



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No.01 /AP/GST/2020 dated:17.01.2020

1	Name and address of the applicant	M/s Sri Satya Sai Water Supply Project Board, Office of Executive Engineer (RWS) Panchayat Raj Department, Z.P. Compound, Anantapur – 515001, Andhra Pradesh
2	GSTIN	37HYDS12550G1D0
3	Date of filing of Form GST ARA-01	20.08.2019
4	Date of Personal Hearing	11.11.2019
5	Represented by	Sri Kailash Nath P.S.S, Advocate
6	Jurisdictional Authority – State	Assistant Commissioner (ST), Anantapur –II Circle, Anantapur Division.
8	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s Sri Satya Sai Water Supply Project Board., (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s Sri Satya Sai Water Supply Project Board, Office of Executive Engineer (R.W.S), (hereinafter referred to as the Applicant) is a society registered under the Societies Registration Act, 1997, and having its registered office at Office of the Executive Engineer (RWS) Panchayat Raj Department, Z.P. Compound, Anantapur. The Applicant was incorporated with the objective of undertaking drinking water supply projects in Anantapur District, Andhra Pradesh.

Prior to the Applicant being constituted, 'Sri Satya Sai Trust', a public charitable trust in Anantapur, under took the drinking water supply project in the year 1995 to provide drinking water facilities to around 731 villages. By January 1998, the project released water to around 630 villages, which included 273 individual schemes. Since the individual schemes had to be monitored by Gram Panchayat, all the 273 individual schemes were proposed to be handed over to the Gram Panchayat. In respect of operation and maintenance of 19 comprehensive protected water supply schemes, and 5 major comprehensive protected water supply schemes, the Government of Andhra Pradesh by G.O.Ms.No.344 dt.16.09.1997, constituted the Applicant "Sri Satya Sai Water Supply Project Board". The Applicant Board was then constituted as a society under the Societies Registration Act, 1997.

The Applicant Board, as constituted under G.O.Ms.No.344, dt: 16.09.1997, consists of 9 Executive Members as appointed by the State of Andhra Pradesh. Out of the 9 members, 7 members of the Board are ex-officio members who include the Collector and District Magistrate, Anantapur; Chairman, Zilla Praja Parishad, Anantapur, Superintendent Engineers from various divisions, and Chief Executive Officer, Zilla Parishad, Anantapur. Amongst the remaining two members, one member is nominee of Sri Satya Sai Central Trust, and the other member is a retired Engineer-in-Chief, Panchayat Raj. Thus, the majority of the Applicant Board consists of officers and employees of the Government of the State of Andhra Pradesh.

Further, the G.O.Ms.No.344 dt.16.09.1997 constituting the Applicant also states that the Applicant can have regular staff on deputation from Panchayat Raj Engineering Department, Irrigation, Roads and Building Department and Public Health Engineering Departments. It further states that the cost of operation and maintenance of the water supply scheme shall be borne by the Government and the Board at the rate of 70:30, with 70% of the cost being contributed by the State Government, and 30% of the cost being borne by the Applicant from the water charges being collected by the Applicant



from the users. As per G.O.Rt.No.255 dated 21.02.2018, the Government released Rs. 3,500 lakhs to the Applicant. The Applicant in addition to being majorly controlled by officers and employees of the State Government is also funded substantially by the State Government alone.

The Applicant has been entering into contracts in intervals of two years, for operation and maintenance of 5 major comprehensive supply schemes and 19 protected water schemes with contractors. Under the terms of the agreement, contractor would be responsible for the operation and maintenance of the plant, while the Applicant would ensure that

- (i) there is uninterrupted power supply,
- (ii) material/ spares would be supplied as and when necessary. Thus, the contractor has been providing pure services of operation and maintenance of the plant, as there is no supply of material during the process.

It is submitted that under the Finance Act, 1994, in the pre-negative list regime, the activity of providing operation and maintenance services by the contractor to the applicant were chargeable to service tax, and was duly remitted by the contractor. Pursuant to the introduction of the negative list of service tax, the Applicant was of the view that the service is not chargeable to tax in light of the exemption provided under Entry 12 under the Mega Exemption Notification No.25/2012, dt.20.06.2012, which is as under:

*“12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or
(iii) sewerage treatment or disposal;”*

The Applicant was of the considered view that it qualifies as a ‘governmental authority’ as (i) it was constituted by way of a Government Order, (ii) the majority of its Executive members consists of ex-officio officers and employees of the State Government, and (iii) it is funded majorly by the State Government.

4. Questions raised before the Authority:

i) Whether the applicant qualifies as a ‘Governmental Authority’ under the Act and whether the services availed by it are exempt from the GST by virtue of Entry 3 in Notification 12/2017 (Rate), dt: 28.06.2017.

ii) Whether the Applicant is not liable to remit any GST to its suppliers for any services it procures by virtue of its activities of supplying water for domestic purposes.



On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner (ST), Anantapur-II Circle. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the central tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017.

In response, no remarks are received from the jurisdictional officers concerned regarding whether there are any proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Applicants Interpretation of Law and Facts:

Pursuant to introduction of Goods and Services Tax (GST), the Applicant did not seek registration under the provisions of the CGST/APGST Act as there are no taxable supplies being made by the Applicant. Since the introduction of GST, various contractors who are providing services to the Applicant are charging GST in their respective bills raised on the Applicant which this applicant is not remitting as the Applicant still continues to hold that the activities undertaken by the Applicant would still be considered as activities undertaken by the government authority on which new GST is applicable.

The applicant seeks to claim exemption under Entry 3 of Notification 12/2017 dt: 28.06.2017 which exempts pure services provided to Governmental authority, as under:

S.No.	Chapter, Section, heading, Group or Service Code (Tariff)	Description of Services	Rate (Per cent)	Condition
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 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



The terms 'Governmental authority' has been defined in the Explanation to Section 2(16) of the IGST Act as under:

"Explanation - For the purposes of this clause, the expression "governmental authority" means an authority or aboard 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 municipality under article 243W of the Constitution,"*

Article 243W of the Constitution reads as under: 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 manners 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.

The Twelfth Schedule contains a list of matters on which are the responsibility of the Municipalities or the Committees, in respect of which power and authority can be exercised. Entry 5 in the Twelfth Schedule reads as under:

5. Water supply for domestic, industrial and, commercial purposes.

The Applicant opines that it qualifies to be a 'Governmental Authority', and the services provided to it by contractors are exempt from tax as



(i) it is setup by the Government of Andhra Pradesh under G.O.Ms.No.344 dt.16.09.1997, and (ii) 7 of the 9 members on the Board of Applicant are the officers/employees of the Government of Andhra Pradesh, which effectively gives a participation of more than 90 percent in the Applicant, (iii) the Applicant was setup by the Panchayat Raj & Rural Development Authority which performs the functions of a municipality, and (iv) the Applicant is undertaking the functions of 'water supply for domestic purposes' which qualifies as a function of a Municipality under Entry 5 to Twelfth Schedule, read with Article 243W of the Constitution.

6. Record of Personal Hearing:

Sri Kailash Nath P.S.S, Advocate, the authorized representatives of the applicant appeared for Personal Hearing on 11.11.2019 and they reiterated the submission already made in the application.

7. Discussion and Findings:

We have examined the issues raised in the application. The taxability, classification of the services, applicable rate of tax, eligibility of exemption etc., for the Goods and Services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

Regarding the first question, whether the applicant qualifies for "Governmental authority" is examined under Section 2(16) of the IGST Act, or as defined vide Notification No. 31/2017 - Central Tax (Rate), dated: 13.10.2017, which reads as under;

"Explanation - For the purposes of this clause, the expression "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."*

Now we examine whether the applicant is qualified by the above conditionalities.

1) Whether the applicant is set up by an Act of Parliament or a State Legislature?

The applicant does not fall under this category

2) Whether it is established by any Government?

The applicant is constituted by the Government i.e., the State of Andhra Pradesh under G.O.Ms No. 344 dated: 16.09.1997. Hence is qualified by this condition.



Whether the applicant possesses 90% or more participation by the Government by way of equity or control.

The Board of the applicant i.e., “Sri Satya Sai Water Supply Project Board” consists of 9 Members, out of which 7 are officers /Employees of the Government of Andhra Pradesh that qualifies for 77% of Government control falling short of the designated 90% as required by the Act. Even the cost of the operation and maintenance of the water supply scheme is contributed at a ratio of 70% by the State Government, while 30% of the cost is being borne by the applicant from the water charges collected from the users. In the instant case the applicant falls short of the qualifying mark of 90% in terms of equity or control. Hence the applicant does not fit in the category of “Governmental authority”.

Thus availment of exemption for the services received by the applicant by virtue of Sl.No. 3 of Notification No 12/2017 – Central Tax (Rate), dt: 28.06.2017 does not arise in this context.

Now we look into the issue of taxability of the services procured by the applicant from its Contractor M/s. Larsen & Toubro Limited, Water Supply & Distribution Business Unit, Water & Effluent Treatment IC. In light of the facts of the case as submitted by the applicant the Contractor is responsible for the “Operation and Maintenance” of the plant such as engaging of labour, supervisors to oversee the labour and managers for overall supervision along with amenities, tools & tackles provided for all the above personnel like vehicle, office establishment etc., while the applicant would ensure uninterrupted power supply and supply of material /spares as and when necessitated by the Contractor. Thus the services provided by the Contractor are pure services of “Operation and Maintenance” of plant devoid of any supply of material or goods in the due process. The services under question fall under Sl.No. 25, Heading 9987 “Maintenance repair and installation (except construction) Services” attracting tax rate of 18% (CGST 9% + SGST 9%) under Notification 11/2017- Central Tax (Rate) dt: 28.06.2017.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question 1 : Whether the applicant qualifies as a ‘Governmental Authority’ under the Act and whether the services availed by it are exempt from the GST by virtue of Entry 3 in Notification 12/2017 (Rate) dated 28.06.2017.



Answer 1: The applicant does not qualify for Governmental Authority under the Act and hence services procured by it are not exempt but taxable as explained above.

Question 2 : Whether the Applicant is not liable to remit any GST to its suppliers for any services it procures by virtue of its activities of supplying water for domestic purposes.

Answer 2: The services procured by the applicant fall under Sl.No. 25, Heading 9987 "Maintenance repair and installation (except construction) Services" attracting tax rate of 18% (CGST 9% + SGST 9%) under Notification 11/2017- Central Tax (Rate) dt: 28.06.2017.

**Sd/-D. RAMESH
(MEMBER)**

**Sd/- M.SREEKANTH
(MEMBER)**

//t.c.f.b.o//

Assistant Commissioner (ST)

Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

1. M/s Sri Satya Sai Water Supply Project Board, Office of Executive Engineer (R.W.S)Panchayat Raj Department, Z.P. Compound, Anantapur-515001.(By **Registered Post**)
2. Sri Kailash Nath, P.S.S., Advocate H.No.6-3-663/7/6, Flat No.202, Sai Priya Apartments, Jaffar Ali Bagh, Somajiguda, Hyderabad-500082, Telangana State (By **Registered Post**)

Copy to

1. The Assistant Commissioner of State Tax, Anantapur-II Circle, Anantapur Division (By **Registered Post**)
2. The Superintendent, Central Tax, Anantapur-I Range, CGST Anantapur Division. (By **Registered Post**)

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.



2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

