d. Definition of term **Control** as referred in various statutes & as interpreted by Hon'ble Supreme Court are relied upon such as:
- Black's Law Dictionary
 - Section 2(17) of the Companies Act, 2013
 - Regulation 2(d) of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017
 - Regulation 2(1)(c) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997
 - Section 2(g) of Securities and Exchange Board of India Act, 1992
 - Accounting Standards-18 issued by the Institute of Chartered Accountants in reference to Related Party transactions

DISCUSSION AND FINDINGS

8.1 We have carefully considered the entire material available on record including the Ruling of AAR, Rajasthan, the appeal papers filed by the appellant, records of personal hearings held on 16.08.2023, 24.08.2023 & 31.10.2023, additional submissions furnished by the authorized representatives of the appellant vide letters/emails dated 01.08.2023, 16.08.2023, 24.08.2023 and 21.09.2023 and the synopsis submitted vide email dated 10.11.2023.

8.2 Before proceeding to decide the appeal, let us first decide as to whether the appeal has been filed within stipulated period (i.e. thirty days from the date on which the ruling sought to be appealed against is communicated to the applicant) prescribed under Section 100 (2) of CGST Act, 2017 or not. In the instant case, we note that as per the appellant, the Order of AAR, Rajasthan was communicated to them on 16.12.2021. The appellant in ARA-02 and also in additional submissions



dated 01.08.2023 mentioned that this appeal has been filed within the limitation period in pursuance to Hon'ble Supreme Court Judgment dated 10.01.2022 in **Suo Motu Writ Petition (C) No. 3 of 2020**. Hon'ble Supreme Court in its Judgment dated 10.01.2022 in **Suo Motu Writ Petition (C) No. 3 of 2020** in Para (iii) has held that

"In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply".

Thus, the appellant were required to file the appeal within 30 days from 01.03.2022 in light of the aforesaid judgment of Hon'ble Supreme Court. We note that the appellant has filed the appeal on 30.03.2022 that is within the prescribed time limit. Thus, we find that the appeal has been filed by the appellant within the prescribed time. Therefore, we proceed further to decide the appeal on merit.

8.3 From the appeal memo, we note that the appellant have contested on all the issues, therefore, we are required to examine the contested issues/Ruling one by one.

9. The first question before us is to decide whether or not the service recipient i.e. M/s Jaipur Smart City Limited is a Governmental Authority as defined in the explanation to clause (16) of Section 2 of the 1GST Act, 2017.

On perusal of the AAR Order, we note that Authority for Advance Ruling, Rajasthan found that Government of Rajasthan holds only 50% shareholding in M/s JSCL and balance shareholding is held by Jaipur Municipal Corporation which is not a Government. Therefore, the AAR held that M/s JSCL are not satisfying the definition of Governmental Authority.

9.1 We note that the appellant have contested that participation can be in the form of "equity" or "control" or a combination of both. They submitted that Jaipur Nagar Nigam is a Municipal Corporation incorporated by Rajasthan State Government through powers vested with them by "The Rajasthan Municipalities



Act, 2009. The State Government appoints Director, Deputy Director, Assistant Director and other officials for its functioning.

9.2 The appellant further submitted that State Government controls the decision-making power by directly appointing directors in the board of directors in M/s JSCL and also appointing officials in Jaipur Nagar Nigam who officiate in M/s JSCL. Therefore, as per the appellant, the condition of ninety per cent or more participation by way of control is satisfied and it can be said that M/s JSCL are a Governmental Authority with control in the hands of State Government.

9.3 For defining the term "Control" the appellant placed reliance on Hon'ble Supreme Court decision in the case of **Arcelor Mittal India Private Limited v. Satish Kumar Gupta & Ors** 2018 (10) TMI 312, Hon'ble Supreme Court decision in the case of **Corpn. of Nagpur City v. Ramchandra** (1981) 2 SCC 714, Hon'ble Supreme Court decision in the case of **Shamrao Vithal Cooperative Bank Ltd. v. Kasargode Panduranga Maliya** (1972) 4 SCC 600, Hon'ble Supreme Court decision in the case of **State of Mysore v. Allum Karibasappa** (1974) 2 SCC 498 & Hon'ble Patna High Court decision in the case of **Shapoorji Paloonji & Company Pvt. Ltd. Versus Commissioner, Customs Central Excise And Service Tax And Others** (2016) 3 TMI 832 contending especially therein that if there is more than 90 % Governmental control over a body then it would suffice for it to qualify as Governmental Authority.

9.4 We note that the appellant have mainly contested that the Authority for Advance Ruling has considered participation of State Government by way of equity of 90 % or more for ascertaining the entity to be 'Governmental Authority' or 'Government Entity' and erred in not considering the participation of Government 90 % or more by way of control.

9.5 It is pertinent to appreciate as to what is a 'Governmental Authority'. We note that it has been defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017. We also note that the term Governmental Authority has been defined in Explanation (at point ix) to the Notification No. 11/2017 Central Tax –Rate dated 28.06.2017 inserted vide Notification No. 31/2017 Central Tax –Rate dated 13.10.2017. The definition of Governmental Authority 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 ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under Article 243G or to a municipality under Article 243W of the Constitution.

9.6 Now, we proceed to examine whether M/s JSCL are qualified to be considered a Governmental Authority in view of the above conditions. Following questions need to be answered in the context:-

9.6.1 Whether M/s JSCL are set up by an Act of Parliament or a State Legislature ?

M/s JSCL are not set up by an Act of Parliament or State Legislation.

9.6.2 (a) whether is it established by any Government ?

M/s Jaipur Smart City Limited are a special purpose vehicle (SPV) formed on 12.03.2016 by the Rajasthan State Government (as approved by Order No. 64/2016 dated 01.04.2016 issued by the Cabinet of State of Rajasthan) to operate as a nodal agency to take up works proposed under the smart city proposal according to Smart City mission launched by the Government of India.

9.6.3 (b) whether Government possesses ninety per cent or more participation in M/s JSCL by way of equity or control.

As far as the ‘equity’ part is concerned, M/s Jaipur Smart City Limited are a State Government company incorporated under the Companies Act, 2013 in which the Rajasthan Sate Government and Jaipur Nagar Nigam are the promoters having 50:50 equity shareholding, which does not substantiate more than 90% of participation by way of equity of the Government. The shareholding pattern of Jaipur Smart City Limited as submitted by the appellant is as under:-

S.NO.	Name of Shareholders	Shareholding (No. of Shares)
1	Secretary to Government, Local Self Government, Rajasthan, Jaipur (Nominee of Government of Rajasthan)	1
2	Commissioner, Jaipur Development Authority, Jaipur (Nominee of Government of Rajasthan)	1
3	Commissioner, Municipal	99,99,99,998 (4,998 initially)



	Corporation, Jaipur (Nominee of Urban Local Body)	& 9,99,95,000 further allotted)
4	Director and ex-officio Special Secretary, Local Bodies, Rajasthan, Jaipur (Nominee of Government of Rajasthan)	99,99,99,997 (4,997 initially & 9,99,95,000 further allotted)
5	Additional Commissioner (Head Quarter), Municipal Corporation, Jaipur (Nominee of Urban Local Body)	1
6	Chief Accounts Officer cum, FA, DLB (Nominee of Government of Rajasthan)	1
7	Chief Engineer, JMC (Nominee of Urban Local Body)	1
Total		20,00,00,000

9.6.3.1 From the above, we find that the Rajasthan State Government does not hold 90% of the equity in M/s JSCL. The same has also been pronounced by the AAR, Rajasthan in the impugned Ruling.

9.6.3.2 We note that Appellant have also placed reliance on the Supreme Court judgment dated 13.10.2023 in case of (i) Commissioner, Customs Central Excise And Service Tax, Patna v/s M/s Shapoorji Pallonji And Company Pvt. Ltd. & ors and (ii) Union of India v/s M/s Shapoorji Pallonji And Company Pvt. Ltd. In the judgment the Apex Court has held that the condition of Government **participation of 90 per cent or more by way of equity or control**, is required to be fulfilled in case of point (ii)(if any entity is established by any Government,) of the definition of 'Governmental Authority' whereas the entity in question in the subject judgment was established by an act of Parliament/State Legislature. This is not the case in the instant appeal. M/s JSCL were not established by an act of Parliament/State Legislature. Therefore, the said judgment is not applicable in the facts of the case before.

9.6.3.3 Further they have also relied on Ruling of various AARs in which recipients of the supply have been held to be Government Entity/ Governmental Authority. In these recipient bodies the respective State Government & their Municipal Corporation were the promoters having 50:50 equity share holding substantiating more than 90% of participation of the respective Government. The details of the Rulings relied upon are tabulated as under :



S.No	Ruling Authority	Party Name & Order	Service Recipient	Decision
1	AAR, Andhra Pradesh	Order dated 05.05.2020 in case of Zigma Global Environment Solutions P Ltd.	Tirupati Smart City Corporation Limited	Recipient was held as Governmental Authority
2	AAR-Andhra Pradesh	Order dated 25.02.2021 in case of Shapoorji Pallonji & Company Private Limited	Greater Visakhapatnam Smart City Corporation Limited	Recipient was held as Government Entity
3	AAR-Maharashtra	Order dated 25.05.2022 in case of Auto Cluster Development Research Institute	Pimpri Chinchwad Smart City Limited	Recipient was held as Government Entity

9.6.3.4 We note that the provisions of Section 103 of the CGST Act, 2017 state:-

(1) The Advance Ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

- (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for Advance Ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

Thus in view of the above provisions though such Rulings cannot be made applicable in the instant matter. However we note that the service recipient companies, for which 'Governmental Authority'/Government Entity' status has been pronounced by the various AARs in the aforesaid Rulings, have been created with the same motive which was behind the creation of M/s JSCL. M/s JSCL were also created for development of Jaipur as a Smart City under the Smart City Mission of Government of India.

9.6.3.5 In light of the above discussion, we are of the view that M/s Jaipur Smart City Limited is a limited company incorporated under the Companies Act, 2013 in which the Rajasthan State Government and the Jaipur Nagar Nigam (local Authority/ULB) are the promoters having 50:50 equity shareholding. We note that Jaipur Nagar Nigam being a local authority is also an extension of the



Government as it is a Municipal Corporation incorporated by Rajasthan State Government under "The Rajasthan Municipalities Act, 2009". The officers of Jaipur Nagar Nigam also officiate as one of the Directors in M/s JSCL. This substantiates more than 90% control of the Government by way of participation; Therefore, we hold that M/s JSCL are covered under Governmental Authority as defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017.

10. The second question to be decided by this authority is whether or not Item number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 is applicable in respect of all payments related to work order for Fire Fighting System installation at contracted area between applicant (now appellant) and M/s Jaipur Smart City Limited?

10.1 We note that Item Number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017 and further amended by Notification 46/2017- Central Tax (Rate) dated 14.11.2017 and Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 reads as:-

(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 that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] provided to the Central Government, State Government, Union territory, 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.

10.2 We observe that that the term '**original works**' is defined vide Notification No. 12/2017-Central Tax (Rate) as under:

2(zs) "original works" means- all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;



10.3 We note that as per the Letter of Acceptance dated 18.02.2021 issued by M/s JSCL to the appellant, the work to be undertaken by the appellant for M/s JSCL is 'fire fighting system with pump house in ABD Area Jaipur'.

Further, we have also perused the Bid Reference No. JSCL/Works/02/2020-21 for tender awarded to the appellant which encapsulates the Scope of Work of the contractor/appellant. As per the scope of work, the work undertaken/to be undertaken by the appellant also included

- (i) All equipment and sensors supply, installation, testing and commission including 5 years O&M is in the scope of contractor.
- (ii) All the civil, mechanical/Electrical work required to complete the scope of contractor.
- (iii) To construct 200 KL underground water tank and pump room.
- (iv) Excavation work including 20 KM carriage distance is in contractor scope

On examining the scope of work in the Bid, it is clear that the work undertaken by the appellant is in the nature of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works.

This shows that the work undertaken by the appellant falls under the ambit of services provided to a Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (b) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

10.4 We also note that the work executed by the appellant for M/s JSCL is a function entrusted to a municipality under Article 243 W of the Constitution

Article 243 W of the Constitution is as under :-

"243 W. 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;**
- (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.”

10.5 We further note that matter is listed in Twelfth Schedule and the functions entrusted to Municipality is as under -

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) **Roads and bridges.**
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) **Fire services.**
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and up gradation.

10.6 In light of the above discussion, we find that when M/s JSCL qualify to be a Governmental Authority then the services provided to it by the appellant are considered as services provided to the Governmental Authority. Thus, Item number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017 is clearly applicable on the appellant in this case.

11. The third question to decide before us is the GST rate for the work undertaken by applicant (now appellant) for M/s Jaipur Smart City Limited under Bid Reference No. JSCL/Works/02/2020-21.

In light of the discussion for the first two questions, we are of the view that the services provided by the appellant are covered under Item number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended. The said services are then liable to attract GST @ 12% (i.e. 6% CGST & 6% SGST) during the contracted period only up to 31.12.2021, as after that, in column no. (3) of Serial No. 3 of Notification No.



11/2017 – Central Tax (Rate) dated 28.06.2017 the words “a Governmental Authority or a Government Entity” has been omitted vide Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021 w.e.f. 01.01.2022.

12. Now we take up the next question mentioned at S.No. 4 of application, AAR Ruling of which has also been contested by the appellant; whether the applicant is liable to pay GST under RCM in respect of road cutting charges paid by them to Jaipur Nagar Nigam (JNN) on behalf of M/s Jaipur Smart City Limited in relation to such contract? If the answer to the same is in affirmative, what will be the GST rate for such payment under RCM.

The AAR has held that the applicant now appellant, are liable to pay GST at the rate 18% (i.e., 9% CGST and 9% SGST) in this respect. The AAR has held that activity of granting of permission for road cutting is not covered under the list of works as mentioned under Article 243 W of the Constitution as entrusted to a Municipality.

12.1 The appellant have mainly contested that the service of granting permission for road cutting is provided by JNN so that the underground pipelines can be laid down for installation of firefighting system in the contracted area. The said service of granting approval **is in relation to function entrusted** to the Municipality under Article 243W of the Constitution i.e., functions enumerated under clause (d) – roads and bridges and clause (g) – Fire Services of Schedule XII of Article 243W of the Constitution of India.

Further they added that as per clause (b) of sub-section (2) of Section 7 of CGST Act, 2017 and Notification No. 14/2017 - Central Tax (Rate) dated 28th June 2017 amended by Notification No. 16/2018 dated 26th July 2018, services by the Central Government or State Government or Union territory or any local Authority by way of any activity in relation to a functions entrusted to a Panchayat under Article 243 G of the Constitution or to a Municipality under Article 243 W of the Constitution are considered as neither supply of goods nor supply of services.

12.2 From the AAR Ruling Order, we find that it is not under dispute that Jaipur Nagar Nigam is a Municipality/ local Authority. Only question before us is to decide whether the activity to recover road cutting charges from appellant is in



relation to any function entrusted to a municipality under Article 243 W of the Constitution or not.

12.3 We find that activity in respect of roads and bridges have been mentioned at clause (d) of list in twelfth schedule. We find that in Article 243W, the words **“in relation to the matters listed in the Twelfth Schedule”** has been mentioned, and in the Twelfth Schedule, road cutting charges or road cutting is not listed. We find that these services of granting NOC for road cutting charges are not related to construction of Road & Bridges. In our opinion, road cutting charges recovered by Jaipur Nagar Nigam from the Appellant is not covered under clause (d) i.e. roads and bridges.

12.4 In the present case, we observe that services of granting permission/NOC for road cutting were provided by the Local Authority i.e. Jaipur Nagar Nigam (municipality) for a consideration to the business entity i.e. M/s Lakhlan & Qureshi Construction Company (appellant) and not to M/s JSCL. Hence, the appellant being a recipient of the services are liable to pay GST for the charges paid to Jaipur Nagar Nigam under reverse charge mechanism. The activity of giving permission for road cutting is not mentioned in the list of works as provided under Article 243W of the Constitution entrusted to a Municipality.

Thus, we hold that clause (b) of sub-section (2) of Section 7 of CGST Act, 2017 read with Notification No. 14/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 16/2018 - Central Tax (Rate) dated 26.07.2018 is not applicable in this case. Therefore, the appellant are liable to pay GST @18% (i.e. 9% CGST + 9% SGST) as a recipient under RCM.

13. Now we take the last question mentioned at S. No. 5 of application and Ruling which has been contested by the appellant; whether Recovery of such road cutting charges by the Appellant from M/s. Jaipur Smart City Limited is liable to GST? If the answer is in affirmative, what will be the GST rate?

13.1 AAR has found that for road cutting approval Jaipur Nagar Nigam had demanded Rs. 3,85,10,775/- vide letter dated 26.03.2021 in which the name of M/s JSCL has nowhere been mentioned. This shows that applicant i.e. LQCC **hold the title to the services** of road cutting approval so procured from Jaipur Nagar Nigam. Hence, the appellant are not qualified as pure agent in the instant case.



13.2 The appellant, on the other hand contested that they do not hold any title to the NOC procured from JNN and were acting only on the behalf of M/s JSCL. In this regard, we have perused the 'Demand Note' dated 26.03.2021 issued by Jaipur Nagar Nigam addressed to appellant. In this demand note, approval has been given to the appellant for the work of 'road cut' in relation to work of laying fire fighting pipeline being done on behalf of M/s Jaipur Smart City Limited. Thus, we note that the AAR, Rajasthan has erred in mentioning at the last Para of Page 22 of their order that 'nowhere the name of M/s JSCL is mentioned in the said demand note/letter dated 26.03.2021.

13.3 The appellant further contested that in the light of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June 2017 the reimbursement of amount by M/s JSCL to the appellant for the NOC fees paid is in the nature of pure services provided in relation to activities mentioned in Article 243W of the Constitution and therefore its reimbursement from M/s JSCL attracts nil rate of tax.

13.4 It is imperative to ascertain the conditions to qualify as pure agent as well the provisions of Notification 12/2017- Central Tax (Rate) dated 28th June 2017.

13.4.1 We note that the pure agent has been defined in Rule 33 of CGST Rules, 2017 which reads as:-

"Rule 33. Value of supply of services in case of pure agent. -

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation:- For the purposes of this rule, the expression "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;



- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account."

13.4.2 Relevant portion of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 i.e. Entry No. 3 of the said Notification reads as under :

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
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 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

13.4.3 As can be seen from the above, three conditions are required to be satisfied for a service to be covered under Entry No. 3 of the Notification which are :

- (1) It must be pure service not involving any supply of goods.
- (2) It must be provided to the Central Government or State Government or Union territory or local Authority or a Governmental Authority or a Government Entity.
- (3) It must be an activity in relation to any function entrusted to a (i) Panchayat under Article 243 G of the Constitution; or (ii) Municipality under Article 243 W of the Constitution.

13.4.4 We find that the appellant have fulfilled the condition No. 1 i.e reimbursement of road cutting charges by M/s JSCL to the appellant involves no



supply of goods. Thus, the activity is purely in nature of service. Further, as it has already been decided that M/s Jaipur Smart City Limited are a 'Governmental Authority', therefore the second condition is also satisfied.

However, we find that the recovery of road cutting charges is not covered under an activity in relation to any function entrusted to a (i) Panchayat under Article 243 G of the Constitution; or (ii) Municipality under Article 243 W of the Constitution as has already been held in Para 12.3 above.

13.4.5 Therefore, we find that the exemption under Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 is not available to the appellant. Thus, the appellant are liable to pay GST on recovery of such road cutting charges (from M/s JSCL) @18% (i.e. 9% CGST + 9% SGST).

ORDER

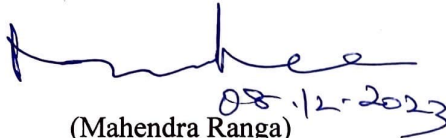
In light of the above discussion and findings, we hold that


1. M/s Jaipur Smart City Limited are covered under Governmental Authority as defined in the explanation to clause (16) of Section 2 of the IGST Act, 2017.
2. The supply related to 'fire fighting system with pump house in ABD Area & Purohitji ka Katla including 5 years Operating & Maintenance installation' provided by the appellant to M/s JSCL is considered as supply of services provided to the Governmental Authority and are covered under Item number (vi) in Column (3) of serial number 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017
3. The said services are liable to attract GST @ 12% (i.e. 6% CGST & 6% SGST) during the contracted period only up to 31.12.2021 as after that in column no. (3) of Serial No. 3 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 the words **“a Governmental Authority or a Government Entity”** have been omitted vide Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021 w.e.f. 01.01.2022.
4. In respect of amount paid as NOC for road cutting to Jaipur Nagar Nigam, Clause (b) of sub-section (2) of Section 7 of CGST Act, 2017 read with Notification No. 14/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 16/2018 - Central Tax (Rate) dated 26.07.2018 is not applicable



in this case. Therefore, the appellant are liable to pay GST @18% (i.e. 9% CGST + 9% SGST) as a recipient under RCM.

5. The appellant are liable to pay GST on recovery of road cutting charges from M/s JSCL @18% (i.e. 9% CGST + 9% SGST)..


(Mahendra Ranga)
Member (Central Tax)
(Mahendra Ranga)
Member, AAAR (Central Tax)


(Dr. Ravi Kumar Surpur)
Member (State Tax)
(Dr. Ravi Kumar Surpur)
Member, AAAR (State Tax)

SPEED POST

To
M/s Lakhlan & Qureshi Construction Co.
C/o Sh. Siddharth Ranka, Advocate
Ranka Chambers, 2nd floor,
C-12A, Surya Path, New Colony,
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F. No. IV (16)01/AAAR/RAJ/2022-23/ 3556

Date. .12.2023

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur.
4. The Member, Rajasthan Authority for Advance Ruling, Rajasthan Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. The Assistant Commissioner, CGST Division-G, Vidyadhar Nagar, Jaipur.
6. The Assistant Commissioner Circle-L, Ward Jaipur-III, Jaipur
7. M/s Lakhlan & Qureshi Construction Co. 4th floor, Office No. 402, Diamond Tower, Purani Chungi, Ajmer Road, Jaipur-Rajasthan-302021.
8. The web-manager - www.gstcouncil.gov.in
9. Guard File.

