

GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.



ADVANCE RULING NO. GUJ/GAAR/R/2022/25

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/06

Dated: 18/04/2022

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

Brief Facts

The applicant M/s. Tirupati Construction, have been awarded a works contract for Construction of New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) at Village : Baben , Taluka : Bardoli, District : Surat, by the Road and Building Department in the Government of Gujarat vide Work Order Number : AB/TC/B-2/3/1181 dated : 01.06.2020. The said construction contract is labour plus material. The “Construction of said New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) involves the following stages such as: (a) School Student Hostel (Ground + 5 Floors) having capacity of 324 beds (b) College Student Hostel (Ground + 4 Floors) having capacity of 300 beds (c) School Building (d) C-Type Staff Quarters (Seven Floors) and Principal Bungalow. The applicant submits that this is an ongoing activity as on the date of filing this advance ruling application.

2. The applicant submits as follows:

- (i) The activity of “Construction of New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) at Village : Baben , Taluka : Bardoli, District : Surat ” is a supply of service within the meaning of Section 7(1)(a) of the CGST Act,2017 read with Section 2(102) of the said Act.
- (ii) There is a charge of CGST and SGST on the said supply of service under Section 9 of the CGST Act, 2017 and Section 9 of the SGST Act, 2017 since the said supply is an intra-state supply within the meaning of Section 8(2) of the IGST Act, 2017.

- (iii) Section 2(119) of the CGST Act, 2017 defines 'Works Contract' as under:

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

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

"(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than items covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

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

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

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

- (v) The service of Composite Supply of Works Contract as defined in Section 2(119) of the CGST Act, 2017, by way of construction of a civil structure in the nature of an educational establishment meant predominantly for use other than for commerce, industry, or any other business or profession, provided to the Central Government, State Government, Union Territory, a local authority or Governmental Authority or a Government Entity, shall be subjected to CGST @ 6% & 6% SGST.
- (vi) The said activity of Construction of New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) at Village: Baben, Taluka : Bardoli, District : Surat for the Road and Building Department, Govt. of Gujarat is being provided to the State Government i.e. Government of Gujarat.
- (vii) The said contract for the construction of Construction of New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) involves supply of goods along with labour on the part of the applicant and is thus a works contract within the meaning of Section 2(119) of the CGST Act, 2017.
- (viii) Since, (a) the State Government of Gujarat is engaged as a public authority in so far as the said construction and development of the said educational establishment is concerned and also (b) No commercial or business activity is involved in so far as the said 'Construction' is of predominantly of an educational establishment , not involving any business or commerce and the Gujarat State Government is directly undertaking the said educational establishment development , without recourse to any Special Purpose

Vehicle or a company or a corporation or a governmental authority or a governmental agency

3. The applicant has submitted that in their opinion, the said service of ‘Construction of Construction of New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) at Village : Baben , Taluka : Bardoli, District : Surat ” , merits classification under the said Entry at Serial Number : 3 (vi)(a) as well as 3 (vi)(b) of the said Notification and the applicable rate is 12% (6% CGST+ 6 % SGST).

4. Question on which Advance Ruling sought:

Whether the activity of composite supply of works contract service by way of construction of “ “Construction of New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed) at Village : Baben , Taluka : Bardoli, District : Surat ”, for the Road and Building Department in the Government of Gujarat and as detailed in Work Order Number : AB/TC/B-2/3/1181 dated : 01.06.2020 entered in to by the applicant supplier and the said State Government, merits classification at Serial Number 3(vi)(a) and (b) of Notification Number 11/2017 – Central Tax(Rate) dated : 28.06.2017 , as amended from time to time and last amended by Notification Number : 21/2012-Central Tax(Rate) dated : 31.12.2021 w.e.f. 01.01.2022?

Personal Hearing

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

Revenue Submission

6. Central Revenue vide letter dated 24-3-22 submitted as follows:

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

“(a) a civil structure or any other original work meant predominantly for use other than for commerce (industry) or any other business or profession; (b)..... (c)..... Explanation: For the purpose of this item term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities ”				Provided that where the services are supplied to Government Entity, they should have been procured by the said entity in relation to work entrusted to it by the Central Government, State Government, Union territory or local authority as the case may be.
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(ii) The application is silent on the uses of proposed civil structure (to be constructed under composite supply of works contract to local authority) i.e. the New Adarsh Nivashi Shala (Kumar) / School Hostel (324 Bed) / Staff Quarters and Kumar Chhatralay (300 Bed). As per the provision mentioned

above, it is mandatory condition that the said civil structure is meant for use other than for commerce, industry or any other business or profession. The said civil structure may be utilized for commerce or business purpose. Hence, the said provision is not applicable in this case.

Findings

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

8. We have carefully considered all the submissions. We hold that for subject supply to find entry at Sr. No. 3(vi) of said NT, the following criteria is to be satisfied:

a. Supply shall be Composite supply of Works Contract.

b. Service Recipient shall be Central/State Government, the Union Territory, a local authority, a Government Authority or a Government Entity.

c.i. The Civil Structure/ Original Works must be predominantly meant for use other than for commerce, industry or any other business or profession, or,

c.ii. a structure meant predominantly for use as an educational establishment, or,

c.iii. a residential complex predominantly meant for self use or use of their employees.

9. We find that the subject contract is for the construction of immovable property wherein transfer of property in goods is involved in the execution of subject contract. We hold that subject supply is Works Contract Service. The Supply comprises supply of school building, school hostel, college hostel, Principal's bungalow and staff quarters. We hold subject supply is a composite supply of works contract service. We find that the service recipient is Government of Gujarat (GoG).

10. We note that vide Explanation to Serial No 3(vi) of said NT, 'business' shall not include any activity or transaction undertaken by the State Government in which they are engaged as public authorities. **Thereby we find this activity undertaken by GoG out of the purview of business**, as described at sr no 3(vi)(a) of Said NT. Also, School building is a structure meant for use as an educational establishment as described at entry at Sr no 3(vi)(b)(i) of said NT; and supply of Staff Quarters is covered at 3(vi)(c) of said NT.

11. We note that Revenue submits that said civil structure may be used for commerce or business. We hold that a School building will be used by State Government for education and cannot be considered a commercial building. Further, as already discussed, with the explanation of term business incorporated into Sr no 3(vi) of said NT as discussed in previous para and

nothing of contrary vide a specific intelligence report submitted by Revenue that the structure supplied is for business/ commerce purpose, we find no merit in Revenue's submission.

12. We pass the Ruling:

Ruling

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

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad

Date: **18/04/2022**