

 सत्यमेव जयते 111	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. Sh. Mahendra Ranga, Member (Central Tax)
2. Sh. Ravi Kumar Surpur, Member (State Tax)

ORDER NO. RAJ/AAAR/ 01 /2023-24 DATED 10. 11.2023

Name and address of the Appellant	:	M/s Sai Enterprises, Irish, 113, Manglam Ananda, Rampur Road, Near Sanganer Railway station, Sanganer, Jaipur-302029, Rajasthan
GSTIN/ UID of the appellant	:	08ACHFS7005C1ZC
Issues under Appeal	:	Whether Authority for Advance Ruling, Rajasthan is right in pronouncing that no ruling is being pronounced under the provisions of the GST Act, 2017 as the question posed by the appellant is related to supplies already undertaken by them prior to the date of filing of the application for advance ruling before RAAR.
Date of Personal Hearing	:	31.10.2023
Present for the appellant	:	Shri Anurag Basu, CA
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/02/2022-23 against Advance Ruling No. RAJ/AAR/2022-23/05 dated 01.06.2022.

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same barring a few. Therefore, unless a mention is specifically made of such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the similar provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s Sai Enterprises, Irish, 113, Manglam Ananda, Rampur Road, Near Sanganer Railway Station, Sanganer, Jaipur (**hereinafter also referred to as 'appellant'**) against the Advance Ruling No. RAJ/AAR/2022-23/05 dated 01.06.2022. The appellant is registered under GST having GSTIN 08ACHFS7005C1ZC. The Appellant has filed appeal on 23.06.2022 on portal of



also submitted hard copy in this office on 24.06.2022. The requisite fee of CGST Rs. 10000/- and SGST Rs. 10000/- have been paid vide Challan dated 21.06.2022.

3 The Appellant is engaged in the business of operation and maintenance of electricity Grid Sub-Stations in respect of work orders awarded by various governmental organizations from time to time.

3.1 Jaipur Vidyut Vitran Nigam Limited (hereinafter referred to as "JVVNL" or "Jaipur Discom"), having their registered office at Vidyut Bhawan, Jan Path, Jyoti Nagar, Jaipur is a government of Rajasthan Undertaking and is engaged in distribution and supply of electricity in 12 districts of Rajasthan, namely Jaipur, Dausa, Alwar, Bharatpur, Dholpur, Kota, Bundi, Baran, Jhalawar, Sawai Madhopur, Tonk and Karauli.

3.2 JVVNL has invited tender for operation and maintenance of identified 33/11 KV Grid Sub – Stations against Dausa Lot-V and Bharatpur Lot-II through tender enquiry TN-483. As per Tender Enquiry TN-483, JVVNL intend to enter into a contract with the contractor for operation and maintenance of identified 33/11 KV Grid Sub – Stations at Dausa and Bharatpur districts of Rajasthan. The project would involve operation and maintenance of the identified GSS at defined locations for a period 2 years. The aforementioned work was awarded to the appellant M/s Sai Enterprises.

3.3 The Appellant approached the Authority for Advance Ruling (AAR), Rajasthan seeking a ruling under Section 97(2) (b) and 97(2) (e) of CGST Act, 2017 on the following questions:-

(a) Whether the service recipient i.e., M/s. Jaipur Vidyut Vitran Nigam Limited is a "Government Entity" as defined under clause (zfa) of para 2 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017 – Central Tax (Rate) dated 13.10.2017.

(b) Whether services provided by the Appellant in respect of work order No. TN-483 for Operation and Maintenance of identified 33/11 KV Grid Sub-Stations to Jaipur Vidyut Vitran Nigam Limited are wholly exempt vide serial number 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 [as amended]?

3.4 As regards question (a) above, the Authority for Advance Ruling observed that the words "or a Governmental authority or a Government Entity" has been omitted at serial number 3, in column (3), in the heading "Description of Services" in the Notification No. 12/2017- Central Tax (Rate), dated the 28th June, 2017 vide aforesaid Notification No. 16/2021-Central Tax (Rate) dated 18.11.2021 which resulted as withdrawn of exemption from tax from 01.01.2022. Thus, as on date, no exemption is applicable on Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Government Entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution. Hence, applicant is not eligible to avail the said exemption from tax.

Further, the Authority for Advance Ruling observed that the applicant had applied for Advance Ruling on 16.11.2021 in respect of availability of benefits of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 for the supplies effected upto 30.04.2021



against Work Order No. JPD/SE(TW) /XEN (TW-III)/TN-483/D/5016 dated 31.10.2019. However as per provisions of Section 95 (a) of CGST Act, 2017, an Advance Ruling can only be provided in relation to *the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant & the RAAR* vide order dated 01.06.2022 pronounced the ruling as under :-

“As the question posed by the applicant is related to supplies undertaken by them prior to the date of filing of the application for Advance Ruling before the Authority thus, no ruling is being pronounced on the question under the provisions of the GST Act, 2017.”

4 Being aggrieved by the impugned ruling order passed by the Authority for Advance Ruling, the Appellant has preferred the present appeal before this forum on the following grounds :-

4.1 That the Application for Advance Ruling filed by the Appellant is as per the provisions of Section 95 of CGST Act, 2017.

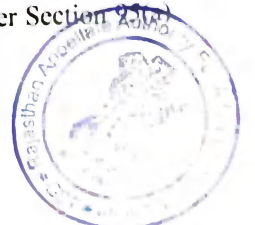
4.2 That the Authority for Advance Ruling has grossly erred in holding that it is out of purview of AAR to pronounce any ruling on the question sought with respect to the supplies undertaken for the period prior to the date on which the Advance Ruling was sought. As per Authority, Appellant filed their application on 16.11.2021 i.e. much later from the last date of extension of work order i.e. only upto 30.04.2021. Thus, AAR-has held that the Appellant filed Advance Ruling application before the authority after the expiry of almost six months from the date of expiry of aforesaid work order and therefore the said application is not acceptable.

4.3 That the Appellant submitted that as per Section 95 (a) of CGST Act, 2017 “**advance ruling**” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant”.

4.4 That the Appellant submitted that there is no such restriction that application for Advance Ruling cannot be filed once the provision of services is complete.

4.5 That the Appellant places reliance on the Flyer issued by CBEC on “Advance Ruling Mechanism in GST.” A perusal of the same would reveal that under para second of page 1 of the Flyer mentioning “What is Advance Ruling” it is categorically mentioned that “*The definition of Advance ruling given under the Act is a broad one and an improvement over the existing systems of Advance Rulings under Customs and Central Excise Laws. Under the present dispensation, Advance Rulings can be given only on a proposed transaction, whereas under GST, Advance Ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the Appellant.*”

4.6 That in light of above, they submitted that the application made for Advance Ruling on 16.11.2021 for the work undertaken for period from 01.11.2019 to 30.04.2021 is as per the provisions of GST law within the meaning of Advance Ruling as defined under Section 95(a) of CGST Act, 2017.



4.7 That the Appellant further submitted that they being engaged in such work regularly based on the existing facts also wanted to know the taxability of the transaction for future references in light of the law prevailing at the time of filing of the Advance Ruling under question. But the Authority for Advance Ruling has intentionally avoided to provide a ruling on such questions, which is against the intention of law as brought out in the Flyer issued by CBEC. Thus, on this ground alone the impugned order issued by the AAR shall be quashed.

4.8 The Appellant submitted that Serial no. 3 of Notification no. 12/2017 of Central Tax (Rate) dated 28.06.2017, as amended by Notification no. 02/2018 of Central Tax (Rate) dated 25.01.2018, is applicable when pure services (excluding works contract service or other composite supplies involving supply of any goods) are provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or **Government Entity** by way of any activity in relation to any function entrusted to a Panchayat under Article 243 G of the Constitution or in relation to any function entrusted to a Municipality under Article 243 W of the Constitution.

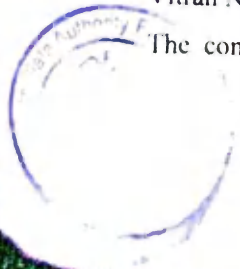
4.9 That the Appellant submitted that as per Notification, a registered person shall be entitled to charge CGST at Nil rate of tax when providing the above said services to Central Government, State Government, Union Territory, a local authority or a governmental authority or **government entity** by way of pure services (excluding works contract service or other composite supplies involving supply of any goods).

4.10 That the Appellant submitted that operation and maintenance services of identified 33/11 KV grid sub-stations against Dausa Lot – V and Bharatpur Lot – II through tender No. TN-483 provided by them to Jaipur Vidyut Vitran Nigam Limited (JVVNL) fall within the scope of Serial No. 3 i.e. **Pure Services** provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or **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.

4.11 That the Appellant submitted that work undertaken by them falls under clause (XIV) **Rural electrification, including distribution of electricity of the** functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution.

4.12 That the Appellant submitted that “Government Entity” has been defined under Notification Number 12/2017 as amended by 32/2017 under clause (zfa) of paragraph 2. That the Appellant submitted that according to the definition of government entity as stated above, an organization can qualify as government entity if it is set up by an Act of Parliament or a State Legislature or established by any Government, with ninety per cent or more 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.

4.13 That the Appellant submitted that Jaipur Vidyut Vitran Nigam Limited is a government of Rajasthan Undertaking. Government of Rajasthan has floated Jaipur Vidyut Vitran Nigam Limited for the distribution and supply of electricity in 12 districts of Rajasthan. The company is wholly owned by the state government and is governed by a board of



directors and is answerable to Governor of Rajasthan on behalf of State Government and its nominees. The paid-up capital of the company as on 31st March 2020 was Rs.10,94,003 lakhs divided into 1,09,400.30 lakhs equity shares of Rs.10/- each. The share holding pattern of Jaipur Vidyut Vitran Nigam Limited, as reported under Form No. Mgt-9 (Extract of Annual Return) filed with the Registrar of Companies for the financial year ended on 31st March 2020 is as under—

S. No.	Name of Shareholders	Shareholding (No. of Shares)
1	Governor of Rajasthan on behalf of State Government and its nominees	10,94,00,30,000
Total		10,94,00,30,000

4.14 That the Appellant submitted that Jaipur Vidyut Vitran Nigam Limited is governed by the Board of Directors and is answerable to the Governor of Rajasthan on behalf of State Government and its nominees. In case of JVVNL equity and control both are with the State government. That a perusal of the facts would clear it beyond doubt that the condition of 90% or more participation by way of equity or control with state government is satisfied in the given case and therefore JVVNL qualifies as a Government Entity.

4.15 That the Appellant submitted that the functions performed by Jaipur Vidyut Vitran Nigam Limited are squarely covered under Article 243 G of the constitution of India.

4.16 That the Appellant has also relied upon the ruling of Hon'ble Advance Ruling Authority of Rajasthan in the case of ARG Electricals Pvt. Ltd. ADVANCE RULING NO. RAJ/AAR/2020-21/04 dated 14.05.2020, which is squarely applicable in their case. The same is in context to Ajmer Vidyut Vitran Nigam Limited, company created by the Government of Rajasthan with the principal objective of doing business of distribution and supply of electricity in 12 districts of Rajasthan. The Hon'ble AAR of Rajasthan has held that AVVNL is a government entity as defined in the clause (zfa) of paragraph 2 of Notification number 12/2017 as amended by Notification number 32/2017. It is established that the company was formed by State government with 90 percent or more participation by way of equity or control and are engaged in carrying out a function entrusted by them through Article 243 G of the constitution of India.

4.17 That the Appellant submitted that all the conditions contained in the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 have been complied with for the chargeability of CGST at the NIL rate.

4.17 That the Appellant submitted that the Authority has erred in stating that no exemption is available to the Appellant as vide Notification No. 16/2021 of Central Tax (Rate) dated 18.11.2021 the words "Governmental Authority" and "Government Entity" has been omitted at serial no. 03 of Notification no. 12/2017 of Central Tax (Rate) dated 28.06.2017 resulting in withdrawn of exemption applicable to pure services.

4.19 That the Appellant submitted that the word "Government Entity" has been omitted from column (3) of serial no. 3 of Notification No. 12/2017 with effect from 01.01.2022. That the exemption in relation to pure services provided to government entity has been withdrawn.



from prospective effect from 01st January 2022 and not retrospectively from some earlier date. The Appellant submitted that the application was filed for supplies already being undertaken during the period from 01.11.2019 to 30.04.2021 when the exemption was available in relation to pure services provided to government entity and not for proposed transaction. Therefore, the benefit of exemption through serial no. 3 of Notification No. 12/2017 of central tax (Rate) dated 28.06.2017 is available to Appellant.

5 Personal hearing in the matter was held on 31.10.2023, Sh. Anurag Basu, CA & Authorized Representative of the appellant attended hearing. He has drawn attention to the Flyer issued by the Directorate General of Taxpayer services, CBEC on the topic 'GST Advance Ruling mechanism in GST'. He has further drawn reference to the second para of second side wherein it has been mentioned as under:-

"The definition of Advance ruling given under the Act is a broad one and an improvement over the existing systems of Advance Rulings under Customs and Central Excise Laws. Under the present dispensation, Advance Ruling can be given only on a proposed transaction, whereas under GST, Advance Ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant". (emphasis supplied)

He has also drawn attention to the last paragraph of page-2 of the Flyer which reads as follows:-

"Application for Advance Ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act".

He affirmed that the subject matter of the Advance Ruling is not pending in any Departmental proceedings. Further, Advance Ruling is applicable for past matters. Therefore, they are entitled to the Ruling in the matter. Accordingly, he requested to remand the matter to the original Advance Ruling Authority for denovo consideration".

DISCUSSION AND FINDINGS

6 We have carefully gone through the entire evidence available on record, especially the Appeal papers filed by the Appellant, the Ruling of the AAR, Rajasthan, written as well as oral submissions made by the authorized representative(s) of the appellant at the time of the personal hearing held on 31.10.2023.

6.1 We note that the Appellant has sought Advance Ruling on the following two questions:-

1. Whether the service recipient i.e., M/s. Jaipur Vidyut Vitran Nigam Limited is a "Government Entity" as defined under clause (zfa) of para 2 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 32/2017 - Central Tax (Rate) dated 13.10.2017.



2. Whether services provided by the Applicant [i.e. SAI ENT.] in respect of work order No. TN-483 for Operation and Maintenance of identified 33/11 KV Grid Sub-Stations to Jaipur Vidyut Vitran Nigam Limited are wholly exempt vide serial number 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017[as amended]?

We further, note that the question No. 1 is interlinked with Question No. 2. The ruling on question number 1 has been sought in order to ascertain as to whether “JVVNL” is “Government Entity” or not as the benefit of S. No. 3 of the Notification No. 12/2017- CT (Rate) dated 28.06.2017 (as amended from time to time) is available to the appellant only if their service recipient is a “Government Entity”. Ruling on question No. 2 has been sought whether their supplies are wholly exempt under Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as (amended) or not. The Advance Ruling has been sought in respect of work order No. TN-483 for Operation and Maintenance of identified 33/11 KV Grid Sub-Stations awarded by Jaipur Vidyut Vitran Nigam Limited to the appellant, of which supplies were undertaken during the period from 01.11.2019 to 30.04.2021.

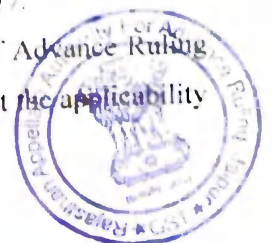
6.2 As regard question No. 1, the Authority for Advance Ruling observed that the words “or a Governmental authority or a Government Entity” have been omitted at serial number 3, in column (3), in the heading “Description of Services” in the said Notification No. 12/2017-Central Tax (Rate), dated the 28th June, 2017 vide aforesaid Notification No. 16/2021-Central Tax (Rate) dated 18.11.2021 which resulted in withdrawal of exemption from tax from 01.01.2022. Thus, as on date, no exemption is available on Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Government Entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution. Hence, the applicant (now appellant) is not eligible to avail the said exemption from tax.

Further, the Authority for Advance Ruling for the question No. 2 observed that the applicant (now appellant) had applied for Advance Ruling on 16.11.2021 in respect of availability of benefits of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 for the supplies effected upto 30.04.2021 against Work Order No. JPD/SE(TW) /XEN (TW-III)/TN-483/D/5016 dated 31.10.2019 whereas as per provisions of Section 95 (a) of CGST Act, 2017 , an Advance Ruling can only be given in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant .

The Authority for Advance Ruling, Rajasthan vide order dated 01.06.2022 pronounced as under :-

“As the question posed by the applicant is related to supplies undertaken by them prior to the date of filing of the application for Advance Ruling before the Authority thus, no ruling is being pronounced on the question under the provisions of the GST Act, 2017.”

6.3 We observe that before giving findings on merit by the Authority of Advance Ruling or the Appellate Authority, it is imperative on their part, to first decide, about the applicability



of Advance Ruling with reference to Section 95 (a) of the CGST Act, 2017 *and also in respect of those matters or questions specified in sub-section (2) of Section 97 of the CGST Act, 2017.*

6.4 In the instant case, we find that the Authority for Advance Ruling, Rajasthan held that the supply is not covered under Section 95 (a) of the CGST Act, 2017. On the other hand, the Appellant has contested & relied upon the Flyer issued by the Directorate General of Taxpayer services, CBEC on the topic 'GST Advance Ruling mechanism in GST. We observe that the referred Flyer has no statutory status. It reflects the prima facie understanding of the authors about the provisions of law. There is a possibility of the authors of such documents missing finer points. Therefore, such documents, though good guides, cannot be treated as final words about the provisions of law. Levy & Collection of GST or any tax is always governed by statutory provisions. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bolpur V/s M/s Ratan Melting & Wire Industries reported at 2008(231) ELT 22 (SC) held that a circular which is contrary to the statutory provisions has really no existence in law. Likewise a Flyer has no binding value so far as it is contrary to the specific provisions of law.

6.5 We note that the provisions of Section 95 (a) of the CGST Act, 2017 read as under :-

"95. Definitions of Advance Ruling— In this Chapter, unless the context otherwise requires—

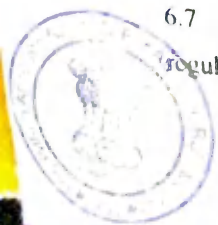
(a) —advance ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;". (emphasis applied)

6.6 The law, therefore, covers two kinds of supplies under the purview of the AR mechanism :

- (i) Supplies being undertaken – meaning thereby supplies which have begun, but not concluded. Once the supply has been concluded, it will cease to be covered by the term "being undertaken".
- (ii) Proposed to be undertaken – in the instant case the supplies have already been concluded. Thus, as the name implies, the pronouncement with respect to them shall no longer be in the nature of "Advance". As such, these supplies cannot be covered by the Advance Ruling Mechanism.

Therefore, we hold that the Authority for Advance Ruling, Rajasthan is right on not pronouncing the Ruling on Merits.

6.7 Further, the Appellant has contended that they are engaged in such work/supply regularly and wanted to know the taxability of the transaction for future references. In this



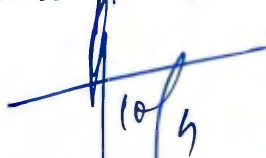
context, we find that the impugned Ruling has been sought only for the specific Work Order No TN-483 for Operation and Maintenance of identified 33/11 KV Grid Sub-Stations awarded by Jaipur Vidyut Vitran Nigam Limited to the appellant. Supplies under the work order have been undertaken during the period from 01.11.2019 to 30.04.2021. It is not in dispute that the supply has already been completed. Thus, the question of entertaining any application subsequent to the period for which supply has already been completed, does not arise.

Thus, on this count also the contestation of the appellant is not tenable & we find that the Authority for Advance Ruling, Rajasthan is right on not pronouncing the Ruling on Merits.

ORDER

In view of the above discussion and findings, we hold that the Ruling pronounced by the Authority for Advance Ruling, Rajasthan vide Order dated 01.06.2021 is right and needs no interference at this forum and we uphold the same. Accordingly, appeal filed by the appellant is rejected.


(Mahendra Ranga)
Member (Central Tax)


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

SPEED POST

To

M/s Sai Enterprises
C/o CA Anurag Basu,
Om Agarwal & Company
D-32, Durga Dham, Indrapuri Colony
Lal Kothi Scheme, Jaipur - 302015

F. No. IV (16)02/AAAR/RAJ/2022-23/ 

Date. 13.11.2023

Copy to:-

1. The Chief Commissioner, CGST and Central Excise, Jaipur Zone, NCRB, Statue Circle, Jaipur-302005 (Raj.).
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr. Commissioner, CGST and Central Excise Commissionerate, NCRB, Jaipur-302005 (Rajasthan).
4. The Assistant Commissioner, CGST Division-A, Road No. 1D, VKIA, Jaipur (Rajasthan).
5. M/s Sai Enterprises, Irish, 113, Manglam Ananda, Rampur Road, Near Sanganer Railway station, Sanganer, Jaipur-302029, Rajasthan
6. The web-manager - www.gstcouncil.gov.in
7. Guard File.

