


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADMISSION ORDER NO. GUJ/GAAR/ADM/2020/117
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/34)

Date: 30.12.2020

Name and address of the applicant	:	M/s. Gujarat State Road Development Corporation Ltd., Ground floor, Nirman Bhavan, Sector-10A, Gandhinagar-382010.
GSTIN of the applicant	:	24AAECG8707D1ZU
Date of application	:	27.07.2020.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	<i>Not Mentioned in the Application</i>
Date of Personal Hearing	:	23.12.2020 (Through online hearing)
Present for the applicant	:	

BRIEF FACTS

The applicant M/s. Gujarat State Road Development Corporation Ltd., Ground floor, Nirman Bhavan, Sector-10A, Gandhinagar-382010 has submitted that the Government of Gujarat, in order to have a developed, efficient and high quality system of road transportation, had formulated a ‘Road Policy’ on December, 1996 (“Policy”), to be implemented by the Roads and Building Department, GOG. The Policy enables private participation in the development, construction, repair, upgradation, management, operation and maintenance of roads within the State of Gujarat.

2. The applicant has further submitted that in furtherance of the policy, the Government of Gujarat enacted the Gujarat Infrastructure Development Act, 1999 (Gujarat Act No.11 of 1999) (“GID Act”) to provide a regulatory framework for participation of the private sector in financing, construction, maintenance, development and operation of infrastructure projects on build-operate-transfer (BOT) basis in the State of Gujarat; that vide item 2 of Schedule I of the GID Act, roads, bridges and bypasses are the eligible infrastructure projects that allow private sector participation; that in this regard, Government of Gujarat established and set up Gujarat Infrastructure Development Board (GIDB) and GSRDC in consonance with Gujarat Infrastructure Development Act, 1999(Gujarat Act No.11 of 1999) (GID Act), with the object to invite private sector participation for the development, construction, repair, upgradation,

management, operation and maintenance of the aforesaid infrastructure development projects within the State of Gujarat.

3. The applicant has submitted that they are a wholly owned Government of Gujarat company (i.e. 100% equity ownership and control held by Government of Gujarat) established under the Companies Act, 1956 represented by its Managing Director, hereinafter called as GSRDC; that they are having their principal place of business at Ground Floor, Nirman Bhavan, Sector 10-A, Gandhinagar i.e. in the State of Gujarat. The applicant has further submitted that the main object of the GSRDC is to act as an independent and autonomous body for the construction and development of the roads (state highway) and bridges as a part of the activities of the Roads and Buildings (R&B), Department of Government of Gujarat under the BOT, BOOT or BOLT project; that GSRDC is also required to facilitate, regulate and control the use of roads, bridges and flyovers etc. and to advice the R&B Department of Government of Gujarat on all the issues relating to roads and assist in formulation of policies in this regard; that GSRDC intends to develop 8 road projects under Public Private Partnership and that it seeks participation from private operators for the said projects to provide superior quality road infrastructure at competitive prices.

4. The applicant has submitted that Pure services provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority or a Government Entity has been exempted vide Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, at Entry No.3 which reads as under:

Sl. 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 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

5. The applicant has further submitted that in order to assess whether they are eligible to receive such benefits that a Governmental Authority or Government Entity is entitled to, it is required to assess the definition of Governmental Authority and Government Entity as given under Notification No.11/2017-Central Tax(Rate) dated 28.06.2017. The applicant has stated that

as per the definitions given under Notification No.11/2017-Central Tax(Rate) and Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, Governmental Authority is defined 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 90per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

6. The applicant has further submitted that for arriving at the decision it is important to ascertain whether the nature of services provided by the applicant falls under 12th Schedule, Article 243W of the Indian Constitution or 11th Schedule, Article 243G of the Constitution. The applicant has stated that the activities listed under 12th Schedule are enumerated as under:

1. Urban planning including town planning.
2. Regulation 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.

7. The applicant has further stated that Article 243G of the Constitution of India entrusts powers authority and responsibilities to the Panchayats subject to certain conditions with respect to: (a) the preparation of plans for economic development and social justice as may be entrusted to them including those in

relation to the matters listed in the Eleventh Schedule. The applicant has stated that the activities listed under the 11th Schedule are enumerated as under:

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.
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.

8. The applicant has further stated that he understands that it has been formed with the main object to undertake activity of construction and development of state highway roads as entrusted by the State Government and the services of construction and development of state highway roads does not appear to fall in the list of services enumerated under 12th schedule of Article

243W or 11th schedule or Article 243G of the Constitution of India and hence does not qualify the criteria of Governmental Authority and accordingly not eligible to take the benefit of exemption provided to Governmental Authority at Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. As per the definitions given under Notification No.31/2017-Central Tax(Rate) dated 13.10.2017, Government Entity is defined as under:

“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 State Legislature; or

(ii) established by any Government,

with 90per 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.”.

9. The applicant has further submitted that GSRDC is a 100% Government of Gujarat undertaking (i.e. 100% stake in equity held by Government of Gujarat) incorporated with main object of construction and development of state highway roads, as entrusted by the Government of Gujarat, hence they are covered under definition of Government Entity as defined in the Notification No.31/2017-Central Tax(Rate) dated 13.10.2017. The applicant has concluded his submission with a request: (i) to hold that the Service of construction and development of state highway roads provided by GSRDC does not qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively of the Constitution of India. (ii) to hold that the applicant is very well covered under the definition of ‘Government Entity’ and not ‘Governmental Authority’ and that it is eligible for the benefits available to Government Entity under Notification No.11/2017-CTR dated 28.06.2017. The applicant has asked the following question seeking Advance Ruling on the same:

(a) Whether the service of construction and development of state highway roads provided by GSRDC would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?

(b) Whether applicant would fall under the definition of Governmental Authority or Government Entity?

DISCUSSION & FINDINGS:

10. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

11. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

12. On going through the application filed by the applicant we find that the said application has not been filed in the prescribed format required as per the provisions of Section 97(1) of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017. We also find that the applicant has paid an amount/fee of Rs.10,000/- along with their aforementioned application. In this regard, we find it imperative to refer to Section 97(1) of the CGST Act, 2017 as well as Rule 104 of the CGST Rules, 2017 which read as under:

Section 97. (1) *An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.*

Rule 104. Form and manner of application to the Authority for Advance Ruling.

(1) *An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in **FORM GST ARA-01** and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.*

(2) *The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.*

13. On going through the provisions of Section 97 of the CGST Act, 2017 and Rule 104 of the CGST Rules, 2017, we find that the application for obtaining an Advance Ruling under sub-section(1) of Section 97 is to be submitted in FORM-GST ARA-01 (which is the prescribed format for the said application) and shall be accompanied by a fee of Five thousand rupees which is to be deposited in the manner specified in Section 49 of the CGST Act, 2017. Similarly, as per Section 97 of the GGST Act, 2017 and Rule 104 of the GGST Rules, 2017, the application for obtaining an Advance Ruling under sub-section(1) of Section 97 is to be submitted in FORM-GST ARA-01 and shall be accompanied by a fee of Five thousand rupees which is to be deposited in the manner specified in Section 49 of the GGST Act, 2017. On a combined reading of the provisions of the aforementioned Section 97 and Rule 104 of both the aforementioned Acts and Rules, we find that the application for obtaining an Advance Ruling under sub-section(1) of Section 97 is to be submitted in FORM-GST ARA-01 and shall be accompanied by a fee of Ten thousand rupees (Five thousand rupees as per Rule 104 of the CGST Rules, 2017 + Five thousand rupees as per Rule 104 of the GGST Rules, 2017).

14. We, therefore, find that although the applicant has paid the required fees of Rs.10,000/- as required, they have not filed the application in the prescribed

format of GST-ARA-01 required as per the provisions of aforementioned Sections and Rules. Therefore, the instant application is liable for rejection under Section 98(2) of the CGST Act, 2017 for not filing the application in proper FORM GST-ARA-1 as required under the provisions of CGST Act and Rules and respective GGST Act & Rules.

15. In view of the facts mentioned above, we do not find it necessary to delve into the details or facts of the issue in hand since the applicant has failed to comply even with the statutory requirements of the provisions of the relevant sections and rules of the CGST Act, 2017/GGST Act, 2017 as well as the CGST Rules, 2017/GGST Rules, 2017 with regard to filing the application of Advance Ruling before the Advance Ruling Authority, thus rendering it an invalid application for Advance Ruling under Section 97(1) of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017.

16. In the light of the aforesaid circumstances, we rule as under:

R U L I N G

Instant application filed by M/s. Gujarat State Road Development Corporation Ltd., Ground floor, Nirman Bhavan, Sector-10A, Gandhinagar-382010 is hereby rejected under Section 98(2) of the CGST/GGST Act, 2017 being non-maintainable in view of the above discussion.

(SANJAY SAXENA)
MEMBER

(MOHIT AGRAWAL)
MEMBER

Place: Ahmedabad

Date: 30.12.2020.