


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2024/10
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/23)

Date: -30.05.2024

Name and address of the applicant	:	M/s. Devendra K Patel, 60, Krushna Dham Society, Near Pragati Nagar, Piplod, Surat, Gujarat- 395 007
GSTIN of the applicant	:	24AZFPP1155R1ZX
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-64, Division-7, Surat.
Date of application	:	19.06.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b)
Date of Personal Hearing	:	27.02.2024 & 24.04.2024
Present for the applicant	:	Shri Dinesh Gabani (CA), Devendra K. Patel

Brief facts:

M/s. Devendra K Patel, 60, Krushna Dham Society, Near Pragati Nagar, Piplod, Surat, Gujarat- 395 007 [for short-‘applicant’] is registered under GST and their GSTIN number is 24AZFPP1155R1ZX.

2. The applicant is engaged in the business of providing works contract services in addition to engineering consultancy services to various Governmental agencies like R&B department, Capital Project Division, Project Implementation Unit, etc..

3. The applicant has received various contracts from R&B Department of the Government of Gujarat, for providing engineering/consultancy services for preparing & providing plans and estimate & DTP [Draft Tender Paper] for building work.

4. It is the applicant’s contention that:



- R&B department falls under the Government of Gujarat and is headed by a Cabinet Minister;
- that the department is in charge of all activities pertaining to planning, construction and maintenance of all categories of roads and all Government owned buildings in the state of Gujarat;
- that the Government owned buildings comprises Government offices, Hospitals, Educational Institutions and buildings pertaining to all departments of the state of Gujarat;
- R&B department before awarding a contract through tendering process, undertakes detailed analysis of project like field survey, collection of various data related to construction activity, feasibility report, cost estimates, preparation of plans & drawings, etc.; that preparation of tender documents require technical knowledge;
- that the above services are also obtained through consultants by R&B department through tendering process;
- that the applicant provides such services to R&B department; that the nature of the work awarded to the applicant, in terms of the tender is “preparing & providing plans and estimate & DTP for the building work.”

5. The applicant has further contended as follows:

- that the consultancy services of preparing & providing plans & estimates & draft tender paper for building work provided by the applicant, would fall within the ambit of an activity in relation to function entrusted to a Panchayat under article 243G [eleventh schedule] and Municipality under article 243W [twelfth schedule] of the Constitution of India;
- that the above schedules, include activity of urban planning including town planning & planning of land – use and construction of buildings which are functions entrusted to a Municipality;
- that the services provided by the applicant of preparing & providing plans & estimates & draft tender paper for building work would qualify as pure services;
- that the services are provided to R&B department, Government of Gujarat *ie* State Government only;
- that in view of the aforementioned contention, the applicant has satisfied all the three conditions of entry no. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended;
- that they wish to rely on the rulings in the case of (a) ¹Jayesh Anilkumar Dalal, (b) ²Ajit Babubhai Jariwala (c) ³Rudrabhishek Enterprises Ltd.

6. The applicant has raised the following question for advance ruling *viz*

(i) Whether providing services of preparing and providing plans and estimate and preparing and providing DTP [Draft Tender Plan] for the building work provided by the assessee to the R&B department, Government of Gujarat under the contract would qualify as an activity in relation to Panchayat or Municipality under Article 243 G or Article 243 W respectively, of the Constitution of India ?;

(ii) If answer to the first question is in affirmative then, whether such service provided by the applicant would qualify as pure service [excluding works contract service or composite supplies involving supply of any goods] provided to the Central Government, State Government or Union Territory or local authority 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 as provided in serial number 3 of notification No. 12/2017-CT (R), dtd 28.6.2017, and, thus be eligible for exemption from levy of CGST and SGST respectively ?

¹ Order No. GUJ/GAAR/R/2019/8 dated 1.5.2019

² Order No. GUJ/GAAR/R/2023/17 dated 26.4.2023

³ Order No. UP ADRG-20/2023 dated 2.3.2023



7. Personal hearing was granted on 27.2.2024 and 24.4.2024 wherein Shri Dinesh Gatani, CA, Shri Devendra K Patel and Shri Pravesh Vijay, CA appeared on behalf of the applicant. On being asked it was informed that TDS is being deducted by the State Government. The authorized representative reiterated the submission and further also relied on the additional submission provided during the course of personal hearing on 24.4.2024.

8. In the additional submission provided during the course of personal hearing held on 24.4.2024, the applicant further stated as follows:

- that in the PH held on 27.2.2024, an emphasis was put on the question as to how the service provided to the State Government have been utilized by the Municipality or Panchayat;
- that R&B Department is a part of State Government; that the State Government has entrusted functions of planning, construction & maintenance of all categories of road/Government owned buildings to the said department;
- that the phrase 'activity in relation to any function' used in the notification, *ibid*, is to be interpreted as similar/such/relatable activity carried out by the Central Government, State Government or Union Territory; that any other interpretation would render the exemption redundant;
- that they would like to rely on the TRU ⁴circular wherein it is stated that 'ambulance services' is an activity in relation to the function entrusted to panchayats & Municipalities under articles 243G and 243W & if the said services are provided by PSPs (Private Service Providers) to State Government, then also it is exempted in terms of the said circular;
- that it is nowhere stated in the said circular that whatever services have been provided to the State Government should have been utilized by the Local authorities or Panchayat;
- that they would like to draw an emphasis by pointing out that in exemption notification No. 31/2017-CT (R) dtd 13.10.2017, exemption is granted subject to specific pre-condition, while in the entry no. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, no such conditions are there; that it would not be correct to interpret the phrase 'activity in relation to the functions' to mean services provided to State Government should have been entrusted by local authority to State Government;
- the applicant would further like to rely on the below mentioned rulings viz
 - ⁵Dredging and Desiltation Company P Ltd
 - ⁶Neo Built Corporation
 - ⁷Arihant Dredging Developers P Ltd
 - ⁸Dredging and Desiltation Company P Ltd
 - ⁹Jayesh Anilkumar Dalal
 - ¹⁰KDS Services P Ltd
 - ¹¹Manpar Icon Technologies

⁴ Circular No. 51/25/2018 dated 31.7.2018

⁵ Order No. 3/WBAAR/2019-20 dated 10.6.2019.

⁶ Order No. 5/WBAAR/2019-20 dated 10.6.2019.

⁷ Order No. 11/WBAAR/2019-20 dated 27.6.2019.

⁸ Order No. 12/WBAAR/2019-20 dated 27.6.2019.

⁹ Order No. 17/AAAR/2/7/2021 dated 2.7.2021.

¹⁰ Order No. UP ADRG-9/2022 dated 28.7.2022.

¹¹ Order No. 61 dated 7.7.2020.



- ¹²Saryu Babu Engineer India P Ltd
- ¹³Manish Manpower Agency
- ¹⁴Soma Mohite Joint Venture
- ¹⁵Global Environ Solutions P Ltd
- ¹⁶Consulting Engineers Group Ltd
- ¹⁷Amravathi Metro Rail Corporation Ltd
- ¹⁸Padmavati Hospitalities & Facilities Management Service

Discussion and findings

9. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

10. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

11. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions/circular for ease of reference:

- **Constitution of India**

- **243G. Powers, authority and responsibilities of Panchayats**

Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and 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 Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

- **Eleventh Schedule (Article 243G)**

1. Agriculture, including agricultural extension.

2. Land improvement, implementation of land reforms, land consolidation and soil conservation.

3. Minor irrigation, water management and watershed development.

4. Animal husbandry, dairying and poultry.

¹² Order No. 53 dated 11.7.2020.

¹³ Order No. KAR ADRG 03/2024 dated 29.1.2024.

¹⁴ Order No. MAH/AAAR/SS-RJ/21/2019-20 dated 20.1.2020.

¹⁵ Order No. 10/AP/GST/2020 dated 5.5.2020.

¹⁶ Order No. 17/AP/GST/2020 dated 13.5.2020.

¹⁷ Order No. AAR/AP/7(GST)/2018 dated 2.7.2018.

¹⁸ Order No. 31/ARA/2021 dated 10.8.2021.



5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.]

• **243W. Powers, authority and responsibilities of Municipalities, etc.**

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—

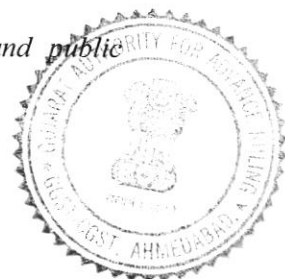
(i) the preparation of plans for economic development and social justice;

(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.

• **Twelfth Schedule (Article 243W)**

1. Urban planning including town planning.
2. Planning of land- use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.



• **Notification No.12/2017-Central Tax(Rate)**

New Delhi, the 28th June, 2017

G.S.R.....(E).-In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	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 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

• **Circular No. 51/25/2018-GST dated 31.07.2018**

I am directed to invite your attention to the Circular No. 210/2/2018- Service Tax, dated 30th May, 2018. The said Circular has been issued in the context of service tax exemption contained in notification No. 25/2012- Service Tax dated 20.06.2012 at Sl. No. 2 and 25(a). The Circular states, inter alia, that the service of transportation in ambulance provided by State Governments and private service providers (PSPs) to patients are exempt under notification No. 25/2012- Service Tax dated 20.06.2012 and that ambulance service provided by PSPs to State Governments under National Health Mission is a service provided to Government by way of public health and hence exempted under notification No. 25/2012- Service Tax dated 20.06.2012.

2. The service tax exemption at Sl. No.2 of notification No. 25/2012 dated 20.06.2012 has been carried forward under GST in the identical form vide Sl. No. 74 of notification No. 12/2017- CT (R) dated 28.06.2017. The service tax exemption at serial No. 25(a) of notification No. 25/2012 dated 20.06.2012 has also been substantially, although not in the same form, continued under GST vide Sl. No. 3 and 3A of the notification No. 12/2017- CT (R) dated 28.06.2017. The said exemption entries under Service Tax and GST notification read as under.

Service Tax	GST
<u>Sl. No. 2:</u> (i) Health care services by a clinical establishment, an authorized medical practitioner or para-medics; (ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above.	<u>Sl. No. 74:</u> Services by way of- (a) health care services by a clinical establishment, an authorized medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.



Sl.No. 25(a): Services provided to Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation	Sl. No. 3: 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. Sl. No. 3A: Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply 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
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3. Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. Function of 'Public health' is entrusted to Municipalities under Article 243W of the Constitution read with Twelfth schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243W of the Constitution.

4. In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May, 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 vide Sl. No. 74.

5. As regards the service provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or otherwise charged from the State Government, it is clarified that the same would be exempt under-

- Sl. No. 3 of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving supply of any goods, and
- Sl. No. 3A of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply.

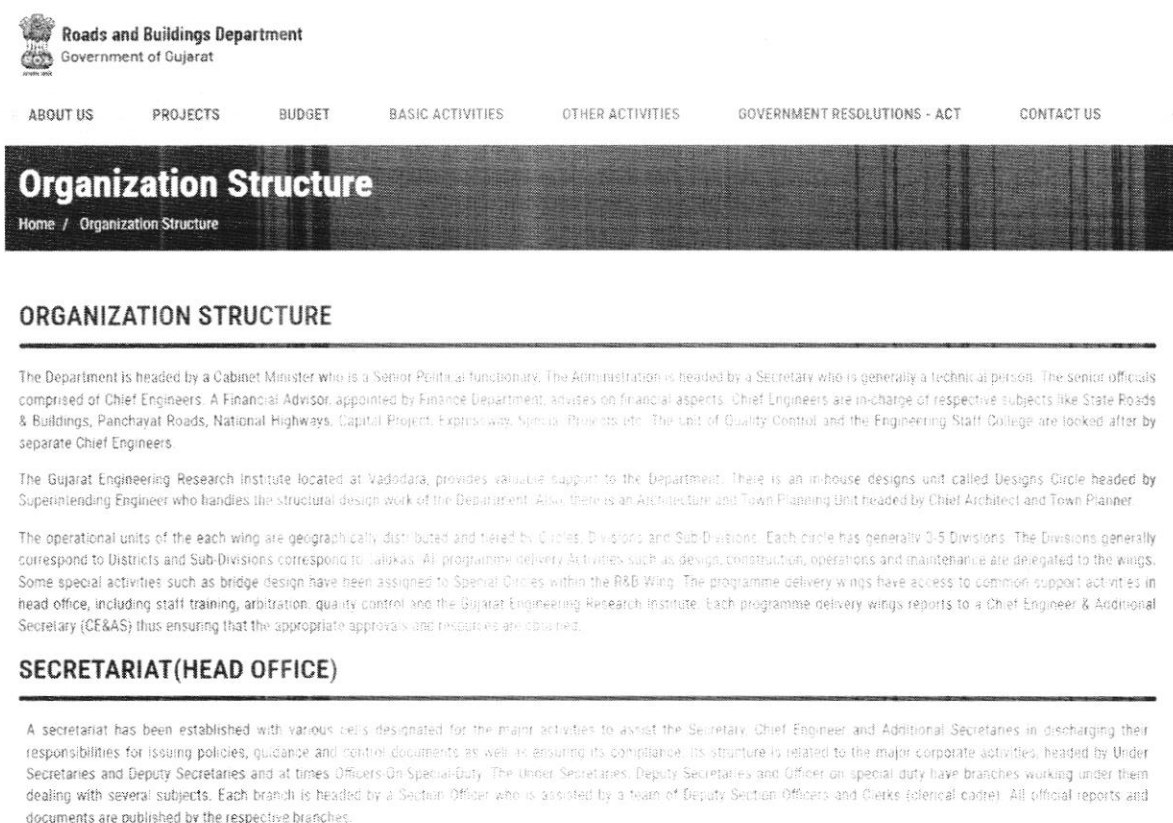
6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

12. We find that the issue to be decided in the present application is whether the consultancy services provided by way of preparing and providing plans and estimates and DTP [draft tender paper] for building works- to R&B department of the Government of Gujarat in terms of the scope of the tender issued by them are in relation to the functions entrusted to Municipalities under article 243W and to Panchayat under Article 243G of the Constitution of India and is therefore exempt in terms of Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended.



13. It is the applicant's claim that the service is provided to the R&B department of the Government of Gujarat; that preparing and providing plans and estimates and DTP [draft tender plan], is a pure service; that the activity is in relation to function entrusted to a Municipality and a Panchayat, *ibid*; that since the aforementioned three main conditions for exemption vide notification No. 12/2017-CT (R) dated 28.6.2017, as amended, is satisfied, they are eligible for the exemption.

14. Let us examine the above claims. On examining the first claim, a screen shot from the website of the R&B department, <https://rnb.gujarat.gov.in> states as under:



Roads and Buildings Department
Government of Gujarat

ABOUT US PROJECTS BUDGET BASIC ACTIVITIES OTHER ACTIVITIES GOVERNMENT RESOLUTIONS - ACT CONTACT US

Organization Structure

Home / Organization Structure

ORGANIZATION STRUCTURE

The Department is headed by a Cabinet Minister who is a Senior Political functionary. The Administration is headed by a Secretary who is generally a technical person. The senior officials comprised of Chief Engineers. A Financial Advisor, appointed by Finance Department, advises on financial aspects. Chief Engineers are in-charge of respective subjects like State Roads & Buildings, Panchayat Roads, National Highways, Capital Project, Expressway, Special Projects etc. The unit of Quality Control and the Engineering Staff College are looked after by separate Chief Engineers.

The Gujarat Engineering Research Institute located at Vadodara, provides valuable support to the Department. There is an in-house designs unit called Designs Circle headed by Superintending Engineer who handles the structural design work of the Department. Also, there is an Architecture and Town Planning Unit headed by Chief Architect and Town Planner.

The operational units of the each wing are geographically distributed and tiered by Circles, Divisions and Sub Divisions. Each circle has generally 3-5 Divisions. The Divisions generally correspond to Districts and Sub Divisions correspond to Talukas. All programme delivery Activities such as design, construction, operations and maintenance are delegated to the wings. Some special activities such as bridge design have been assigned to Special Circles within the R&B Wing. The programme delivery wings have access to common support activities in head office, including staff training, arbitration, quality control and the Gujarat Engineering Research Institute. Each programme delivery wings reports to a Chief Engineer & Additional Secretary (CE&AS) thus ensuring that the appropriate approvals and resources are obtained.

SECRETARIAT (HEAD OFFICE)

A secretariat has been established with various cells designated for the main activities to assist the Secretary, Chief Engineer and Additional Secretaries in discharging their responsibilities for issuing policies, guidance and control documents as well as ensuring its compliance. Its structure is related to the major corporate activities, headed by Under Secretaries and Deputy Secretaries and at times Officers-On-Special-Duty. The Under Secretaries, Deputy Secretaries and Officer on special duty have branches working under them dealing with several subjects. Each branch is headed by a Section Officer who is assisted by a team of Deputy Section Officers and Clerks (seniorial cadre). All official reports and documents are published by the respective branches.

We therefore find that the first claim of the service having been provided to State Government appears to be correct.

15. On examining the second claim, i.e. preparing and providing plans and estimates and DTP [draft tender plan], is a **pure service**, we find that the term is not defined under the GST Act, Rules etc.. However, in the FAQ issued by CBIC under sectoral series for Government services, question 25 deals with the same, which is reproduced below for ease of reference:

Question 25: What is the scope of 'pure services' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

*Answer: In the context of the language used in the notification, **supply of services without involving any supply of goods would be treated as supply of 'pure services'**. For example, supply of man power for cleanliness of roads, public places, architect services, consulting*



engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

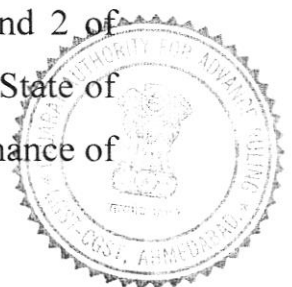
[emphasis supplied]

Since, the applicant is engaged in preparing and providing plans and estimates and DTP [draft tender plan], we find that the second claim of the applicant of the service having been rendered being a 'pure service' appears to be correct.

16. Moving on to the third claim, that the activity is in relation to function entrusted to a Municipality and a Panchayat, *i.e.* Articles 243 G and W and the two schedules mentioned in the said article. The articles and the schedules have already been reproduced in paragraphs *supra*, for ease of reference. The applicant vide his application and additional submission, has vehemently stated that the activity of preparing and providing plans and estimates and DTP [draft tender paper] for building work **are in relation** to functions entrusted to Municipalities and Panchayats. It is further stated that their activity would fall within the ambit of Sr. No. 1 and 2 of Schedule 12, reproduced *supra*, viz [1. Urban planning including town planning. 2. Planning of land – use and construction of buildings.]

17. We find that the applicant has not provided any details of the buildings for which they have provided plans and estimates and DTP. On account of lack of adequate detail, the question that arises for consideration is whether a building say staff quarters built for State Government employees for which the applicant was engaged in preparing and providing plans and estimates and DTP [draft tender plan], can be said to be a work in relation to function entrusted to Municipalities and panchayat? We find it difficult to answer the above question in affirmative.

18. Further, it is also difficult to comprehend as to how constructing a building, which probably has nothing to do with any of the functions enumerated in schedules XI or XII can be said to be in relation to functions entrusted to Municipality under Article 243W in terms of Sr. No. and 2 of Schedule XII. We also do not find any merit in the averment, that the State of Gujarat has entrusted the functions of planning, construction & maintenance of



all categories of roads and all Government owned buildings to the R & B department which makes them fall within the ambit of the exemption at Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended. Thus, we hold that this averment is without any basis and hence not legally tenable.

19. The applicant's further averment that the term/phrase 'activity in relation to the function entrusted to a panchayat or municipality should be interpreted as similar/such/relatable activity carried out by the Central government, State Government, etc. Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended; that otherwise the exemption would become redundant. In this connection, we find that the Hon'ble SC in the case of Doypack Systems Pvt. Ltd. [AIR 1988 SC 782] clarified the meaning of the expression "in relation to" as follows: "In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 521 where it is stated that the term 'relate' is also defined as meaning to ring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". Similarly, the Hon'ble SC in the case of Madhav Rao Jivaji Rao Scindia [AIR 1971 SC 530] observed that the expression "relating to" means to bring into relation or establish a relation. It was further clarified that there should be a direct and immediate link with a covenant and that there cannot be any independent existence outside such covenant.

20. A counter argument would be that if the averment of applicant, if accepted then would lead to a situation wherein all the buildings constructed by the State Government, being an activity in relation to the function entrusted to a Panchayat or Municipality, would merit exemption under Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended. This situation, we find, is not what is espoused by the aforementioned exemption notification. The averment therefore not being plausible, is rejected.

21. Even otherwise, as is already mentioned *supra*, the applicant has nowhere stated as to for what purpose the buildings were constructed by the State Government, which if provided, could have helped in examining whether the same was in relation to the function entrusted to a Panchayat or



Municipality. Moreover, during the personal hearing it was stated that the R&B Division is deducting TDS under section 51 of the CGST Act, 2017.

22. Having said so, we find that the applicant who is engaged in preparing and providing plans and estimates and DTP [draft tender plan], is not eligible for a blanket exemption in terms of Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended, in respect of all the buildings constructed for the State Government. However, it goes without saying that in case the applicant is in a position to prove that the building constructed is in relation to any of the functions entrusted to a Panchayat or Municipality, in terms of Schedule XI and XII, they would be eligible for the exemption under Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended. This as is already mentioned would vary and depend on the facts of each case.

23. We also find that the question of the interpretation/applicability of exemption is no longer *res-integra* having been decided by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Dilip Kumar & Company [2018 (361) E.L.T. 577 (SC)]. The Hon'ble Supreme Court in the said case held as follows [relevant extracts]

52. *To sum up, we answer the reference holding as under –*

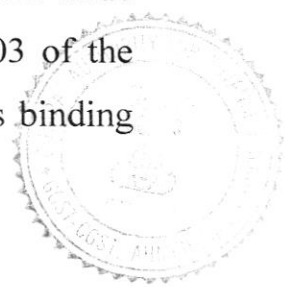
(1) *Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*

(2) *When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*

(3) *The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.*

Following the ratio of the judgement delivered by the Hon'ble Supreme Court, we feel that the blanket exemption sought by the applicant in respect of all the buildings constructed for the State government under the aforementioned notification, is not legally tenable.

24. The applicant has relied upon a circular and a plethora of rulings. As far as the reliance on various rulings are concerned, we find that [a] the issue involved is different and [b] even otherwise, in terms of section 103 of the CGST Act, 2017, the advance ruling pronounced by the authority is binding



only on the applicant who sought the ruling and on the concerned officer of the jurisdictional officer in respect of the applicant. As far as the reliance on the circular no. 51/25/2018-GST dated 31.7.2018, is concerned, we find that the clarification holding that service provided by PSPs [private service providers] to State Government by way of transportation of patients [ambulance services] against consideration in the form of fee was exempt was on the ground that functions of 'health and sanitation' is entrusted to Panchayat under article 243G read with XIth schedule & Municipalities under article 243W read with XIIth schedule.

25. In view of the foregoing, we pass the following ruling

RULING

(i) Providing services of preparing and providing plans and estimate and preparing and providing DTP [Draft Tender Plan] for the building work by the applicant to the R&B department, Government of Gujarat under the contract would not qualify as an activity in relation to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India.

(ii) Since the answer to the first question is in negative, the second question becomes infructuous.

(MILIND KAVATKAR)
MEMBER (SGST)

Place: Ahmedabad

Date: 30 /05/2024

(AMIT KUMAR MISHRA)
MEMBER (CGST)

